



# ICLG

The International Comparative Legal Guide to:

## Employment & Labour Law 2019

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A practical cross-border insight into employment and labour law

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# Malaysia



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## 1 Terms and Conditions of Employment

### 1.1 What are the main sources of employment law?

The primary sources of employment law stem from legislation such as the Employment Act 1955 (“EA”), Industrial Relations Act 1967 (“IRA”), Employment (Termination and Lay-Off Benefits) Regulations 1980 (“ETLOBR”), Employees’ Provident Fund Act 1991 (“EPF Act”), Employees’ Social Security Act 1969 (“SOC SO Act”), Employment Insurance System Act 2018 (“EIS Act”), Trade Unions Act 1959 (“TUA”), Factories and Machineries Act 1967 (“FMA”), Occupational Safety and Health Act 1994 (“OSHA”), Workmen’s Compensation Act 1952 (“WCA”), the Children and Young Persons (Employment) Act 1966 (“CYPEA”), subsidiary legislation and case law. Case law from other jurisdictions, particularly commonwealth jurisdictions, are also persuasive.

### 1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The EA in general specifically protects the following categories of employees (“EA Employees”):

- (i) Employees earning below RM2,000 a month;
- (ii) Irrespective of wages earned, any person employed:
  - (a) as a manual labourer;
  - (b) as a supervisor of manual labourers;
  - (c) to operate or maintain any mechanically propelled vehicle for the purpose of transporting passengers or goods or for reward or commercial purposes;
  - (d) as a domestic servant; or
  - (e) in certain positions in sea-going vessels.

The EA also has specific provisions which apply to all employees irrespective of wages earned.

Foreign nationals and other prescribed categories of employees are excluded from the coverage of the EPF Act and SOC SO Act.

Specific categories of employees set out in the First Schedule of the EIS Act are excluded from the application of the EIS Act, such as persons whose employment is of a casual nature and employed otherwise than for the purposes of the employer’s industry; domestic servants; persons permitted to win minerals or produce from or on the land of another and who, in consideration of such permission, gives a proportion of the minerals or produce so won to that other person or pays to him the value of such proportion; spouses of employers; persons detained in any prison, Henry Gurney School, approved

place of detention, mental hospital or leper settlement; members of the public service of the Federation and the States; employees of local authorities or statutory bodies; employees under the age of 18 years; employees aged 60 and above; and employees aged 57 years and in respect of whom no contributions were payable under the EIS Act before such employee attained the age of 57 years.

The TUA prohibits certain categories of employees from being trade union members, such as members of various statutory authorities.

Minors (below 18 years of age) are also protected under the CYPEA, which imposes restrictions on the employment of minors.

### 1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

For EA Employees, the EA requires employment contracts with terms of employment in excess of one month to be in writing and include termination provisions. Oral employment contracts are also valid and the EA does not prohibit the recognition or enforcement of the same.

Notwithstanding the above, the Personal Data Protection Act 2010 (“PDPA”) prescribes that certain information must be provided to employees in writing (please refer to question 8.1 below).

### 1.4 Are any terms implied into contracts of employment?

The EA provides various minimum terms and conditions of employment. Any employment provisions must not be below the minimum standard set by the EA for EA Employees, and terms not provided for in an employment contract that are present in the EA will be implied.

Terms may also be implied by law or by custom, such as an employee’s duties to serve an employer with fidelity, honesty and good faith, obeying all legal and reasonable orders of the employer, not misusing or disclosing an employer’s confidential information, avoiding situations of conflict of interest, and not committing acts which bring benefit or advantage to the employee to the detriment of the employer. Employees also enjoy implied rights in employment contracts, including the right to contribute and receive protection from unjust dismissal, paid maternity leave, to unionise and join a trade union, to have personal data managed in accordance with the PDPA, and to enjoy security of tenure.

There are implied terms in employment contracts applicable to employers as well, including duties to provide a safe working environment for its employees, providing work for the purposes of

the employment contract, acting fairly in good faith and treating employees with mutual trust and respect. Employers' implied rights in employment contracts include the right to terminate an employee's services by contractual notice, dismissing an employee with just cause and excuse, restructuring its business, and to investigate and/or take disciplinary action against an employee.

