



Act 265

EMPLOYMENT ACT 1955

(Incorporating the Employment [Amendment] Act 2012)*

***Note:**

The Employment (Amendment) Act 2012 has been gazette on 9 February 2012 and has come into force on 1 April 2012. The amendments are indicated in **bold font**. This document is for early reference only pending a formal publishing copy.

LAWS OF MALAYSIA

Act 265

EMPLOYMENT ACT 1955
Incorporating the Employment (Amendment) Act 2012

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LAWS OF MALAYSIA

Act 265

EMPLOYMENT ACT 1955

(Incorporating the Employment (Amendment) Act 2012)

An Act relating to employment.

[1st June 1957]

PART I

PRELIMINARY

Short title and application

1. (1) This Act may be cited as the Employment Act 1955.
- (2) This Act shall apply to *Peninsular Malaysia only.

Interpretation

2. (1) In this Act, unless the context otherwise requires-

"agricultural undertaking" means any work in which any employee is employed under a contract of service for the purposes of agriculture, horticulture or silviculture, the tending of domestic animals and poultry or the collection of the produce of any plants or trees;

"apprenticeship contract" means 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;

"approved amenity or approved service" means any amenity or service -

- (a) approved by the Director General under subsection 29(2) on application made to him by an employer for its inclusion in a contract of service; or
- (b) provided for in any award made by the Industrial Court or in any collective agreement;

"approved incentive payment scheme" means an incentive payment scheme approved by the Director General under, and for the purposes of, section 60I;

**Note* – This Act has been extended to the Federal Territory of Labuan- *see* subsection 1(2) of the Federal Territory of Labuan (Extension and Modification of Employment Act) Order 2000 [P.U.(A) 400/2000] w.e.f. 1 November 2000.

"collective agreement" has the same meaning assigned thereto in the Industrial Relations Act 1967 [*Act 177*];

"confinement" means parturition resulting after at least **twenty-two** weeks of pregnancy in the issue of a child or children, whether alive or dead, and shall for the purposes of this Act commence and end on the actual day of birth and where two or more children are born at one confinement shall commence and end on the day of the birth of the last-born of such children, and the word "confined" shall be construed accordingly;

"constructional contractor" means any person, firm, corporation or company who or which is established for the purpose of undertaking, either exclusively or in addition to or in conjunction with any other business, any type of constructional work, and who or which is carrying out such constructional work for or on behalf of some other person under a contract entered into by him or them with such other person, and includes his or their heirs, executors, administrators, **assignees** and successors;

"constructional work" includes the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well dredge, wireless, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork or other work of construction, as well as the preparation for, or the laying of, the foundations of any work or structure, and also any earthworks both in excavation and in filling;

"contract of service" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract;

"contractor" means any person who contracts with a principal to carry out the whole or any part of any work undertaken by the principal in the course of or for the purposes of the principal's trade or business;

"contractor for labour" means a person who contracts with a principal, contractor or sub-contractor to supply the labour required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be;

"day" means -

- (a) a continuous period of twenty-four hours beginning at midnight; or
- (b) for the purposes of Part XII in respect of an employee engaged in shift work or in work where the normal hours of work extend beyond midnight, a continuous period of twenty-four hours beginning at any point of time;

"Director General" means the Director General of Labour appointed under section 3(1);

"domestic servant" means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom

and driver or cleaner of any vehicle licensed for private use;

"employee" means any person or class of persons-

- (a) included in any category in the First Schedule to the extent specified therein; or
- (b) in respect of whom the Minister makes an order under subsection (3) or section 2A;

"employer" means any person who has entered into a contract of service to employ any other person as an employee and includes the agent, manager or factor of such first mentioned person, and the word "employ", with its grammatical variations and cognate expressions, shall be construed accordingly;

"foreign domestic servant" means a domestic servant who is not a citizen or a permanent resident;

"foreign employee" means an employee who is not a citizen;

"Industrial Court" has the same meaning assigned thereto in the Industrial Relations Act 1967;

"industrial undertaking" includes -

- (a) disturbing, removing, carting, carrying, washing, sifting, melting, refining, crushing or otherwise dealing with any rock, stone, gravel, clay, sand, soil, night-soil or mineral by any mode or method whatever;
- (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, packed or otherwise prepared for delivery, broken up, or demolished, or in which materials are transformed or minerals treated, including shipbuilding and the generation, transformation and transmission of electricity or motive power of any kind;
- (c) constructional work;
- (d) transport of passengers or goods by road, rail, water or air, including the handling of goods at docks, quays, wharves, warehouses or airports;
- (e) any industry, establishment or undertaking, or any activity, service or work, declared under subsection (5) to be an industrial undertaking;

"intoxicating liquor" has the same meaning as that assigned to "intoxicating liquor" under section 2 of the Customs Act 1967 [*Act 235*];

"machinery" has the same meaning as in the Factories and Machinery Act 1967 [*Act 139*];

"medical officer" means a registered medical practitioner who is employed in a medical capacity by the Federal Government, or by the Government of a State;

"Minister" means the Minister charged with the responsibility for human resources;

"part-time employee" means a person included in the First Schedule whose average hours of work per week as agreed between him and his employer are more than thirty per centum but do not exceed seventy per centum of the normal hours of work per week of a full-time employee employed in a similar capacity in the same enterprise;

"Peninsular Malaysia" has the meaning assigned thereto by section 3 of the Interpretation Acts 1948 and 1967 [*Act 388*], and includes the Federal Territory;

"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;

"place of employment" means any place where work is carried on for an employer by an employee;

"principal" means any person who in the course of or for the purposes of his trade or business contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal;

"registered medical practitioner" means a medical practitioner registered under the Medical Act 1971 [*Act 50*];

"sexual harassment" means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment;

"shift work" means work which by reason of its nature requires to be carried on continuously or continually, as the case may be, by two or more shifts;

"spread over period of ten hours" means a period of ten consecutive hours to be reckoned from the time the employee commences work for the day, inclusive of any period or periods of leisure, rest or break within such period of ten consecutive hours;

"sub-contractor" means any person who contracts with a contractor for the execution by or under the sub-contractor of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a sub-contractor to carry out the whole or any part of any work undertaken by the sub-contractor for a contractor;

"sub-contractor for labour"- [*Deleted Act A1419 of 2012*]

"underground working" means any undertaking in which operations are conducted for the purpose of extracting any substance from below the surface of the earth, the ingress to and egress from which is by means of shafts, adits or natural caves;

"wage period" means the period in respect of which wages earned by an employee are payable;

"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-

- (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
- (b) any contribution paid by the employer on his own account 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;
- (c) any travelling allowance or the value of any traveling concession;
- (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) any gratuity payable on discharge or retirement; or (f) any annual bonus or any part of any annual bonus;

"week" means a continuous period of seven days;

"West Malaysia" has the meaning assigned thereto by section 3 of the interpretation Act 1967, and includes the Federal Territory;

"year of age" means a year from the date of a person's birth.

(2) The Minister may by order amend the First Schedule.

(3) The Minister may by order declare such provisions of this Act and any other written law as may be specified in the order to be applicable to any person or class of persons employed, engaged or contracted with to carry out work in any occupation in any agricultural or industrial undertaking, constructional work, statutory body, local government authority, trade, business or place of work, and upon the coming into force of any such order -

- (a) any person or class of persons specified in the order shall be deemed to be an employee or employees;
- (b) the person, statutory body or local government authority employing, engaging or contracting with every such person or class of persons shall be deemed to be an employer;
- (c) the employer and the employee shall be deemed to have entered into a contract of service with one another;
- (d) the place where such employee carries on work for his employer shall be deemed to be a place of employment; and
- (e) the remuneration of such employee shall be deemed to be wages,

for the purposes of such specified provisions of this Act and any other written law.

(4) The Minister may make regulations in respect of the terms and conditions upon which the person or class of persons specified pursuant to subsection (3) may be employed.

(4A) 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 employees; 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"

(5) The Minister may, from time to time, by notification published in the Gazette, declare any particular industry, establishment or undertaking, or any class, category or description of industries, establishments or undertakings or any particular activity, service or work, or any class, category or description of activities, services or works, to be an industrial undertaking for the purposes of this Act.

Minister may prohibit employment other than under contract of service

2A. (1) The Minister may by order prohibit the employment, engagement or contracting of any person or class of persons to carry out work in any occupation in any agricultural or industrial undertaking, constructional work, statutory body, local government authority, trade, business or place of work other than under a contract of service entered into with-

- (a) the principal or owner of that agricultural or industrial undertaking, constructional work, trade business or place of work; or
- (b) that statutory body or that authority.

(2) Upon the coming into force of any such order, the person or class of persons employed, engaged or contracted with to carry out the work shall be deemed to be an employee or employees and-

- (a) the principal or owner of the agricultural or industrial undertaking, constructional work, trade, business or place of work; or
- (b) the statutory body or local government authority

shall be deemed to be the employer for the purposes of such provision of this Act and any other written law as may be specified in the order.

(3) Notwithstanding subsection (1), the Minister may by order approve the employment of any person or class of persons by such other person or class of persons (not being the principal or owner) as he may specify but subject to such conditions as he may deem fit to impose.

(4) Any person who contravenes any order made under this section commits an offence.

General Power to exempt or exclude

2B. The Minister may by order exempt or exclude, subject to such conditions as he may deem fit to impose, any person or class of persons from all or any of the provision of this Act.

Appointment of officers

3. (1) The Yang di-Pertuan Agong may appoint an officer to be styled the Director General of Labour, in this Act referred to as "the Director General".

(2) The Yang di-Pertuan Agong may appoint, to such number as he considers necessary for carrying out the provisions of this Act, officers of the following categories, that is to say-

- (a) Deputy Directors General of Labour;
- (b) Directors of Labour, Deputy Directors of Labour, Senior Assistant Directors of Labour and Assistant Directors of Labour; and
- (c) Labour Officers.

(3) Subject to such limitations, if any, as may be prescribed by regulations made under this Act, any officer appointed under subsection (2) shall perform all the duties imposed any may exercise all the powers conferred upon the Director General by this Act, any every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Act.

Appeals.

4. Any person affected by any decision or order, other than an order **or decision under section 69, 69B, 69C, 73 or subsection 81D(4)** given or made by an officer appointed under section 3(2), may, if he is dissatisfied with such decision or order, within fourteen days of such decision or order being communicated to him appeal in writing therefrom to the Director General.

