

PAYMENT OF WAGES

- In Malaysia, as far as employees are concerned, wages has become one area of great concern.
- The Wages Councils Act 1947 has established a council, which is known as Wages Council, to set such minimum wages in certain industries.

PAYMENT OF WAGES

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In particular, the Act deals with:

- Wage periods
- Advances on wages
- Deductions from wages
- Priority of wages
- The truck system



PAYMENT OF WAGES

- According to Section 2 of the Employment Act 1955, wages means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but does not include the value of any house, any contribution paid by the employer, any travelling allowance, any annual bonus and others as provided in Section 2 of the Employment Act 1955.

PAYMENT OF WAGES

Wage Period

- The general rule is wages must be paid at least once every month.
- A contract of service shall specify a wage period not exceeding one month.
- If the contract does not specify this, the wage period would be deemed to be one month.
- By virtue of Section 18 of the EA, it means that wages must be paid regularly and within the stipulated period, so that workers are able to plan their financial requirements and be certain as to when they will be receiving their wages.

PAYMENT OF WAGES

Wage Period

- A contract of service may specify wage periods not exceeding one month.
- Where a contract of service is silent on wage period, the wage period for the purpose of the contract shall be deemed to be one month.
- Under Employment Act 1955, 'wages' means all remunerations which is payable to an employee for work done in respect of his contract of service.

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Wage Period

- Section 19 provides that wages (less any lawful deduction) are payable not later than the seventh day after the day of wage period.
- Moreover, the employer may apply for the extension of the time of payment from the Director General.
- Then, on normal termination, wages are payable on the day when the contract of service is terminated, as provided in Section 20 of the same Act.

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Wage Period

- Where an employee terminates his contract of service without notice, the wages shall be paid by the employer not later than the third day after the day on which the contract of service is so terminated.
- In *Asia Motor Co. (K.L.) Sdn. Bhd. v Ram Raj & Anor* [1985] 2 MLJ 202, the respondents were sales representatives of the appellant. They made a complaint to the Director of Labour stating that they were paid less than the statutory minimum remuneration provided by Paragraph 4 (i) of the Wages Regulations (Shop Assistants) Order 1970.

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Wage Period

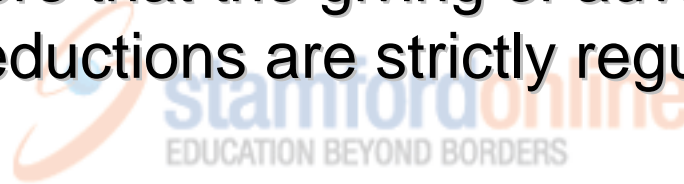
The Federal Court observed that although generally speaking the word “remuneration” has a wider meaning than the word ‘wages’ in the context of WCA, these words seem to be used interchangeably and therefore has the same meaning.

The concept of ‘remuneration’ used in the WCA is the same as that of ‘wages’ used in the Employment Act 1955.

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Advances on Wages

It must be noted here that the giving of advances on wages and subsequent deductions are strictly regulated.



PAYMENT OF WAGES

Advances on Wages

- Section 22 of the Employment Act 1955 clearly mentioned that it is unlawful to pay an employee a wage advance (not already earned), for instance, exceeding the amount of one month's wages, unless the purpose is for the employee:The logo for 'stamfordonline' is positioned over the text 'for the employee:'. It features the word 'stamford' in blue and 'online' in orange, with a stylized orange and blue swirl to the left. Below the main text, the tagline 'EDUCATION BEYOND BORDERS' is written in a smaller, grey font.
 - To purchase land;
 - To purchase, build or improve a house;
 - To purchase a motorcar, motorcycle or bicycle;
 - To purchase livestock; or
 - To purchase shares of the employer's business offered for sale by the employer.

PAYMENT OF WAGES

Deductions from Wages

- Deductions from employees' wages are only allowed in certain restricted circumstances.
- An employer may deduct the following from his employees' wages without their permission:
 - Overpayment made by mistake during the immediate preceding three months from the month in which deductions are to be made;
 - Indemnity due to the employer by the employee under Section 13(1);

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Deductions from Wages

- Recovery of advances of wages provided no interest is charged on the advances; and
- EPF, social security contributions, income tax, etc. as authorized by law.



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Deductions from Wages

- Any other deductions require the written permission of both the employee and the Director General of Labour. Such deductions may include:
 - Payment into a welfare or insurance scheme, which is for the benefit of the worker;
 - Repayment of any advance given to the worker where an interest payment is imposed;
 - Payment to a third party;
 - Payment for the purchase of the company goods made by the employee; and
 - Payment of rental for accommodation provided by the employer or the cost of any service provided by the employer to the employee.

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Deductions from Wages

- Section 23 provides that an employee is not entitled to any wages spent in:
 - Prison or police custody;
 - Travelling to and from prison or any other place of custody; and
 - Attending or returning from court, except as a witness of his employer's behalf.

PAYMENT OF WAGES

Truck System

- In order to prevent exploitation of workers, the Employment Act 1955 states that wages must be paid in legal tender.
- Section 25 provides that the employee could give his written agreement that his wages be paid into his account at a bank or by cheque.
- However, such agreement can be revoked by the employee by giving four weeks' written notice to the employer.

PAYMENT OF WAGES

Truck System

- Basically, in any event, the employee should not unreasonably withhold or withdraw his consent in respect of the payment through bank or cheque.
- It is clearly stated in the Employment Act 1955 that an employee could only insist on being paid in cash if he had a strong reason.

PAYMENT OF WAGES

Truck System

- In *Chin Swee Hin Sdn. Bhd. v Mohamed Arif bin Khalid* [1977] 2 MLJ 31, the issue before the High Court was whether the food allowance had to be included as part of the respondent's wages for purposes of calculating his overtime pay.
- In calculating overtime pay, the appellant, employer, had excluded the food allowances from the respondent's wages but the Labour Officer had included it. The appellant appealed to the High Court.

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Truck System

The High Court observed that the definition of wages in Section 2 of the Employment Act 1955 is clear and unambiguous. As the food allowance paid to the respondent by the appellant was part and parcel of the contract of service, there is no reason why it should not also be included for purposes of calculating overtime pay.

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Truck System

- In *Viking Askim Sdn. Bhd. v National Union of Employees in Companies Manufacturing Rubber Products & Anor* [1991] 2 MLJ 115, the award of the Industrial Court, ordering full wages for Sundays and public holidays, during the period of shutdown caused by a fall in orders was challenged before the High Court, which later upheld the decision of the Industrial Court.

PAYMENT OF WAGES

Truck System

In the Employment Act 1955, there is no provision empowering an employer to make any deduction from wages for periods of shutdown due to fall in orders.

PAYMENT OF WAGES

Priority of Wages

An employer is bankrupt and the Court has ordered that his properties be sold by a secured creditor. Does this mean that the employees will not get their wages?

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Priority of Wages

- The general rule is where the property of an employer is sold by a court order upon the application of a secured creditor, the court shall not authorise payment of the proceeds of sale to the secured creditor until the employees' wages have been paid first.