Express terms override implied terms in a contract. However, for such terms to be valid and enforceable, they must be reasonable and not interfere with an employee's individual rights.

Obligations on employers are also imposed by legislation, particularly statutory contributions prescribed pursuant to the EPF Act, SOCSO Act and EIS Act. The Income Tax Act 1967 also provides that employers are obligated to deduct in each month a portion of an employee's salary in accordance with the Inland Revenue Board's prescribed schedule and remit such tax deduction towards the employees' personal income tax payment to the Inland Revenue Board.

### 1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

EA Employees are entitled to various minimum terms and conditions of employment, namely:

- (i) maximum hours of work on a daily and weekly basis;
- (ii) overtime payment for work outside of normal hours of work;
- (iii) protection from unlawful deduction of wages;
- (iv) paid annual leave;
- (v) paid sick leave;
- (vi) 11 paid gazetted public holidays, five of which are prescribed by law;
- (vii) termination notice period;
- (viii) payment of termination benefits, save where termination of employment is pursuant to misconduct or poor performance; and
- (ix) payment of minimum wage.

Furthermore, employees (except for those specifically excluded by legislation) are entitled to EPF, SOCSO and EIS contributions.

All female employees are entitled to paid maternity leave of no less than 60 days, save for certain exempted categories.

### 1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining usually takes place at the company level, and may take place between:

- (i) a trade union representing employees and a trade union representing employers;
- (ii) a national trade union with an individual employer or an employer which consists of a group of companies including subsidiaries; and
- (iii) an in-house union with the employees' employer.

Only trade unions registered with the Director-General of Trade Unions ("DGTU") and recognised by the employer may enter into collective bargaining with the employer in accordance with laws regulating the collective bargaining process.

## 2 Employee Representation and Industrial Relations

### 2.1 What are the rules relating to trade union recognition?

The recognition of trade unions in Malaysia is governed by the TUA and the IRA.

The Industrial Relations Regulations 2009 ("IRR") prescribes the rules and regulations for the recognition of a trade union in Malaysia:

- (i) A trade union that wishes to represent the workers in a collective bargaining will need to apply in the prescribed form together with the union's constitution to the employer and the Director-General of Industrial Relations ("DGIR").
- (ii) Within 21 days after the receipt of such documents, the employer must either accord recognition to the trade union or notify the trade union of the workmen concerned and set out in writing the grounds for refusing recognition.

If the employer refuses to accord recognition or fails to respond within the 21-day period, the trade union may lodge a report with the DGIR within the prescribed period otherwise the claim for recognition will be deemed withdrawn. Upon receipt of the report, DGIR will take the necessary steps to ascertain the eligibility of the trade union to represent the workers.

The DGIR has the authority to refer the case to the DGTU to conduct a competency check on the trade union. If the trade union is deemed competent, the DGIR shall conduct a secret ballot to determine if the majority of the workers support the trade union.

Finally, the Minister of Human Resources ("MOHR") will decide whether to refuse or to accord recognition to the trade union.

### 2.2 What rights do trade unions have?

A trade union is a separate legal entity and may sue or be sued in its name.

Once a trade union has been registered, it gains certain rights and privileges including immunity from being sued for the following acts, subject to certain restrictions:

- (i) any actions taken by the union or its officers or its members in relation to a trade dispute, on the ground that such act induces some other person to breach an employment contract, interferes with the trade, business or employment of some other person or with the right of some other person to dispose of capital or of labour as that person wills; and
- (ii) any tort committed by the union or its officers or its members, provided that the wrongful act has been committed by the officers or the union members acting on behalf of the union.

A trade union may be sued for matters relating to the trade union's property.

### 2.3 Are there any rules governing a trade union's right to take industrial action?

Industrial action such as strikes, pickets and lockouts are strictly regulated by statute, prohibited in certain situations, and are limited to members of a registered trade union. Any form of industrial action by: (i) employees who are not union members; (ii) a union member whose action is not supported by the union; or (iii) union members who belong to a trade union but whose actions contravene statutory regulations, is deemed to be illegal.