[Am. Act A1419 of the year 2012]

Effect on Act of other written laws.

5. Nothing in this Act shall be construed as relieving any person who has entered into a contract of service, either as the employer or as the person employed, of any duty or liability imposed upon him by the provisions of any other written law for the time being in force in Malaysia or any part thereof or to limit any power which may be exercised by any public officer or any right conferred upon any such person as aforesaid under or by virtue of any such written law.

PART II

CONTRACTS OF SERVICE

Saving of existing contracts

6. Every agreement lawfully entered into between an employer and an employee before the coming into force of this Act shall if it is still legally binding upon the parties continue in force for such period as may be specified in the agreement and the parties thereto shall be subject to, and shall be entitled to the benefits of, this Act.

More favourable conditions of service under the Act to prevail

7. Subject to section 7A, any term or condition of a contract of service or of an agreement, whether such contract or agreement was entered into before or after the coming into force of this Act, which provides a term or condition of service which is less favorable to an employee than a term or condition of service prescribed by this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be void and of no effect to that extent and the more favorable provisions of this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be substituted therefor.

Validity of any term or condition of service which is more favourable

7A. Subject to any express prohibition under this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder, nothing in section 7 shall be construed as preventing an employer and an employee from agreeing to any term or condition of service under which an employee is employed, or shall render invalid any term or condition of service stipulated in any collective agreement or in any award of the Industrial Court, which is more favorable to the employee than the provisions of this Act or any regulations, order, or other subsidiary legislation whatsoever made thereunder.

Removal of doubt in respect of matters not provided for by or under this Act.

7B. For the removal of doubt it is hereby declared that if no provision is made in respect of any matter under this Act or any subsidiary legislation made thereunder, or if no regulations, order or other subsidiary legislation has been made on any matter in respect of which regulations, or an order or other subsidiary legislation may be made under this Act, it shall not be construed as preventing such matter from being provided for in a contract of service, or from being negotiated upon between an employer and an employee.

Contracts of service not to restrict rights of employees to join, participate in or organize trade unions.

8. Nothing in any contract of service shall in any manner restrict the right of any employee who is a party to such contract-

- (a) to join a registered trade union;
- (b) to participate in the activities of a registered trade union, whether as an officer of such union or otherwise; or
- (c) to associate with any other persons for the purpose of organising a trade union in accordance with the Trade Unions Act 1959.

9. (Repealed).

Contracts to be in writing and to include provision for termination.

10. (1) A contract of service 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.

(2) In every written contract of service a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with this Part.

Provision as to termination of contracts.

11. (1) A contract of service for a specified period of time or for the performance of a specified piece of work shall, unless otherwise terminated in accordance with this Part, terminate when the period of time for which such contract was made has expired or when the piece of work specified in such contract has been completed.

(2) A contract of service for an unspecified period of time shall continue in force until terminated in accordance with this Part.

Notice of termination of contract.

12. (1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service.

(2) The length of such notice shall be the same for both employer and employee and shall be determined by a provision made in writing for such notice in the terms of the contract of service, or, in the absence of such provision in writing, shall not be less than -

- (a) four weeks' notice if the employee has been so employed for less than two years on the date on which the notice is given;
- (b) six weeks' notice if he has been so employed for two years or more but less than five years on such date;
- (c) eight weeks' notice if he has been so employed for five years or more on such date;

Provided that this section shall not be taken to prevent either party from waiving his right to a notice under this subsection.

(3) Notwithstanding anything contained in subsection (2), where the termination of service of the employee is attributable wholly or mainly to the fact that-

- (a) the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was employed;
- (b) the employer has ceased or intends to cease to carry on the business in the place at which the employee was contracted to work;
- (c) the requirements of that business for the employee to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.
- (d) the requirements of that business for the employee to carry out work of a particular kind in the place at which he was contracted to work have ceased or diminished or are expected to cease or diminish;
- (e) the employee has refused to accept his transfer to any other place of employment, unless his contract of service requires him to accept such transfer; or
- (f) a change has occurred in the ownership of the business for the purpose of which an employee is employed or of a part of such business, regardless of whether the change occurs by virtue of a sale or other disposition or by operation of law,

the employee shall be entitled to, and the employer shall give to the employee, notice of termination of service, and the length of such notice shall be not less than provided under subsection (2)(a), (b) or (c), as the case may be, regardless of anything to the contrary contained in the contract of service.

(4) Such notice shall be written and may be given at any time, and the day on which the notice is given shall be included in the period of the notice.

Termination of contract without notice

13. (1) Either party to a contract of service may terminate such contract of service without notice or, if notice has already been given in accordance with section 12, without waiting for the expiry of that notice, by paying to the other party an indemnity of a sum equal to the amount of wages which would have accrued to the employee during the term of such notice or during the unexpired term of such notice.

(2) Either party to a contract of service may terminate such contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.

Termination of contract for special reasons.

14. (1) An employer may, on the grounds of misconduct inconsistent with the fulfillment of the express or implied conditions of his service, after due inquiry-

- (a) dismiss without notice the employee;

- (b) downgrade the employee; or
- (c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

(2) For the purposes of an inquiry under subsection (1), the employer may suspend the employee from work for a period not exceeding two weeks but shall pay him not less than half of his wages for such period:

Provided that if the inquiry does not disclose any misconduct on the part of the employee the employer shall forthwith restore to the employee the full amount of wages so withheld.

(3) An employee may terminate his contract of service with his employer without notice where he or his dependants are immediately threatened by danger to the person by violence or disease such as such employee did not by his contract of service undertake to run.

When contract is deemed to be broken by employer and employee.

15. (1) An employer shall be deemed to have broken his contract of service with the employer if he fails to pay wages in accordance with Part III.

(2) An employee shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has a reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.

Employees or estates to be provided with minimum number of days' work in each month.

16. (1) Where an employee is employed in any agricultural undertaking on an estate on a contract of service under which he earns wages calculated by reference to the number of days' work performed in each month of his service, his employer shall be bound either to provide him with work suitable to his capacity or not less than twenty-four days, in each month during the whole of which he is so employed, or if the employer is unable or fails to provide work on twenty-four days in each month whereon the employee is willing and fit to work, the employer shall nevertheless be bound to pay to the employee in respect of each of such days wages at the same rate as if such employee had performed a day's work;

Provided that any dispute as to whether an employee was willing or fit to work shall be referred to the Director General for his decision:

Provided further that in computing twenty-four days for the purposes of this subsection account shall not be taken of more than six days in any week.

(2) A contract of service shall be deemed to be broken by an employer if he fails to provide work or pay wages in accordance with subsection (1).

17. (Repealed).

Apprenticeship contracts excluded from sections 10 to 16

17A. Sections 10 to 16 shall not apply to apprenticeship contracts which are in a form approved by and of which a copy has been filed with the Director General.

PART III

PAYMENT OF WAGES

Wage period

18. (1) A Contract of service shall specify a wage period not exceeding one month.

(2) If in any contract of service no wage period is specified the wage period shall for the purposes of the contract be deemed to be one month.

Time of payment of wages

19. (1) Subject to subsection (2), every employer shall pay to each of his employees not later than the seventh day after the last day of any wage period the wages, less lawful deductions, earned by such employee during such wage period.

(2) Wages for work done on a rest day, gazetted public holiday referred to in paragraphs 60D(1)(a) and (b) and overtime referred to in section 60A shall be paid not later than the last day of the next wage period.

(3) Notwithstanding subsections (1) and (2), if the Director General is satisfied that payment within such time is not reasonably practicable, he may, on the application of the employer, extend the time of payment by such number of days as he thinks fit.

[Subs.Act A1419 of the year 2012]

Payment on normal termination of contract.

20. The wages, less lawful deductions, earned by but not yet paid to an employee whose contract of service terminates in accordance with section 11(1) or of section 12 shall be paid to such employee not later than the day on which such contract of service so terminates.

Payment on termination of contract in special circumstances and on breach of contract.

21. (1) Where an employer terminates the contract of service of an employee without notice in accordance with section 13(1) or (2) and section 14(1)(a)-

- (a) the wages, less any deductions which the employer is entitled to make under section 24, earned by such employee up to and including the day immediately preceding the day on which the termination of the contract of service takes effect; and
- (b) in addition, where the employer terminates the contract of service under section 13(1), the indemnity payable to the employee under that subsection,

shall be paid by the employer to the employee not later than the day on which such contract of service is so terminated.

(2) Where an employee terminates his contract of service with an employer without notice in accordance with section 13(1) or (2) or section 14(3), the wages, less any deductions which the employer is entitled to make under section 24, earned by such employee up to and including the day immediately preceding the day on which the termination of the contract of service takes effect shall be paid by the employer to the employee not later than the third day after the day on which the contract of service is so terminated.

Limitation on advances to employees.

22. (1) No employer shall during any one month make to an employee an advance or advances of wages not already earned by such employee which exceeds in the aggregate the amount of wages which the employee earned in the preceding month from his employment with such employer, or if he has not been so long in the employment of such employer, the amount which he is likely to earn in such employment during one month, unless such advances is made to the employee-

- (a) to enable him to purchase a house or to build or improve a house;
- (b) to enable him to purchase land;
- (c) *(deleted)*
- (d) to enable him to purchase a motorcar, a motorcycle or a bicycle;
- (da) to enable him to purchase shares of the employer's business offered for sale by the employer;
- (db) to enable him to purchase a computer;**
- (dc) to enable him to pay for medical expenses for himself or his immediate family members;**
- (dd) to enable him to pay for daily expenses pending receipt of any periodical payments for temporary disablement under the Employees' Social Security Act 1969 [Act 4];**
- (de) to enable him to pay for educational expenses for himself or his**

immediate family members;

- (e) for any other purposes-
 - (i) in respect of which an application in writing is made by the employer to the Director General;
 - (ii) which is, in the opinion of the Director General, beneficial to the employee; and
 - (iii) which is approved in writing by the Director General, provided that in granting such approval, the Director General may make such modifications thereto or impose such conditions thereon as he may deem proper;
- (f) for such other purposes as the Minister may, from time to time, notification in the *Gazette*, specify either generally in respect of all employees, or only in respect of any particular employee, or any class, category or description of employees.

(2) For the purpose of this section, "immediate family members" means the employees' parents, children, siblings or any other person under the employee's guardianship.

