

INTRODUCTION

- Why Labour Law was created?
- The History of Master-Employee Relationship
- How Labour Law starts?
- The Development of Labour Legislation in Malaysia



INTRODUCTION

Why Labour Law was created?

- Basically, it was created from the idea known as the subordination of individual employee or worker to the capitalist enterprise.

INTRODUCTION

The History of Master- Employee Relationship

- There was a revolution regarding this relationship which started with master and servant, connoting the idea of slavery where the servant served the master.
- The relationship has changed over the years due to many circumstances. From master and servant relationship, it has changed to one of employer and employee and this relationship connotes rights and obligation. No more elements of slavery (employer has an obligation to provide wages, safe environment of employment and medical protection).

INTRODUCTION

How Labour Law starts?

- Laissez faire was a system in Europe which allowed the individual to embark on business activities as long as they have capital (money). Thus, they could set up any kind of business they liked. In other words, it is free to everybody and there is no government control.

INTRODUCTION

The Development of Labour Legislation in Malaysia

- When the British came, they brought with them migrant workers, i.e., Chinese and Indians. Chinese workers were brought in to work in the tin mines and sugar cane plantation.
- They were brought in under the Indenture system which means that they were brought in for a certain period of time and for certain kind of job. When the time passed, they would either return to their country or continue work for another period. The Indenture system also applied to Indian workers who worked in rubber plantation.

The Development of Labour Legislation in Malaysia

- During that period, there was no comprehensive labour legislation. Therefore the British authority in the Straits Settlement drafted a labour code to be abided by the workers who were working under the Indenture System. It was very much framed to suit the condition of Chinese and Indian workers.

The Development of Labour Legislation in Malaysia

- In 1912, the Labour Code was extended to FMS and it was revised where it applied to all races and workers. Nonetheless the Labour Code was quite restricted because the provisions are suitable only for conditions of work in mines and plantations industry. For example, it does not cover the factory workers. Only later after the formation of Malayan Union did we see the first Malay employment ordinance i.e. Malay Employment Ordinance 1955. After Merdeka, it was known as Malay Employment Act 1955. Both of them were originated from the Labour Code.

INTRODUCTION

The Employment Act 1955

- Introduction
- Important Definitions
- Employment Contracts
- Contract of Services

INTRODUCTION

- The Employment Act 1955 ('the Act') is an important piece of labour legislation.
- The Act provides a comprehensive legal framework governing matters such as payment of wages, rest days, hours of work, holidays, termination, maternity protection, employment of foreign employees and employer's duty to notify Labour Office when commencing business and others.

INTRODUCTION

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- Basically, this Act is chiefly concerned with employees who are earning less than RM1,500.
- Its purpose is to ensure that no contract of service entered into between the employer and the employee is less favourable than the provisions under the Act.
- Furthermore, the Act seeks to provide a number of minimum benefits for those workers and to establish certain rights for both employers and employees.

IMPORTANT DEFINITIONS

- Contract of Services –
 - Any agreement (whether oral or in writing and whether expressed or implied), whereby one person agrees to employ another as an employee and the other agrees to serve his employer as his employee.
 - Includes an apprenticeship contract.
- Day –
 - A continuous period of 24 hours beginning at midnight.

IMPORTANT DEFINITIONS

(continued)

- Employee –
 - He is:
 - Any person who enters into a contract of service with an employer and whose wages do not exceed RM1,500 per month; and
 - Any person irrespective of the wages earned per month, who enters into a contract of service with an employer, and who is:
 - Engaged in manual labour;
 - Engaged in the operation or maintenance of mechanically propelled vehicle (for transport or commercial purposes);

IMPORTANT DEFINITIONS

(continued)

- Supervisor of employees in manual labour;
 - Engaged in any vessels registered in Malaysia (subject to some exceptions); or
 - Engaged as a domestic servant.
- Any person in respect the Minister makes and order under subsection 3 or section 2A.

IMPORTANT DEFINITIONS

(continued)

- Employer –
 - Any person who has entered a contract of service to engage an employee.
 - Include the person's agent, manager or factor.
- Shift work –
 - Work, because of its nature, required to be carried on continuously, by two or more shifts.
- Week –
 - A continuous period of seven days.



IMPORTANT DEFINITIONS

(continued)

- Wages –
 - Basic wages and all other payments in cash payable to an employee in respect of his contract of service, but does not include:
 - Value of accommodation, or the supply of food, fuel, light, water, medical attendance, amenity or service;
 - Employer's contribution to pension fund, provident fund, superannuation scheme, retrenchment, termination or any other fund for the employee's welfare;
 - Travelling allowances or value of travelling concessions;

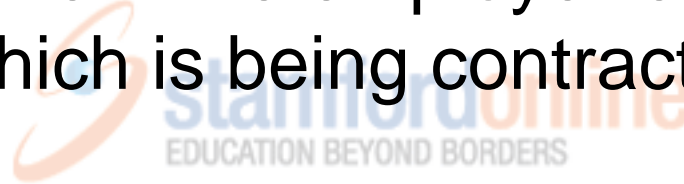
IMPORTANT DEFINITIONS (continued)

- Sum payable to the employee to defray special expenses incurred by nature of his employment;
 - Gratuity upon discharge or retirement; and
 - Annual bonus.
- For the purpose of the First Schedule, wages shall in addition exclude commission, subsistence allowance and overtime payment.