Under the TUA, a trade union may only call for a strike or lockout, respectively, if:

- (i) the consent by secret ballot of at least  $\frac{2}{3}$  of their total number of members is obtained by the union;
- (ii) at least seven days have lapsed after the results of the secret ballot are submitted to the DGTU; and
- (iii) the proposed strike or lockout complies with the rules of the trade union and all applicable laws.

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#### 2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

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There are no work councils in Malaysia.

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#### 2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

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Not applicable. Please refer to question 2.4 above.

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#### 2.6 How do the rights of trade unions and works councils interact?

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Not applicable. Please refer to question 2.4 above.

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#### 2.7 Are employees entitled to representation at board level?

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There is no entitlement for employee representation at board level.

### 3 Discrimination

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#### 3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

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Discrimination of employees is not permissible in Malaysia. Employees have the right to be treated fairly with mutual trust and respect.

The Persons with Disabilities Act 2008 provides that persons with disabilities shall have the right to access employment on an equal basis with persons without disabilities.

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#### 3.2 What types of discrimination are unlawful and in what circumstances?

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Discrimination of employees is not permissible in Malaysia although this only applies at the individual level. Where different classes of employees are engaged by an employer, protection against discrimination only applies to employees within a particular class. The Malaysian courts have determined that all persons by nature, attainment, circumstances, and the varying needs of different classes of persons often require separate treatment. Discrimination amongst various classes of employees is permissible, particularly where there are special conditions applicable to employees of a certain class. The Federal Court in *Beatrice A/P AT Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681 determined that a collective

agreement requiring pregnant air stewardesses to resign did not constitute unlawful discrimination as the nature of the work was not conducive for pregnant women and was incomparable with the nature of work of ground staff employed by the employer, which do not have similar working conditions and/or contractual stipulations.

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#### 3.3 Are there any defences to a discrimination claim?

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Defences include, but are not limited to, defences premised on lack of prejudice, business needs and convention, amongst others.

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#### 3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

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Employees may: (i) bring a discrimination claim in the civil courts; (ii) terminate their employment contract on the alleged ground of breach of an implied term in the contract by the employer; and/or (iii) bring a claim for an unjust dismissal. Employers may settle such claims prior to or after the initiation thereof.

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#### 3.5 What remedies are available to employees in successful discrimination claims?

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The employee may be entitled to damages and a restitution of rights or benefits the employee has been deprived of in the event of successful civil claims. In a successful claim for unjust dismissal, the employee would be entitled to back wages from the date of termination of employment to the date of the final hearing in court, to a maximum of 24 months of back wages together with reinstatement to employment or in the alternative, back wages from date of termination of employment to the date of the final hearing in court to a maximum of 24 months of back wages and compensation *in lieu* of reinstatement, calculated at the rate of one month's salary for each year of service.

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#### 3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

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No, however, the Employment (Part-Time Employees) Regulations 2010 applies to part-time employees and provides for legal entitlements such as overtime pay, public holidays, annual leave and sick leave.

### 4 Maternity and Family Leave Rights

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#### 4.1 How long does maternity leave last?

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All female employees, except for exempted categories, are entitled to a minimum of 60 consecutive days paid maternity leave.

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#### 4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

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During maternity leave, a woman is entitled to her full salary, and all relevant contractual benefits as if she is in active employment, with the exception for benefits that are tied to active work.

#### 4.3 What rights does a woman have upon her return to work from maternity leave?

Women have the right to resume work as if there has been no break in employment upon return from maternity leave.

#### 4.4 Do fathers have the right to take paternity leave?

Fathers are not granted statutory rights to take paternity leave.

#### 4.5 Are there any other parental leave rights that employers have to observe?

No, there are no other parental leave rights.

#### 4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Employees are not entitled to work flexibly regardless of their responsibility for caring for dependents.