(2) Ins. Act A1419 of the year 2012];

Wages not due for absence from work through imprisonment or attendance in court.

23. Wages shall not become payable to or recoverable by any employee from his or employer for or on account of the term of any sentence of imprisonment undergone by him or for any period spent by him in custody or for or on account of any period spent by him in going to or returning from prison or other place of custody or for or on account of any period spent by him in going to, attending before or returning from a court otherwise than as a witness on his employer's behalf.

PART IV

DEDUCTIONS FROM WAGES

Lawful deductions

24. (1) No deductions shall be made by an employer from the wages of an employee otherwise than in accordance with this Act.

(2) It shall be lawful for an employer to make the following deductions:

- (a) deductions to the extent of any overpayment of wages made during the immediately preceding three months from the month in which deductions are to be made, by the employer to the employee by the employer's mistake;
- (b) deductions for the indemnity due to the employer by the employee under

section 13(1);

- (c) deductions for the recovery of advances of wages made under section 22 provided no interest is charged on the advances; and
- (d) deductions authorized by any other written law.

(3) The following deductions shall only be made at the request in writing of the employee:

- (a) deductions in respect of the payments to a registered trade union or co-operative thrift and loan society of any sum of money due to the trade union or society by the employee on account of entrance fees, subscriptions, installments and interest on loans, or other dues; and
- (b) deductions in respect of payments for any shares of the employer's business offered for sale by the employer and purchased by the employee.

(4) The following deductions shall not be made except at the request in writing of the employee and with the prior permission in writing of the Director General:

- (a) deductions in respect of payments into any superannuation scheme, provident fund, employer's welfare scheme or insurance scheme established for the benefit of the employee;
- (b) deductions in respect of repayments of advances of wages made to an employee under section 22 where interest is levied on the advances and deductions in respect of the payments of the interest so levied;
- (c) deductions in respect of payments to a third party on behalf of the employee;
- (d) deductions in respect of payments for the purchase by the employee of any goods of the employer's business offered for sale by the employer; and
- (e) deductions in respect of the rental for accommodation and the cost of services, food and meals provided by the employer to the employee at the employee's request or under the terms of the employee's contract of service.

(5) The Director General shall not permit any deduction for payments under subsection (4)(e) unless he is satisfied that the provision of the accommodation, services, food or meals is for the benefit of the employee.

(6) Where an employee obtains foodstuff, provisions or other goods on credit from a shop the business of which is carried on by a co-operative society registered under the Co-operative Societies Act 1993 [Act 502], it shall be lawful for his employer, at the request in writing of the employee and with the agreement of the manager of the co-operative shop, to make deductions from the wages of the employee of an amount not exceeding the amount of the credit and to pay the amount so deducted to the manager in satisfaction of the employee's debt.

(7) Notwithstanding subsections (2), (3), (4) and (6) the Director General, on an

application by an employer or a specified class or classes of employers, may permit any deduction for a specified purpose from the wages of an employee or a specified class or classes of employees subject to such conditions as he may deem fit to impose.

(8) The total of any amounts deducted under this section from the wages of an employee in respect of any one month shall not exceed fifty per centum of the wages earned by that employee in that month.

(9) The limitation in subsection (8) shall not apply to-

- (a) deductions from the indemnity payable by an employer to an employee under subsection 13(1);
- (b) deductions from the final payment of the wages of an employee for any amount due to the employer and remaining unpaid by the employee on the termination of the employee's contract of service; and
- (c) deductions for the repayment of a housing loan which, subject to the prior permission in writing of the Director General, may exceed the fifty per centum limit by an additional amount of not more than twenty-five per centum of the wages earned.

PART V

SYSTEM OF PAYMENT OF WAGES

Wages to be paid through bank

25. (1) The entire amount of wages earned by, or payable to, any employee in respect of any work done by him less any lawful deductions, shall be actually paid to him through payment into an account at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [Act 372] or any other written law, in any part of Malaysia being an account in the name of the employee or an account in the name of the employee jointly with one or more other persons as stipulated by the employee.

(2) Every employee shall be entitled to recover in the courts so much of his wages, exclusive of sums lawfully deducted under Part IV, as shall not have been actually paid to him in accordance with subsection (1).

[Subs. Act A1419 of the year 2012]

Payment of wages other than through bank

25A. (1) Notwithstanding subsection 25(1), an employer may, upon a written request of the employee, other than a domestic servant, make payment of his employee's wages -

- (a) in legal tender; or**
- (b) by cheque made payable to or to the order of the employee.**

(2) In the case of a domestic servant, the employer shall, upon the request of his domestic servant, obtain approval from the Director General for the payment of wages of the domestic servant to be paid in legal tender or by cheque.

(3) The request by the employee under subsections (1) and (2) may be withdrawn by the employee at any time, by notice in writing, to the employer.

(4) The notice referred to in subsection (3) shall take effect at, but not before, the end of the period of four weeks beginning with the day on which the notice is given.

(5) The request of the employee to the mode of payment of wages under subsections (1) and (2) shall not be unreasonably withheld by the employer.

(6) Any dispute arising out of the request by the employee under subsections (1) and (2) shall be referred to the Director General whose decision on the matter shall be final.

(7) Section 69 shall not apply in respect of any dispute under subsection (6).

[Subs. Act A1419 of the year 2012]

Conditions restricting place at which, manner in which and person with whom wages paid to be spent, illegal

26. No employer shall impose any condition in any contract of service as to the place at which, or the manner in which, or the person with whom, any wages paid to the employee are to be expended and any such condition in a contract of service shall be void and of no effect.

Interest on advances forbidden

27. No employer shall-

- (a) make any deduction; or
- (b) receive any payment,

from any employee by way of discount, interest or any similar charge on account of any advance or advances of wages made to an employee in anticipation of the regular date for the payment of wages, where such advance or advances do not exceed in the aggregate one month's wages.

Restriction on places at which wages may be paid

28. No employer shall pay wages to employees in taverns or other similar establishments or in places of amusement or in shops or stores for the retail sale of merchandise except in the case of employees employed therein.

Remuneration other than wages

29. (1) Nothing in this Part shall render illegal a contract of service with an employee under which the employer agrees to provide the employee with house accommodation, food, fuel, light, water, medical attendance, or any approved amenity or approved service in addition to wages but no employer shall provide any employee with any intoxicating liquor as part of the terms of a contract of service.

(2) The Director General may, on application made to him in writing by an employer, approve in writing any amenity or service as an approved amenity or approved service, and in granting such approval the Director General may make such modifications thereto or impose such conditions thereon as he may deem proper.

(3) Any person who is dissatisfied with any decision of the Director General under subsection (2) may, within thirty days of such decision being communicated to him, appeal in writing therefrom to the Minister.

(4) On any appeal made to him under subsection (3), the Minister may make such decision or order thereon as appears just, and such decision or order shall be final.

30. *(Deleted by Act A1026).*

PART VI

PRIORITY OF WAGES

Priority of wages over other debts

31. (1) Where by order of a court made upon the application of any person holding a mortgage, charge, lien or decree (hereinafter referred to as "the secured creditor") or in the exercise of rights under a debenture the property of any person (hereinafter referred to as "the person liable") liable under any of the provisions of this Act to pay the wages due to any employee or to pay money due to any **contractor for labour** is sold, or any money due to the person liable is attached or garnished, the court or the receiver or manager shall not authorize payment of the proceeds of the sale, or of the money so attached or garnished, to the secured creditor or the debenture holder until the court or the receiver or manager shall have ascertained and caused to be paid, out of such proceeds or money, the wages of such employee, or the money due to any **contractor for labour** under a contract between him and the person liable, which the person liable was liable to pay at the date of such sale, attachment or garnishment:

Provided that this section shall only apply to the sale of a place of employment on which-

- (a) any employee to whom wages are due as aforesaid;
- (b) any employee to whom wages are due by such **contractor for labour** as aforesaid;
- (c) any **contractor for labour** to whom money is owed on account of the sub-contract by the **contractor for labour** as aforesaid,

was employed or worked at the time when such wages were earned or such money accrued due, and to the proceeds of the sale of any products of such place of employment and of any movable property therein used in connection with such employment and to any money due to the person liable on account of work performed by such employee or **contractor for labour** or derived from the sale of the products of such work:

Provided further that-

- (a) where the person liable is an employer the total amount of the wages of any employee to which priority over the claim of a secured creditor is given by this section shall not exceed the amount due by the employer to the employee as wages for any four consecutive months' work;
- (b) where the person liable is a principal and where the wages are claimed from such principal under section 33 the total amount of the wages of any employees to which priority over the claim of a secured creditor is given by this section shall not exceed the amount due by the principal to the contractor at the date of the sale, attachment or garnishment unless the contractor is also a **contractor for labour**;
- (c) where the person liable is a contractor or sub-contractor who owes money to a **contractor for labour** the total amount due to such **contractor for labour** to which priority over the claim of a secured creditor is given by this section shall not exceed the amount due by such **contractor for labour** to his employees (including any further **contractor for labour** under such first-mentioned **contractor for labour**) for any four consecutive months' work.

(2) In this section, except for the second proviso, "wages" includes termination and lay-off benefits, annual leave pay, sick leave pay, public holiday pay and maternity allowance.

Reference by the court to Director General

32. (1) For the purposes of ascertaining the amount due to any employee or sub-contractor for labour under section 31, the court or the receiver or manager may refer the question to the Director General with a request that he hold an inquiry thereinto and forward his findings in respect thereof to the court or the receiver or manager, and the Director General shall comply with any such request.

(2) For the purpose of any inquiry under subsection (1) the Director General shall have all the powers conferred upon him by paragraph 70(f) and section 80 shall have effect as if the inquiry were being held under section 69.

PART VII

CONTRACTORS, PRINCIPALS AND CONTRACTORS FOR LABOUR

Liability of principals and contractors for wages

33. (1) Where a principal in the course of or for the purposes of his trade or business,

contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, and any wages are due to any employee by the contractor or any sub-contractor under the contractor for work done in the course of the performance of the contract, the principal and the contractor and any such sub-contractor (not being the employer) shall be jointly and severally liable with the employer to pay such wages as if that employee had been immediately employed by the principal and by the contractor and any such sub-contractor:

Provided that-

- (a) in the case of a contract for constructional work the principal shall not be liable for the payment of wages under this subsection unless he is also a constructional contractor or a housing developer;
- (b) the principal, and the contractor and any sub-contractor (not being the employer), shall not be liable to any employee under this subsection for more than the wages due to him for any three consecutive months; and
- (c) the employee shall have instituted proceedings against the principal for the recovery of his wages or made a complaint to the Director General under Part XV within ninety days from the date on which such wages became due for payment by his employer in accordance with the provisions for the payment of wages contained in Part III.