EMPLOYMENT CONTRACTS

- The Employment Act describes the employment contract in terms of the well-known 'contract of services' to govern the employer-employee relationship which is being contractual in nature.
- The employment relationship refers to the set of relationships created by any mode of employment. The set of relationship varies with the mode of employment.



EMPLOYMENT CONTRACTS

continued...

- Basically, there are two types of contract which govern the relations between an employer and those who do work for him.
- An employee is one who has a contract of service, but if there exists a contract for services, the person providing the services is an independent contractor and is not an employee.
- It is usually described as a principal-contractor relationship.

EMPLOYMENT CONTRACTS

continued...

- First, insofar as the terms and conditions of employment prescribed by the Act are concerned, the EA, by virtue of Section 7, declares that the employment contract cannot stipulate terms and conditions which are less favourable to the employee.
- Then, insofar as any terms and conditions of employment not prescribed by the Act are concerned, the EA clarifies that the employment contract may stipulate such terms and conditions.

EMPLOYMENT CONTRACTS

continued...

- Furthermore, the EA as provided in Section 10 requires some employment contracts to be in writing, and all written contracts to specify the ways in which they may be terminated by other party to the contract.
- It is further noted that where the nature of work to be done exceeds one month, the contract of service should be in writing.

EMPLOYMENT CONTRACTS

continued...

- An employment contract for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month, shall be in writing.

(Section 10(1) of the EA)

EMPLOYMENT CONTRACTS

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- In every written employment contract a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with Part II of the Act.

(Section 10(2) of the EA)

EMPLOYMENT CONTRACTS

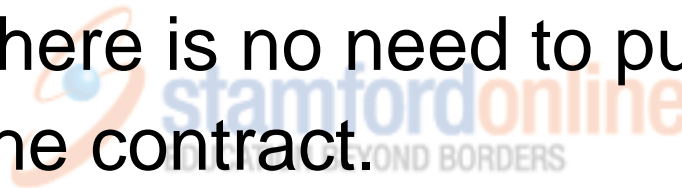
Terms and Conditions

- Basically, the terms are the contents of the contract or the promises made by each party to the other.
- The express terms of a contract are usually found in letters of appointment, company handbooks, and collective agreements.
- It should be noted here that there are also implied terms in every employment contract.

EMPLOYMENT CONTRACTS

Terms and Conditions

- The law courts will imply certain terms into a contract on the grounds that these items are so obvious that there is no need to put them expressly in the contract.



EMPLOYMENT CONTRACTS

Terms and Conditions

- It should be noted that employment contracts can be for a particular period of time or they can be open-ended and not specify the duration.
- The former are known as fixed-term contracts.
- Basically, such kind of contracts specifies the time period for which the worker is to be employed or the contract may state that the employee is to be employed until the completion of a given project or task.



The Distinction...

- First, compulsory statutory contributions and payments like the provident fund, social security, workmen's compensation and pension schemes are payable by employers if the workers are 'employed'.

The Distinction...

- Secondly, in torts, an employer will not normally be vicariously liable for the tortious acts committed by independent contractors, whereas the employer would be liable for torts committed by his employees in the course of their employment which resulted in injuries or damages to the third party.

The Distinction...

- Thirdly, the employers owe a duty at common law to his employees to take reasonable care for their safety, whereas these duties do not normally apply with respect to independent contractors.

The Distinction...

- Fourthly, in case of a judgment made against an employee, an attachment of earnings can be ordered, where the Court can compel the employer to deduct the employee's salary and wages for certain purpose.

The Distinction...

- Fifthly, most important of all, the employee who falls within the definition of 'employee' under the employment or industrial statutes would be entitled to protections under those statutes such as minimum standard of employment protections, minimum requirement of dismissal and termination notices.

Intention of the Parties

- The intention of the parties is considered only as a last resort to determine the status of the workman.
- It is useful to look at the intention of the parties to decide the true nature of the relationship, but it is submitted that intention may not be consistent with the whole construction of the terms and conditions of the agreement.



Implied Contract of Service

- It is not necessary that a contract of service must be in writing.
- It may be implied from the circumstances of the case or it may be oral.
- In *Kilang Gula Felda Perlis Sdn. Bhd. v Aman Shah bin Abdul Khalid*, the High Court observed that the flexible approach should be applied in determining whether a person is a workman under the Act.

Implied Contract of Service

- Thus, in this case, the Court held that the respondent's services were neither terminated nor had he revoked the services, and he had proceeded on authorised study leave.
- There was no break in his services since he continued to be in service even though there was no express contract of service.
- The Court concluded that a contract of service need to be in writing, if not implied.