## 5 Business Sales

#### 5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The law does not recognise automatic continuation of employment with the new owner of the business. In the event of a sale of business, employees who are not offered new employment by the purchaser remain contractually bound to the seller. If the seller no longer requires an employee after the sale of the business, the contract of service of the employee shall be deemed to have been terminated. Consequently, the employer prior to the change in ownership and the person by whom the business is taken over immediately after the change occurs shall be jointly and severally liable for the payment of all termination benefits.

Sellers must also give notice of termination to the employees even if the employees have been offered fresh employment by the purchaser. Employment contracts remain unaffected by share sales.

#### 5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

There is no automatic continuation of employment with the new owner of the business, as such there is no automatic transfer of individual contractual rights.

Collective agreements entered into between the trade union and the seller will continue to apply in relation to the purchaser of the business.

#### 5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Unless provided for in a collective agreement between an employer and a trade union, no information or consultation rights are associated with the sale of the business.

However, employers are encouraged to inform the employees and trade unions prior to the transaction being made public.

#### 5.4 Can employees be dismissed in connection with a business sale?

All employees are deemed to be terminated upon the sale of a business. According to the ETLOBR, EA Employees who are not offered new employment by the purchaser are entitled to all termination benefits as provided by the EA, and for non-EA Employees, such termination benefits as provided in the employment contract. This would not apply if the employees were offered continued employment with the purchaser within seven days of the sale on terms and conditions of employment that are no less favourable.

#### 5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

While employers may change the terms and conditions of employment in connection with a business sale, under the ETLOBR, if the new terms and conditions of employment are less favourable to the employee, the employee would be entitled to termination benefits payable by the seller.

## 6 Termination of Employment

#### 6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employees must be given notice of termination unless dismissed for misconduct or poor performance. The minimum length of the notice period should be an agreed term in the employment contract.

The following notice periods will apply if an EA Employee's employment contract is silent on the length of notice to be given:

Period of Employment	Notice Period
Less than two years	Four weeks
Two to five years	Six weeks
Five years or more	Eight weeks

#### 6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Yes, employers may require employees to serve a period of "garden leave".

#### 6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

All employees are protected against unjust dismissal. Employees believing they have been dismissed without just cause or excuse have recourse to a variety of options depending upon their status under relevant employment laws.

Employees may make a claim for reinstatement under the IRA. The claim must be submitted to the Industrial Relations Department (“IRD”) within 60 days of the termination. If just cause or excuse for dismissal is not shown by the employer, the employee will be entitled to back wages from the date of dismissal to the date of the award, subject to a maximum of 24 months, together with either reinstatement to the previous job; or with compensation *in lieu* of reinstatement, calculated at the rate of one month’s salary for each year of service.

EA Employees may also lodge a complaint to the local Labour Office within 60 days of the dismissal to challenge the dismissal. Non-EA Employees do not enjoy this right. The Labour Office may only order the employer to pay employee termination benefits, indemnity *in lieu* of notice; and indemnity *in lieu* of annual leave in respect of EA Employees.

No consent is required from third parties prior to dismissal, unless contractually agreed between an employer and a third party.

#### 6.4 Are there any categories of employees who enjoy special protection against dismissal?

All employees are protected against unjust dismissal.

#### 6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer may be entitled to dismiss an employee for reasons relating to the individual employee when the employee is guilty of misconduct, or for poor performance.

Dismissal for business-related reasons are allowed, limited to instances of retrenchments or during a closure or sale of business. Only EA Employees are entitled to statutory termination benefits upon retrenchments.

The minimum termination benefits payable to EA Employees prescribed by the ETLOBR are as follows:

Period of Employment	Wages (per year of employment)
Less than two years	10 days’ wages
Two to five years	15 days’ wages
Five years or more	20 days’ wages
An incomplete year of service	Pro-rated wages in respect of the incomplete year of service, calculated to the nearest month

For non-EA Employees, retrenchment benefits are at the discretion of the employer, unless provided for under the employment contract. However, fair and reasonable benefits should be made available to all employees if the financial position of the employer permits.

#### 6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Specific procedures apply to all types of dismissals. These may differ depending on the grounds for dismissal.