(2) Any person, other than the employer, who has paid wages under this section to the employee of any employer may institute civil proceedings against such employer for the recovery of the amount of wages so paid.

Information relating to supply of employees

33A. (1) A contractor for labour who intends to supply or undertakes to supply any employee shall register with the Director General in the prescribed form within fourteen days before supplying the employee.

(2) If a contractor for labour referred to in subsection (1) supplies any employee, he shall keep or maintain one or more registers containing information regarding each employee supplied by him and shall make such registers available for inspection.

(3) A contractor for labour who-

- (a) supplies his employee without registering with the Director General as required under subsection (1); or**
- (b) fails to keep or maintain any register, or make available any register for inspection as required under subsection (2),**

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

PART VIII

EMPLOYMENT OF WOMEN

Prohibition of night work

34. (1) Except in accordance with regulations made under this Act or any exemption granted under the proviso to this subsection no employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work:

Provided that the Director General may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.

(2) Any person-

- (a) who is affected by any decision made or condition imposed under the proviso to subsection (1); and
- (b) who is dissatisfied with such decision or condition,

may within thirty days of such decision or condition being communicated to him appeal in writing therefrom to the Minister.

(3) In deciding any appeal made to him under subsection (2), the Minister may make such decision or order thereon, including the alteration or removal of any condition imposed or the imposition of any further condition, as appears just and such decision or order shall be final.

Prohibition of underground work.

35. No female employee shall be employed in any underground working.

Prohibition of employment by Minister.

36. Notwithstanding the provisions of this Part the Minister may by order prohibit or permit the employment of female employees in such circumstances or under such conditions as may be described in such order.

PART IX

MATERNITY PROTECTION

Length of eligible period and entitlement to maternity allowance.

37. (1) (a) Every female employee shall be entitled –

- (i) to maternity leave for an eligible period in respect of each confinement; and

- (ii) subject to this Part, to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.**

(aa) Where a female employee is entitled to maternity leave under **subparagraph (a)(i)** but is not entitled to receive maternity allowance from her employer for the eligible period under paragraph *(c)*, or because she has not fulfilled the conditions set out in paragraph *(2)(a)*, she may, with the consent of the employer, commence work at any time during the eligible period if she has been certified fit to resume work by a registered medical practitioner.

(b) Subject to section 40, maternity leave shall not commence earlier than a period of thirty days immediately preceding the confinement of a female employee or later than the day immediately following her confinement:

Provided that where a medical officer or the registered medical practitioner appointed by the employer certifies that the female employee as a result of her advanced state of pregnancy is unable to perform her duties satisfactorily, the employee may be required to commence her maternity leave at any time during a period of fourteen days preceding the date of her confinement as determined in advance by the medical officer or the registered medical practitioner appointed by the employer.

(bb) Where a female employee abstains from work to commence her maternity leave on a date earlier than the period of thirty days immediately preceding her confinement, such abstention shall not be treated as maternity leave and she shall not be entitled to any maternity allowance in respect of the days during which she abstains from work in excess of the period of thirty days immediately preceding her confinement.

(c) Notwithstanding **subparagraph (a)(ii)**, a female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children.

***(d)* For the purposes of this Part -**

- (i) "children" means all natural children, irrespective of age; and**
- (ii) "eligible period" means a period of maternity leave of not less than sixty consecutive days.**

(2) (a) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if-

- (i) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement; and**
- (ii) she has been employed by the employer at any time in the four months immediately before her confinement; and**

(b) A female employee who is eligible for maternity allowance under paragraph *(1)(a)* shall be entitled to receive from the employer for each day of the eligible period a maternity allowance at her ordinary rate of pay for one day, or at the rate prescribed by the Minister under paragraph *102(2)(c)*, whichever is the greater.

(c) A female employee employed on a monthly rate of pay shall be deemed to have received her maternity allowance if she continues to receive her monthly wages during her abstention from work during the eligible period without abatement in respect of the abstention.

(d) Where a female employee claims maternity allowance under this section from more than one employer, she shall not be entitled to receive a maternity allowance of an amount exceeding in the aggregate the amount which she would be entitled to receive if her claim was made against one employer only.

(3) Where there are more employers than one from whom the female employee would be entitled to claim maternity allowance in accordance with subsection (2) the employer who pays the maternity allowance shall be entitled to recover from such other employer, as a civil debt, a contribution which shall bear the same proportion to the amount of the maternity allowance paid to the female employee as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement bears to the total number of days on which she worked during the said period:

Provided that if the female employee has failed to comply with subsection 40(1) or (2), the employer who pays the maternity allowance shall not thereby be prevented from recovering contribution calculated in accordance with this subsection.

(4) Any employer who terminates the service of a female employee during the period in which she is entitled to maternity leave commits an offence:

Provided that for the purpose of this section, such termination shall not include termination on the ground of closure of the employer's business.

Payment of maternity allowance

38. The maternity allowance referred to in subsection 37(2) and accruing in each wage period under the contract of service of the female employee shall be paid in the same manner as if such allowance were wages earned during such wage period as provided in section 19.

Payment of allowance to nominee on death of female employee

39. If a female employee, after giving notice to her employer that she expects to be confined, commences her maternity leave and dies from any cause during the eligible period, her employer or any employer who would have been, but for the death of the female employee, liable to pay any maternity allowance shall pay to the person nominated by her under section 41 or, if there is no such person, to her legal personal representative, an allowance at the rate calculated or prescribed as provided in section 37(2) from the day she commenced her maternity leave to the day immediately preceding her death.

Loss of maternity allowance for failure to notify employer.

40. (1) A female employee who is about to leave her employment and who knows or has reason to believe that she will be confined within four months from the date upon which she leaves shall before leaving her employment notify her employer of her pregnancy and if she fails so to do, she shall not be entitled to receive any maternity allowance from such employer.

(2) A female employee shall within a period of sixty days immediately preceding her expected confinement notify her employer of it and the date from which she intends to commence her maternity leave and if she commences such leave without so notifying her employer, the payment of maternity allowance to her may be suspended, notwithstanding section 38, until such notice is given to her employer.

(3) *(Deleted)*.

(4) Any female employee whose employer provides free medical treatment for his employees and who when she is pregnant persistently refuses or fails to submit to such medical treatment offered free by her employer as a registered medical practitioner certifies to be necessary or desirable in connection with her pregnancy, expected confinement or confinement shall, if she would otherwise be entitled to receive any maternity allowance, forfeit such allowance to the extent of seven days.

(5) The want of or any defect or inaccuracy in any notice required to be given in accordance with this section shall not be a bar to the maintenance of any claim to maternity allowance unless the employer is proved to have been prejudiced by the want, defect or inaccuracy of such notice.

(6) The failure to give any such notice within the period specified in this section shall not prejudice the right of a female employee to receive any maternity allowance if it is found that the failure was occasioned by mistake or other reasonable cause:

Provided that any dispute as to whether such failure was occasioned by mistake or other reasonable cause shall be referred under section 69 to the Director General for his decision.

(7) Notice to an employer or, if there is more than one employer, to one of such employers, may be given either in writing or orally or to the foreman or other person under whose supervision the female employee was employed or to any person designated for the purpose by the employer.

Payment of allowance to nominee

41. A female employee may nominate some other person to whom the maternity allowance may be paid on her behalf and any payment of the maternity allowance made to the person so nominated shall, for the purposes of this Act, be deemed to be a payment to the female employee herself.

Restriction on dismissal of female employee after eligible period

42. (1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.

(2) Subject to subsection (1), where **the service of a female employee is terminated** with wages in lieu of notice at any time during the period of four months immediately preceding her confinement, she shall, in computing the period of her employment for the purposes of this Part, be deemed to have been employed as if she had been given due notice instead of wages in lieu thereof.

Conditions contrary to Part void

43. Any condition in a contract of service whereby a female employee relinquishes or is deemed to relinquish any right under this Part shall be void and of no effect and the right conferred under this Part shall be deemed to be substituted for such condition.

Register of allowances paid

44. Every employer shall keep a register, in a form to be prescribed by the Minister by regulations made under this Act, of all payments made to female employees under this Part and of such other matters incidental thereto as may be prescribed by such regulations.

Application of this Part irrespective of wages of female employee

44A. **Notwithstanding paragraph 1 of the First Schedule, this Part extends to every female employee who is employed under a contract of service irrespective of her wages.**

PART X

EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

45-56. *(Repealed).*

PART XI

DOMESTIC SERVANTS

Termination of contract.

57. Subject to any express provision to the contrary contained therein, a contract to

employ and to serve as a domestic servant may be terminated either by the person employing the domestic servant or by the domestic servant giving the other party fourteen days' notice of his intention to terminate the contract, or by the paying of an indemnity equivalent to the wages which the domestic servant would have earned in fourteen days:

Provided that any such contract may be terminated by either party without notice and without the paying of an indemnity on the ground of conduct by the other party inconsistent with the terms and conditions of the contract.

Employment of foreign domestic servant

57A. (1) An employer who employs a foreign domestic servant shall, within thirty days of the employment, inform the Director General of such employment in a manner as may be determined by the Director General.

(2) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Duty to inform Director General of termination of service of foreign domestic servant

57B. (1) If the service of a foreign domestic servant is terminated -

- (a) by the employer;**
- (b) by the foreign domestic servant;**
- (c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign domestic servant; or**
- (d) by the repatriation or deportation of the foreign domestic servant,**

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

(2) For the purpose of paragraph (1)(b), the termination of service by a foreign domestic servant includes the act of the foreign domestic servant absconding from his place of employment.

(3) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

PART XII

REST DAYS, HOURS OF WORK, HOLIDAYS AND OTHER CONDITIONS OF SERVICE

58. (Omitted).

Non-application of Part XII

58A. This Part shall not apply to any term or condition of service which is provided for in any collective agreement entered into before the coming into operation of this Part and taken cognizance of by the Industrial Court or in any award made by the Industrial Court while such collective agreement or award remains in force.

Rest day

59. (1) Every employee shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer, and where an employee is allowed more than one rest day in a week the last of such rest days shall be the rest day for the purposes of this Part:

Provided that this subsection shall not apply during the period in which the employee is on maternity leave as provided under section 37, or on sick leave as provided under section 60F, or during the period of temporary disablement under the Workmen's Compensation Act 1952, or under the **Employees' Social Security Act 1969**.

(1A) Notwithstanding subsection (1) and the interpretation of the expression "day" in section 2(1), in the case of an employee engaged in shift work any continuous period of not less than thirty hours shall constitute a rest day.

(1B) Notwithstanding subsection (1), the Director General, on a written application by an employer and subject to any conditions he may deem fit to impose, may permit the employer to grant the rest day for each week on any day of the month in which the rest days fall and the day so granted shall be deemed to be the employee's rest day for the purposes of this section.

(2) The employer shall prepare a roster before the commencement of the month in which the rest days fall informing the employee of the days appointed to be his rest days therein, and where the same day in each week has been appointed as the rest day for all employees in the place of employment, the employer may, in lieu of preparing a roster, display a notice at a conspicuous place in the place of employment informing the employee of the fixed rest day so appointed.

(3) Every such roster and every particular recorded therein shall be preserved and shall be made available for inspection for a period not exceeding six years from the last day of the month in respect of which the roster was prepared or cause to be prepared.

(4) Any employer who contravenes any of the provisions of this section commits an offence.

Work on rest day

60. (1) Except as provided in section 60A(2), no employee shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously or continually by two or more shifts:

Provided that in the event of any dispute the Director General shall have power to decide whether or not an employee is engaged in work which by reason of its nature requires to be carried on continuously or continually by two or more shifts.

(2) *(Omitted)*.

(3) (a) In the case of an employee employed on a daily, hourly or other similar rate of pay who works on a rest day, he shall be paid for any period of work-

- (i) which does not exceed half his normal hours of work, one day's wages at the ordinary rate of pay; or
- (ii) which is more than half but does not exceed his normal hours of work, two days' wages at the ordinary rate of pay.

(b) In the case of an employee employed on a monthly **or weekly** rate of pay who works on a rest day, he shall be paid for any period of work-

- (i) which does not exceed half his normal hours of work, wages equivalent to half the ordinary rate of pay for work done on that day; or
- (ii) which is more than half but which does not exceed his normal hours of work, one day's wages at the ordinary rate of pay for work done on that day.

(c) For any work carried out in excess of the normal hours of work on a rest day by an employee mentioned in paragraph (a) or (b), he shall be paid at a rate which is not less than two times his hourly rate of pay.

(d) In the case of an employee employed on piece rates who works on a rest day, he shall be paid twice his ordinary rate per piece.

60A. Hours of work

(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work-

- (a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;
- (b) more than eight hours in one day;
- (c) in excess of a spread over period of ten hours in one day;
- (d) more than forty-eight hours in one week:

Provided that-

- (i) for the purpose of paragraph (1)(a), any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours;
- (ii) an employee who is engaged in work which must be carried on continuously and which requires his continual attendance may be required to work for eight consecutive hours inclusive of a period or periods of not less than forty-five

minutes in the aggregate during which he shall have the opportunity to have a meal; and

- (iii) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than nine hours in one day or forty-eight hours in one week.

(1A) The Director General may, on the written application of an employer, grant permission to the employer to enter into a contract of service with any one or more of his employees, or with any class, category or description of his employees, requiring the employee or employees, or the class, category or description of employees, as the case may be, to work in excess of the limit of hours prescribed under paragraph (1)(a),(b),(c) and (d) but subject to such conditions, if any, as the Director General may deem proper to impose, if he is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which renders it necessary or expedient to grant such permission:

Provided that the Director General may at any time revoke the approval given under this subsection if he has reason to believe that it is expedient to do so.

(1B) Any person who is dissatisfied with any decision of the Director General under subsection (1A) may, within thirty days of such decision being communicated to him, appeal in writing therefrom to the Minister.

(1C) On an appeal made to him under subsection (1B) the Minister may make such decision or order thereon as appears just; and such decision or order shall be final.

(2) An employee may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work on a rest day, in the case of—

- (a) accident, actual or threatened, in or with respect to his place of work;
- (b) work, the performance of which is essential to the life of the community;
- (c) work essential for the defence or security of Malaysia;
- (d) urgent work to be done to machinery or plant;
- (e) an interruption of work which it was impossible to foresee; or
- (f) work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967:

Provided that the Director General shall have the power to enquire into and decide whether or not the employer is justified in calling upon the employee to work in the circumstances specified in paragraphs (a) to (f).

(3) (a) For any overtime work carried out in excess of the normal hours of work, the employee shall be paid at a rate not less than one and half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.

(b) In this section "overtime" means the number of hours of work carried out in excess of the normal hours of work per day:

Provided that if any work is carried out after the spread over period of ten hours, the whole period beginning from the time that the said spread over period ends up to the time that the employee ceases work for the day shall be deemed to be overtime.

(c) For the purposes of this section, section 60, paragraph 60D(3)(a) and section 60I, "normal hours of work" means the number of hours of work as agreed between an employer and an employee in the contract of service to be the usual hours of work per day and such hours of work shall not exceed the limits of hours prescribed in subsection (1).

(4) (a) No employer shall require or permit an employee to work overtime exceeding such limit as may be prescribed by the Minister from time to time by regulations made under this Act, and the regulations so made may provide different limits for different classes, categories or descriptions of employees, and such regulations may also provide for such classes, categories or description of employees, as may be specified, to be excluded from their application:

Provided that any work carried out on a rest day, or any of the gazetted public holidays referred to in subsection 60D(1), or on any paid holiday substituted there for under section 60D, shall not be construed as overtime work for the purposes of this subsection:

And provided further that the Director General may, on application made to him in writing by an employer or by an employee or a group of employees, permit any particular employee, or any group, class, category or description of employees in any particular industry, undertaking or establishment to work overtime in excess of the limit of hours so prescribed, subject to such conditions, if any, as he may deem proper to impose.

(aa) Any person who is dissatisfied with any decision of the Director General made under paragraph (a) may, within thirty days of such decision being communicated to him, appeal in writing therefrom to the Minister.

(ab) In deciding any appeal made to him under paragraph (aa), the Minister may make such decision or order thereon as appears just and such decision or order shall be final.

(b) For the purposes of the restriction on overtime under this subsection "overtime" shall have the meaning assigned thereto in subsection (3)(b) .

(5) *(Omitted)*.

(6) The Minister may make regulations for the purpose of calculating the payment due for overtime to an employee employed on piece rates.

(7) Except in the circumstances described in paragraph (2)(a),(b),(c),(d) and (e), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.

(8) This section shall not apply to employees engaged in work which by its nature involves long hours of inactive or stand-by employment.

(9) For the purposes of this Part "hours of work" means the time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements.

Task work

60B. Nothing contained in this Part shall prevent any employer from agreeing with any employee that the wages of such employee shall be paid at an agreed rate in accordance with the task, that is the specific amount of work to be performed, and not by the day or by the piece.

Shift work

60C. (1) Notwithstanding paragraph 60A(1)(b), (c) and (d), but subject to paragraph (1)(a) thereof, an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-eight hours in any one week but the average number of hours worked over any period of three weeks, or over any period exceeding three weeks as may be approved by the Director General, shall not exceed forty-eight per week.

(1A) The approval of the Director General in subsection (1) may be granted if the Director General is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which render it necessary or expedient for him to grant the permission subject to such conditions as he may deem fit to impose.

(1B) The Director General may revoke the approval given under subsection (1A) at any time if he has reason to believe that it is expedient so to do.

(2) Except in the circumstances described in paragraph 60A(2)(a), (b), (c), (d) and (e), no employer shall require any employee who is engaged under his contract of service in shift work to work for more than twelve hours in any one day.

(3) *(Omitted).*

Holidays

60D. (1) Every employee shall be entitled to a paid holiday **at his** ordinary rate of pay on the following days in any one calendar year:

- (a) on **eleven** of the gazetted public holidays, **five** of which shall be:
 - (i) the National Day;
 - (ii) the Birthday of the Yang di-Pertuan Agong;
 - (iii) the Birthday of the Ruler or the Yang di-Pertua Negeri, as the case may be, of the State in which the employee wholly or mainly works

under his contract of service, or the Federal Territory Day, if the employee wholly or mainly works in the Federal Territory;

(iv) the Workers' Day; and

(v) **Malaysia Day; and**

(b) on any day appointed as a public holiday for that particular year under section 8 of the Holidays Act 1951 [Act 369]:

Provided that if any of the public holidays referred to in paragraphs (a) and (b) falls on -

(i) a rest day; or

(ii) any other public holidays referred to in paragraphs (a) and (b),

the working day following immediately the rest day or the other public holiday shall be a paid holiday in substitution of the first mentioned public holiday.

(1A) The employer shall exhibit conspicuously at the place of employment before the commencement of each calendar year a notice specifying the remaining six gazetted public holidays provided for in paragraph (1)(a) in respect of which his employees shall be entitled to paid holidays under paragraph (1)(a):

Provided that by agreement between the employer and an employee any other day or days may be substituted for one or more of the said remaining six gazetted public holidays provided for in paragraph (1)(a):

And provided further that the employer may grant the employee any other day as a paid public holiday in substitution for any of the public holidays referred to in paragraph (1)(b).

(1B) Where any of the public holidays or any other day substituted therefor as provided in subsection (1) or (1A) falls within the period during which an employee is on sick leave or annual leave to which the employee is entitled under this Act, or falls during the period of temporary disablement under the Workmen's Compensation Act, 1952, or under the Employees Social Security Act, 1969, the employer shall grant another day as a paid holiday in substitution for such public holiday or the day substituted therefor.

(2) Any employee who absents himself from work on the working day immediately preceding or immediately succeeding a public holiday or two or more consecutive public holidays or any day or days substituted therefor under this section without the prior consent of his employer shall not be entitled to any holiday pay for such holiday or consecutive holidays unless he has a reasonable excuse for such absence.

(2A) An employee on a monthly rate of pay shall be deemed to have received his holiday pay if he receives from his employer his monthly wages, without abatement (other than as provided under subsection (2)) in respect of the holiday, for the month in which the holiday falls.