#### 6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

When an employee believes he has been dismissed unjustly, he may either: (i) make a representation for reinstatement and back wages under the IRA; (ii) make a claim for unpaid wages by lodging a complaint to the local Labour Office (for EA Employees); or (iii) institute a civil claim for breach of contract.

In civil claims, remedies will ordinarily be limited to damages equivalent to the salary that would have been paid during the termination notice period.

Please refer to question 6.3 for the remedies for a successful unjust dismissal claim.

#### 6.8 Can employers settle claims before or after they are initiated?

Claims can be settled by employers before and after the initiation. However, in the case of a representation for reinstatement under the IRA, a settlement that is achieved prior to the representation being conciliated upon in accordance with the provisions of the IRA may not always have binding effect on the parties.

#### 6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

In the event of a sale of business, closure of business, or retrenchment, collective termination is subject to certain requirements in respect of the process and the legality for the termination.

#### 6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

In a mass dismissal, the enforcement of rights by employees apply equally as they do to individual dismissals. The consequences of failure by an employer to comply with its obligations are also the same on a per-employee basis.

## 7 Protecting Business Interests Following Termination

#### 7.1 What types of restrictive covenants are recognised?

Restrictive covenants pertaining to trade are generally unenforceable. Section 75 of the Contracts Act 1950 provides that an agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void. Restrictive covenants in respect of confidentiality are recognised. However, many employers still opt to include post-termination restrictive covenants in employment contracts for their deterrent effect.

### 7.2 When are restrictive covenants enforceable and for what period?

Restrictive covenants may be enforceable provided they fall under the exceptions to Section 75 of the Contracts Act 1950 (when relating to profession, trade or business), and in confidentiality clauses. Employers can restrain employees from disclosing confidential information obtained during employment, after the employment contract ends, and enforce provisions in employment contracts relating thereto. While there is no prescribed limitation in time on enforceability of restrictive covenants, case laws indicate that the period of restriction must be reasonable in the circumstances.

### 7.3 Do employees have to be provided with financial compensation in return for covenants?

No, employers are not required to provide employees with financial compensation in return for covenants.

### 7.4 How are restrictive covenants enforced?

They may be enforced by commencing a civil claim for remedies. Such remedies may include but are not limited to, interlocutory or interim injunctions, perpetual injunctions and/or damages.

## 8 Data Protection and Employee Privacy

### 8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Employers are bound by law to handle employee data in accordance with the PDPA, which makes it compulsory for a data user to obtain the consent of the individual prior to the processing of personal data, and to comply with the Personal Data Protection Principles. Certain exceptions apply to the General Principle, such as where the data is being processed for the performance of a contract.

However, regardless of whether the exceptions apply, based on the Notice and Choice Principle, the employer must issue a written notice, in both English and Malay, to inform a data subject of the following:

- (i) that personal data of the data subject is being processed by or on behalf of the data user, and to provide a description of the personal data to that data subject;
- (ii) the purposes for which the personal data is being or is to be collected and further processed;
- (iii) any information available to the data user as to the source of that personal data;
- (iv) the data subject's right to request access to and correction of the personal data and how to contact the data user with any inquiries or complaints in respect of the personal data;
- (v) the class of third parties to whom the data user discloses or may disclose the personal data;
- (vi) the choices and means the data user offers the data subject for limiting the processing of personal data, including personal data relating to other persons who may be identified from that personal data;
- (vii) whether it is obligatory or voluntary for the data subject to supply the personal data; and

- (viii) where it is obligatory for the data subject to supply the personal data, and the consequences for the data subject if the data subject fails to supply the personal data.

The transfer of personal data out of the country is also prohibited under the PDPA, unless the data subject consents or when the relevant statutory exceptions apply.

Employers must also comply with: the Disclosure Principle; Security Principle; Retention Principle; Data Integrity Principle; and Access Principle.

### 8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Based on the Access Principle provided in the PDPA, an employee has the right to request for access to his/her personal data and to make corrections if any of the data is found to be inaccurate, incomplete, misleading or not up to date, subject to certain exceptions under the PDPA.