(3) (a) Notwithstanding subsections (1), (1A) and (1B), any employee may be required by his employer to work on any paid holiday to which he is entitled under the said subsections and in such event he shall, in addition to the holiday pay he is entitled to

for that day-

- (i) in the case of an employee employed on a monthly, weekly, daily, hourly, or other similar rate of pay, be paid two days' wages at the ordinary rate of pay; or
- (ii) in the case of an employee employed on piece rates, be paid twice the ordinary rate per piece,

regardless that the period of work done on that day is less than the normal hours of work.

(aa) For any overtime work carried out by an employee referred to in subparagraph (a)(i) in excess of the normal hours of work on a paid public holiday, the employee shall be paid at a rate which is not less than three times his hourly rate of pay.

(aaa) For any overtime work carried out by an employee referred to in subparagraph (a)(ii) in excess of the normal hours of work on any paid holiday, the employee shall be paid not less than three times the ordinary rate per piece.

(b) An employee who works on a holiday shall be entitled to a traveling allowance for that day if payable to him under the terms of his agreement with his employer but such employee shall not be entitled under this subsection to receive an increased rate of any housing allowance or food allowance.

(4) For the purposes of this section if any such holiday falls on a half working day, the ordinary rate of pay payable shall be that of a full working day.

Annual leave

60E. (1) An employee shall be entitled to paid annual leave of—

- (a) eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of less than two years;
- (b) twelve days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and
- (c) sixteen days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more,

and if he has not completed twelve months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service:

Provided that any fraction of a day of annual leave so calculated which is less than one-half of a day shall be disregarded, and where the fraction of a day is one-half or more it shall be deemed to be one day;

And provided further that where an employee absents himself from work without the permission of his employer and without reasonable excuse for more than ten per centum of the working days during the twelve months of continuous service in respect of which his entitlement to such leave accrues he shall not be entitled to such leave.

(1A) The paid annual leave to which an employee is entitled under subsection (1) shall be in addition to rest days and paid holidays.

(1B) Where an employee who is on paid annual leave becomes entitled to sick leave or maternity leave while on such annual leave, the employee shall be granted the sick leave or the maternity leave, as the case may be, and the annual leave shall be deemed to have not been taken in respect of the days for which sick leave or maternity leave is so granted.

(2) The employer shall grant and the employee shall take such leave not later than twelve months after the end of every twelve months continuous service and any employee who fails to take such leave at the end of such period shall thereupon cease to be entitled thereto:

Provided that an employee shall be entitled to payment in lieu of such annual leave if, at the request of his employer, he agrees in writing not to avail himself of any or all of his annual leave entitlement.

(2A) Notwithstanding subsection (2), upon the termination of an employee's contract of service, the employee shall be entitled to take before such termination takes place the paid annual leave due to be taken in the year in which the termination takes place in respect of the twelve months of service preceding the year in which the termination takes place, and, in addition, the leave accrued in respect of the completed months of service during the year in which the termination takes place.

(3) The employer shall pay the employee his ordinary rate of pay for every day of paid annual leave, and an employee on a monthly rate of pay shall be deemed to have received the annual leave pay if he receives his monthly wages, without abatement in respect of such annual leave, for the month in which he takes such annual leave.

(3A) If the contract of service has been terminated by either party before an employee has taken the paid annual leave to which he is entitled under this section, the employer shall pay the employee his ordinary rate of pay in respect of every day of such leave:

Provided that this subsection shall not apply where an employee is dismissed under paragraph 14(1)(a).

(3B) Where an employee is granted leave of absence without pay by his employer during any period of twelve months and the period of absence exceeds in the aggregate thirty days, that period of leave of absence shall be disregarded for the purpose of computing his length of service with the employer under this section.

(4) The Minister may, by notification in the *Gazette*, fix the periods when and prescribe the manner in which annual leave shall be granted to employees in different types of employment or in different classes of industries.

Sick leave

- 60F.** (1) An employee shall, after examination at the expense of the employer—
- (a) by a registered medical practitioner duly appointed by the employer; or
 - (b) if no such medical practitioner is appointed or, if having regard to the nature or circumstances of the illness, the services of the medical practitioner so appointed are not obtainable within a reasonable time or distance, by any other registered medical practitioner or by a medical officer,

be entitled to paid sick leave,—

- (aa) where no hospitalization is necessary,—
 - (i) of fourteen days in the aggregate in each calendar year if the employee has been employed for less than two years;
 - (ii) of eighteen days in the aggregate in each calendar year if the employee has been employed for two years or more but less than five years;
 - (iii) of twenty-two days in the aggregate in each calendar year if the employee has been employed for five years or more; or
- (bb) of sixty days in the aggregate in each calendar year if hospitalization is necessary, as may be certified by such registered medical practitioner or medical officer:

Provided that the total number of days of paid sick leave in a calendar year which an employee is entitled to under this section shall be sixty days in the aggregate;

And provided further that if an employee is certified by such registered medical practitioner or medical officer to be ill enough to need to be hospitalized but is not hospitalized for any reason whatsoever, the employee shall be deemed to be hospitalized for the purposes of this section.

(1A) An employee shall also be entitled to paid sick leave under paragraphs (1)(aa) and (bb) after examination by a dental surgeon as defined in the Dental Act 1971 [Act 51]:

Provided that the entitlement for such sick leave shall be inclusive of the number of days provided for under paragraphs (1)(aa) and (bb).

- (2) An employee who absents himself on sick leave—
 - (a) which is not certified by a registered medical practitioner or a medical officer as provided under subsection (1) or a dental surgeon as provided under subsection (1A); or
 - (b) which is certified by such registered medical practitioner or medical officer or a dental surgeon, but without informing or attempting to inform his employer of such sick leave within forty-eight hours of the commencement thereof,

shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.

(3) The employer shall pay the employee his ordinary rate of pay for every day of such sick leave, and an employee on a monthly rate of pay shall be deemed to have received his sick leave pay if he receives from his employer his monthly wages, without abatement in respect of the days on which he was on sick leave, for the month during which he was on such sick leave.

(4) No employee shall be entitled to paid sick leave for the period during which the employee is entitled to maternity allowance under Part IX, or for any period during which he is receiving any compensation for disablement under the Workmen's Compensation Act 1952 [*Act 273*], or any periodical payments for temporary disablement under the Employees Social Security Act 1969 [*Act 4*].

60G. (*Omitted*).

60H. (*Omitted*).

Interpretation

60I. (1) For the purposes of this Part and Part IX—

(a) "ordinary rate of pay" means wages as defined in section 2, whether calculated by the month, the week, the day, the hour, or by piece rate, or otherwise, which an employee is entitled to receive under the terms of his contract of service for the normal hours of work for one day, but does not include any payment made under an approved incentive payment scheme or any payment for work done on a rest day or on any gazetted public holiday granted by the employer under the contract of service or any day substituted for the gazetted public holiday; and

(b) "hourly rate of pay" means the ordinary rate of pay divided by the normal hours of work.

(1A) Where an employee is employed on a monthly rate of pay, the ordinary rate of pay shall be calculated according to the following formula:

$$\frac{\text{monthly rate of pay}}{26} \cdot$$

(1B) Where an employee is employed on a weekly rate of pay, the ordinary rate of pay shall be calculated according to the following formula:

$$\frac{\text{weekly rate of pay}}{6} \cdot$$

(1C) Where an employee is employed on a daily **or an hourly** rate of pay or on

piece rates, the ordinary rate of pay shall be calculated by dividing the total wages earned by the employee during the preceding wage period (excluding any payment made under an approved incentive payment scheme or for work done on any rest day, any gazetted public holiday granted by the employer under the contract of service or any day substituted for the gazetted public holiday) by the actual number of days the employee had worked during that wage period (excluding any rest day, any gazetted public holiday or any paid holiday substituted for the gazetted public holiday).

(1D) For the purposes of payment of sick leave under section 60F, the calculation of the ordinary rate of pay of an employee employed on a daily **or an hourly** rate of pay or on piece rates under subsection (1C) shall take account only of the basic pay the employee receives or the rate per piece he is paid for work done in a day under the contract of service.

(2) An employer may adopt any method or formula other than the method or formula in subsection (1A), (1B) or (1C) for calculating the ordinary rate of pay of an employee; but the adoption of any other method or formula shall not result in a rate which is less than any of the rates provided in the subsections.

(3) For the purpose of this section, the Director General may, on application made to him in writing by an employer, approve in writing any incentive payment scheme as an approved incentive payment scheme.

PART XIIA

TERMINATION, LAY-OFF, AND RETIREMENT BENEFITS

Termination, lay-off and retirement benefits

60J. (1) The Minister may, by regulations made under this Act, provide for the entitlement of employees to, and for the payment by employers of—

- (a) termination benefits;
- (b) lay-off benefits;
- (c) retirement benefits.

(2) Without prejudice to the generality of subsection (1), regulations made by virtue of subsection (1) may provide—

- (a) for the definition of the expression "termination benefits", "lay-off benefits", or "retirement benefits", as the case may be, and for the circumstances in which the same shall be payable;
- (b) for the application thereof to employees who were in employment under a contract of service immediately before the commencement of such regulations and who continue in such employment after the commencement thereof;
- (c) for the application thereof to all employees generally or to any particular class, category or description of employees;

- (d) for the exclusion from the application thereof of any particular employee or employees, or any class, category or description of employees;
- (e) for the payment of different rates or amounts of termination benefits, lay-off benefits, or retirement benefits, as the case may be, to different classes, categories or descriptions of employees.

PART XIIB

EMPLOYMENT OF FOREIGN EMPLOYEES

Duty to furnish information and returns

60K. (1) An employer who employs a foreign employee shall, within fourteen days of the employment, furnish **the Director General with the particulars of the foreign employee by forwarding the particulars to the nearest office of the Director General.**

(2) An employer or any specified class or classes of employers, whenever required to do so by the Director General, shall furnish returns of particulars relating to the employment of a foreign employee in such manner and at such intervals as the Director General may direct.

(3) If the service of a foreign employee is terminated—

- (a) by the employer;**
- (b) by the foreign employee;**
- (c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or**
- (d) by the repatriation or deportation of the foreign employee,**

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

(4) For the purpose of paragraph (3)(b), the termination of service by a foreign employee includes the act of the foreign employee absconding from his place of employment.