### 8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers are entitled to carry out pre-employment checks. Written consent of the prospective employee should be obtained before employers carry out pre-employment checks, particularly if they involve Sensitive Personal Data of the employee (as defined under the PDPA).

### 8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Employers are entitled to monitor an employee's emails, telephone calls or use of the computer system on the basis that such facilities and equipment belong to the employer and are used for the purposes of work.

### 8.5 Can an employer control an employee's use of social media in or outside the workplace?

Employers may impose various restrictions on the use of social media by employees during work hours. Employers may also restrict the use of social media where postings thereon by employees may adversely prejudice the employer. A breach of such restrictions by employees may constitute misconduct and employers would have the right to terminate the employee due to such misconduct.

## 9 Court Practice and Procedure

### 9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

All civil courts have the jurisdiction to hear employment-related claims.

Additionally, the Industrial Court (“IC”) (which is an arbitration tribunal and is not regarded as a civil court) has jurisdiction to hear the following matters:

- (i) representations by an employee for reinstatement on the grounds of dismissal without just cause or excuse;
- (ii) trade disputes between employers and workers;
- (iii) claims of non-compliance with awards by the IC or the terms of a collective agreement; and
- (iv) interpretation/amendment/variation of collective agreements and IC awards.

EA Employees may also make complaints to the Director General of Labour (“DGL”) in respect of wages or payments due to them under their employment contracts, the EA or the minimum wage order. However, under Section 69 EA, the DGL’s powers extend to non-EA Employees whose salaries do not exceed RM5,000 a month, if the complaint is of non-payment of wages or other payments due to them under their employment contracts.

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### 9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

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There are three options in respect of employment-related complaints:

- (a) Complaints under the IRA:
  - (i) Any employee may make a claim for reinstatement under the IRA within 60 days of alleged unjust dismissal.
  - (ii) Once a claim has been submitted, one or more conciliation meetings will be held, attended by an officer of the IRD, the employee and employer or their representatives.
  - (iii) If the outcome of a conciliation session results in a settled case, the Industrial Relations Officer will assist them to put their agreement in writing and will witness their agreement.
  - (iv) If conciliation does not bring about a settlement, the matter is referred by the DGIR to the MOHR, who will decide whether or not to refer any unsettled claims for reinstatement to the IC for adjudication.
  - (v) There are no filing fees in the IC.
- (b) Complaints to the DGL: EA Employees also have the option of filing a complaint to the DGL, and such complaints should be made in accordance with the EA.

- (c) Civil Claims: Civil claims may be filed in the civil courts in the same manner as any other civil suit, which is subject to the applicable fees.

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### 9.3 How long do employment-related complaints typically take to be decided?

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The length of time taken for decisions on employment-related claims to be made depends on various factors such as the type of claim, the manner in which the complaint is brought and the stage at which the claim is settled. Conciliation meetings before the IRD may be set within one to three months from the date the representation is lodged. If the matter is not settled during the conciliation meetings, the MOHR may refer the case to the IC within six to twelve months of lodgement of the representation. Proceedings in the IC may exceed one year.

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### 9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

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Decisions of a civil court and decisions of the DGL may be appealed. IC awards may only be challenged via an application for judicial review to the High Court on the grounds that the IC committed an error of law or was *ultra vires* in making its award. The time taken may exceed one year.

#### Note

*The Malaysian Government had, in September 2018, proposed amendments to the EA and the TUA (“Proposed Amendments”) which may potentially be implemented in 2019. The Proposed Amendments are currently reviewed by various stakeholders and are subject to change and subject to the Malaysian Government’s discretion to implement the same. However, please note that the Proposed Amendments have yet to be incorporated into the form of a Bill nor passed as an Act of Parliament and thus have yet to be granted the force of law. The timeframe for passing a Bill and the coming into force of an Act of Parliament may take in excess of a year and it is possible that the Proposed Amendments may not be implemented in 2019, if at all. If the Proposed Amendments are implemented, the above answers may be affected.*

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