(5) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Director General may inquire into complaint

60L. (1) The Director General may inquire into any complaint from a local employee that he is being discriminated against in relation to a foreign employee, or from a foreign employee that he is being discriminated against in relation to a local employee, by his employer in respect of the terms and conditions of his employment; and the Director General may issue to the employer such directives as may be necessary or expedient to

resolve the matter.

(2) An employer who fails to comply with any directive of the Director General issued under subsection (1) commits an offence.

Prohibition on termination of local for foreign employee

60M. No employer shall terminate the contract of service of a local employee for the purpose of employing a foreign employee.

Termination of employment by reason of redundancy

60N. Where an employer is required to reduce his workforce by reason of redundancy necessitating the retrenchment of any number of employees, the employer shall not terminate the services of a local employee unless he has first terminated the services of all foreign employees employed by him in a capacity similar to that of the local employee.

Permanent resident exempted from this Part

60O. For the purposes of this Part, the term "foreign employee" shall not include a foreign employee who is a permanent resident of Malaysia.

PART XIII

REGISTERS, RETURNS AND NOTICE BOARDS

Duty to keep registers

61. (1) Every employer shall prepare and keep one or more registers containing such information regarding each employee employed by him as may be prescribed by regulations made under this Act.

(2) Every such register shall be preserved for such period that every particular recorded therein shall be available for inspection for not less than six years after the recording thereof.

(3) Notwithstanding subsections (1) and (2), the Director General, on a written application by an employer, may permit the employer to keep the information required under subsection (1) in any other manner as may be approved by the Director General subject to such conditions as he may deem fit to impose.

Power to make regulations requiring information as to wages

62. The Minister may, by regulations made under this Act, provide that every employer or any specified class or classes of employers shall make available, in such form and at such intervals as may be prescribed, to every employee employed by him or them or to

such class or classes of employees as may be specified such particulars as may be specified relating to the wages of such employees or any of them.

Duty to submit returns.

63. (1) The Director General may, by notification in the *Gazette* or by notice in writing require every employer or such class or classes of employers as may be specified, and every owner or occupier of land upon which employees are employed or such class or classes of owners or occupiers as may be specified, to forward to the Director General at such times as he may direct a return or returns, in such form or forms as he may prescribe, giving such particulars relating to the employees of the employers, or to the employees employed on the land, as may be prescribed.

(2) Notwithstanding the provisions of this Act, the powers of the Director General under subsection (1) extends to every employee employed under a contract of service irrespective of the monthly wages of the employee.

Duty to give notice and other information

63A. (1) Any person or 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 undertaking or establishment, in which any employee is employed or is likely to be employed shall, within ninety 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 such office of the Director of Labour with—
 - (i) the registered name, address and nature of business of;
 - (ii) the name of the manager or person in charge of; and
 - (iii) a statement of the categories and total number of employees employed in,

that undertaking or establishment.

(1A) For the purposes of this section the expressions "commencing of operation" and "commencing of business" each means the date on which the undertaking or establishment is registered under any written law, or the date on which the first employee is employed in furtherance of the operation, commerce, trade or business of such undertaking or establishment, whichever is earlier.

(2) Where any undertaking or establishment as is referred to in subsection (1) is

already in operation or has commenced business, such notice shall be given within ninety days of the coming into force of this section.

(3) Any person or employer who fails to give notice as required by this section or gives such notice containing any false particulars commits an offence.

Duty to display notice boards

64. The owner of any-

- (a) estate of twenty hectares or more;
- (b) mine;
- (c) factory;
- (d) trade, business or manufacturing activity carried on in any premises, on or in which not less than five employees are employed shall, if such estate, mine, factory or premises is outside the limits of a City, Municipality, Town Council, Town Board or other local authority, cause to be erected where practicable in a conspicuous place at or adjacent to the place where the access road to such estate, mine, factory or premises joins the main road or a railway or river, as the case may be, a notice board on which shall be set out in the national language the name of such estate, mine, factory, trade, business or manufacturing activity and the address of the registered or other office thereof.

PART XIV

INSPECTION

Powers of inspection and inquiry

65. The Director General shall have power to enter without previous notice at all times any place of employment where he has reasonable grounds for believing that employees are employed and to inspect any building occupied or used for any purpose connected with such employment and to make any inquiry which he considers necessary in relation to any matter within the provisions of this Act.

Inspecting officer to notify presence

66. On the occasion of any inspection under this Part the Director General shall where practicable notify the owner or occupier of the place of employment, and the employer of any employees employed thereat, of his presence unless he has reasonable grounds for believing that such notification might be prejudicial to the performance of his duties.

Powers of inspecting officer

67. (1) In the course of an inspection under this Part-

- (a) the Director General may examine orally any person whom he believe to be acquainted with the facts and circumstances of any matter within the

provisions of this Act;

- (b) the person so examined shall be legally bound to answer truthfully all questions put to him;
- (c) the Director General examining a person under paragraph (a) shall first inform that person of the provisions of paragraph (b);
- (d) a statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish; and
- (e) any statement made and recorded under this section shall be admissible as evidence in any proceedings in Court.

(2) Notwithstanding subsection (1), a person examined under that subsection may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) The Director General, in addition to the powers conferred on him under subsection (1), may-

- (a) require the employer to produce before him all or any of the employees employed by him together with any contracts of service, books of account of wages, registers and other documents relating to the employees or their employment and to answer such questions in respect of the employees or their employment as he may think fit to ask;
- (b) copy or make extracts from the contracts of service, books of account of wages, registers and other documents relating to the employees or their employment;
- (c) take possession of the contracts of service, books of account of wages, registers and other documents relating to the employees or their employment where, in his opinion-
 - (i) the inspection, copying or the making of extracts from the contracts of service, books of account of wages, registers or other documents cannot reasonably be undertaken without taking possession of them;
 - (ii) the contracts of service, books of account of wages, registers or other documents may be interfered with or destroyed unless he takes possession of them; or
 - (iii) the contracts of service, books of account of wages, registers or other documents may be needed as evidence in any legal proceedings under this Act.

(4) Notwithstanding paragraph (3)(a), no employee shall be required to leave or to cease from performing any work on which he is engaged if his absence or cessation from such work would endanger life or property or seriously disrupt any operation being carried on by his employer.

Officers to be authorized by the Director General

68. An officer appointed under section 3(2) shall not exercise any of the powers of the Director General under this Pat unless he is in possession of an official identification card signed by the Director General authorizing him to exercise such powers, and any officer so authorized shall produce his official identification card on demand to the owner or occupier of the place of employment and to the employer of any employees employed thereat.

PART XV

COMPLAINTS AND INQUIRIES

Director General's power to inquire into complaints

69. (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under-

- (a) any term of the contract of service between such employee and his employer;
- (b) any of the provisions of this Act or any subsidiary legislation made thereunder; or
- (c) the provisions of the Wages Council Act 1947 [*Act 195*] or any order made thereunder,

and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.

(2) The powers of the Director General under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by-

- (i) an employee against any person liable under section 33;
- (ii) a **contractor for labour** against a contractor or **sub-contractor** for any sum which the **contractor for labour** claims to be due to him in respect of any labour provided by him under his contract with the contractor or **sub-contractor**; or
- (iii) an employer against his employee in respect of indemnity due to such employer under section 13(1),

and to make such consequential orders as may be necessary to give effect to his decision.

(3) In addition to the powers conferred by subsections (1) and (2), the Director General may inquire into and confirm or set aside any decision made by an employer under subsection 14(1) and the Director General may make such consequential orders as may be necessary to give effect to his decision:

Provided that if the decision of the employer under paragraph 14(1)(a) is set aside, the consequential order of the Director General against such employer shall be confined to payment of indemnity in lieu of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee:

Provided further that the Director General shall not set aside any decision made by an employer under paragraph 14(1)(c) if such decision has not resulted in any loss in wages of other payments payable to the employee under his contract of service:

And provided further that the Director General shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this Part within sixty days from the date on which the decision under section 14 is communicated to him either orally or in writing by his employer.

(3A) An order made by the Director General for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director General may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the order until the day the order is satisfied:

Provided that the Director General, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.

(4) A person who fails to comply with any decision or order of the Director General made under this section commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one hundred ringgit for each day the offence continues after conviction.

Limitation on power conferred by section 69

69A. Notwithstanding section 69, the Director General shall not inquire into, hear, decide or make any order in respect of any claim, dispute or purported dispute which, in accordance with the Industrial Relations Act 1967-

- (a) is pending in any inquiry or proceedings under that Act;
- (b) has been decided upon by the Minister under section 20(3) of that Act; or
- (c) has been referred to, or is pending in any proceedings before, the Industrial Court.

Additional powers of Director General to inquire into complaints

69B. (1) Notwithstanding the provisions of this Act, the powers of the Director General under paragraph 69(1)(a) shall extend to employees whose wages per month exceed **two thousand** ringgit but does not exceed five thousand ringgit.

(2) For the purposes of this section, the term "wages" means wages as defined in section 2 but does not include any payment by way of commission, subsistence allowance or overtime payment.

(3) Save for Parts XV and XVI which shall apply with the necessary modifications, the other provisions of this Act shall not apply to the employees referred to in subsection (1).

Claims for indemnity for termination of contract without notice

69C. (1) In the exercise of his powers under section 69B(1), the Director General may inquire into and decide any claim concerning any indemnity due to the employer or employee where the contract of service is terminated by either party without notice, or if notice was given, without waiting for the expiry of that notice.

(2) The indemnity due to the employer or employee under subsection (1) shall be a sum equal to the amount of wages which would have accrued to the employee during the term of the notice or during the unexpired term of the notice.

Order of Director General may be in writing

69D. Notwithstanding subsection 69(1), an order of the Director General made under subsection 69B(1) or 69C(1) for the payment by or to the employer or employee of a sum of money as the Director General deems just, without any limitation of amount, may be made in writing.

Penalty for offence

69E. A person who fails to comply with a decision or an order of the Director General made under subsection 69B(1) or 69C(1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one hundred ringgit for each day the offence continues after conviction.

Procedure in Director General's inquiry

70. The procedure for disposing of questions arising under sections 69, 69B and 69C shall be as follows:

- (a) the person complaining shall present to the Director General a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director General of his complaint and of the remedy which he seeks;
- (b) the Director General shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant's statement in his case book;

- (c) the Director General may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against:

Provided that if the person complained against attends in person before the Director General it shall not be necessary to serve a summons upon him;

- (d) when issuing a summons to a person complained against the Director General shall give such person notice of the nature of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director General for summonses to such persons to appear as witnesses on his behalf;
- (e) when the Director General issues a summons to a person complained against he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may, on the request of the complainant and subject to any conditions as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;
- (f) when at any time before or during an inquiry the Director General has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto he may summon any or all of such persons;
- (g) the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;
- (h) if the person complained against or any person whose financial interests the Director General has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons shall fail so to attend the Director General may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;
- (i) in order to enable a court to enforce the decision of the Director General, the Director General shall embody his decision in an order in such form as may be prescribed.

Director General's record of inquiry

71. The Director General shall keep a case book in which he shall record the evidence of persons summoned or otherwise present and his decision and order in each matter in issue before him and shall authenticate the same by attaching his signature thereto and the record in such case book shall be sufficient evidence of the giving of any decision; and any person interested in such decision or order shall be entitled to a copy thereof free of charge and to a copy of the record upon payment of the prescribed fee.

Joinder of several complaints in one complaint

72. Where it appears to the Director General in any proceedings under this Part that there are more employees than one having a common cause for complaint against the same employer or person liable, it shall not be necessary for each such employee to make a separate complaint under this Pat, but the Director General may, if he thinks fit, permit one or more of them to make a complaint and to attend and act on behalf of and generally to represent the others, and the Director General may proceed to a decision on the joint complaint or complaints of each and all such employees:

Provided that, where the Director General is of opinion that the interests of the employer or person liable are likely to be prejudiced by the non-attendance of any employee, he shall require the personal attendance of such employee.

Prohibitory order by Director General to third party

73. (1) Whenever the Director General shall have made an order under section 69, 69B or 69C against any employer or any person liable for the payment of any sum of money to any employee or **contractor for labour** and the Director General has reason to believe that there exists between such employer or person liable and any other person a contract in the course of the performance of which the employee or contractor performed the work in respect of which the order was made, the Director General may summon such other person and, if after enquiry he is satisfied that such a contract exists, may make an order in the prescribed form prohibiting him from paying to the employer or person liable and requiring him to pay to the Director General any money (not exceeding the amount found due to such employee or **contractor for labour**) admitted by him to be owing to the employer or person liable in respect of such contract:

Provided that where such other person admits to the Director General in writing that money is owing by him under such contract to the employer or person liable he need not be summoned to attend before the Director General and the Director General may make such order in his absence:

Provided further that where such other person is liable as a principal under subsection 33(1) to pay any wages due by the employer or person liable and where the money admitted by him to be owing to the employer or person liable is not sufficient to pay the whole of such wages nothing in this subsection shall relieve him of his liability for the balance of such wages up to the amount for which he is liable under proviso (b) to the said subsection.

(2) The payment of any money in pursuance of an order under subsection (1) shall be a discharge and payment up to the amount so paid of money due to the employer or person liable under the contract.

No fees for summons: service of summons

74. (1) No fee shall be charged by the Director General in respect of any summons issued by him under this Part.

(2) Any such summons may be served by a Sessions Court or a Magistrates' Court on behalf of the Director General, or in such other manner, and by such person, as the Director General may deem fit.

Enforcement of Director General's order by Sessions Court

75. Where any order has been made by the Director General under this Part, and the same has not been complied with by the person to whom it is addressed, the Director General may send a certified copy thereof to the Registrar of a Sessions Court, or to the Court of a First Class Magistrate, having jurisdiction in the place to which the order relates or in the place where the order was made, and the said Registrar or Court, as the case may be, shall cause the said copy to be recorded and thereupon the said order shall for all purposes be enforceable as a judgment of the Sessions Court, or of the Court of the First Class Magistrate, as the case may be, notwithstanding that the same may in respect of amount or value be in excess of the ordinary jurisdiction of the said Court:

Provided that no sale of immovable property shall for the purposes of such enforcement be ordered except by the High Court.

Submission by Director General to High Court of point of law

76. (1) In any proceedings under this Part the Director General may, if he thinks fit, submit any question of law for the decision of a Judge of the High Court and if he does so he shall decide the proceedings in conformity with such decision.

(2) An appeal shall lie to the Court of Appeal from any decision of a Judge under subsection (1).

Appeal against Director General's order to High Court

77. (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under section 69, 69B, 69C, **73** or **subsection 81D(4)** such person may appeal to the High Court.

(2) Subject to any rules made under section 4 of the Subordinate Court Rules Act 1955 [*Act 55*], the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

Employee's remedy when employer about to abscond.

78. (1) If any employee complains to a Magistrate that he has reasonable grounds for believing that his employer, in order to evade payment of his wages, is about to abscond, the Magistrate may summon such employer and direct him to show cause why he should not be required to give security by bond to remain in Malaysia until such wages are paid; and if, after hearing the evidence of such employer, the Magistrate decides that such bond shall be given the Magistrate may order such employer to give security by bond in such sum as to the Magistrate seems reasonable, that he will not leave Malaysia until the Magistrate is satisfied that all the just claims of such employee against him for wages have been paid or settled.

(2) If the employer fails to comply with the terms of such order to give security, he shall be detained in prison until arrangements have been made to the satisfaction of the Magistrate for settling the claims of such employee:

Provided that-

(a) such employer shall be released at any time by the committing Magistrate on security being furnished or on his paying either the whole or such part as to the Magistrate seems reasonable of all just claims of such employee against him for wages or on the filing of a petition in bankruptcy by or against him; and

(b) in no case shall the period of such detention exceed three months.

(3) The bond to be given by an employer shall be a personal bond with one or more sureties, and the penalty for breach of the bond shall be fixed with due regard to the circumstances of the case and the means of the employer.

(4) If on or after a complaint by any employee under subsection (1) it appears to the Magistrate that there is good ground for believing that the employer complained against has absconded or is absconding or is about to abscond, the Magistrate may issue a warrant for the arrest of such employer and such employer shall be detained in custody pending the hearing of the complaint unless he finds good and sufficient security to the satisfaction of the Magistrate for his appearance to answer the complaint.

(5) For the purposes of this section a certificate purporting to be signed by the Director General and issued to the Magistrate to the effect that wages claimed have been paid or settled shall be sufficient evidence of the payment or settlement thereof.

Powers of Director General to investigate possible offences under this Act

79. (1) Whenever the Director General has reasonable grounds for suspecting that an offence under this Act has been committed, or wishes to inquire into any matter dealt with by this Act or into any dispute as to such matter or into the death of or injury to an employee (not the subject of an investigation under the **Electricity Supply Act 1990 [Act 447]**, or the Factories and Machinery Act 1967, or any written law relating to mining for the time being in force in Malaysia or any part thereof) or into the matter connected with the keeping of registers and other documents, or whenever any person complains to the Director General of any breach of any provision of this Act, the Director General may

summon any person who he has reason to believe can give information respecting such offence or the subject matter of such inquiry or complaint.

(2) If upon inquiry as aforesaid the Director General is of opinion that an offence has been committed, he may institute such criminal proceedings as he may deem necessary.

(3) A summons issued under this section shall be in such form as may be prescribed.

Examination on summons by the Director General

80. Any person summoned by the Director General under this Part shall be legally bound to attend at the time and place specified in the summons and to answer truthfully all questions which the Director General may put to him.

Right of employee to appear before the Director General.

81. No employer shall prevent or attempt to prevent any employee from appearing before the Director General in pursuance of this Part.

PART XVA

SEXUAL HARASSMENT

Interpretation

81A. For the purposes of this Part, "complaint of sexual harassment" means any complaint relating to sexual harassment made-

- (i) by an employee against another employee;**
- (ii) by an employee against any employer;**
- (iii) by an employer against an employee.**

Inquiry into complaints of sexual harassment

81B. (1) Upon receipt of a complaint of sexual harassment, an employer or any class of employers shall inquire into the complaint in a manner prescribed by the Minister.

(2) Subject to subsection (3), where an employer refuses to inquire into the complaint of sexual harassment as required under subsection (1), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

(3) Notwithstanding subsection (2), an employer may refuse to inquire into

any complaints of sexual harassment as required under subsection (1), if-

- (a) the complaint of sexual harassment has previously been inquired into and no sexual harassment has been proven; or
- (b) the employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.

(4) Any complainant who is dissatisfied with the refusal of the employer to inquire into his complaint of sexual harassment, may refer the matter to the Director General.

(5) The Director General after reviewing the matter referred to him under subsection (4) -

- (a) if he thinks the matter should be inquired into, direct the employer to conduct an inquiry; or
- (b) if he agrees with the decision of the employer not to conduct the inquiry, inform the person who referred the matter to him that no further action will be taken.

Findings of the inquiry by employer

81C. (1) Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection 81B(1) and the employer is satisfied that sexual harassment is proven the employer shall -

- (a) in the case where the person against whom the complaint of sexual harassment is made is an employee, take disciplinary action which may include the following:
 - (i) dismissing the employee without notice;
 - (ii) downgrading the employee; or
 - (iii) imposing any other lesser punishment as he deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks; and
- (b) in the case where the person against whom the complaint of sexual harassment is made is a person other than an employee, recommend that the person be brought before an appropriate disciplinary authority to which the person is subject to.

Complaints of sexual harassment made to the Director General

81D. (1) If a complaint of sexual harassment is made to the Director General, the Director General shall assess the complaint and may direct an employer to inquire into such complaint.

(2) The employer shall inquire into the complaint of sexual harassment when directed to do so under subsection (1) and submit a report of the inquiry to the

Director General within thirty days from the date of such direction.

(3) If a complaint of sexual harassment received by the Director General is made against an employer who is a sole proprietor, the Director General shall inquire into such complaint himself in a manner prescribed by the Minister.

(4) Upon inquiry by the Director General of the complaint of sexual harassment under subsection (3), the Director General shall decide if sexual harassment is proven or not and such decision shall be informed to the complainant as soon as practicable.

(5) Notwithstanding subsection (3), the Director General may refuse to inquire into any complaint of sexual harassment received under subsection (3), if -

- (a) the complaint of sexual harassment has previously been inquired into by the Director General and no sexual harassment has been proven; or**
- (b) the Director General is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.**

(6) Where the Director General refuses to inquire into the complaint of sexual harassment received under subsection (3), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

Effects of decisions of the Director General

81E. (1) Where the Director General decides under subsection 81D(4) that sexual harassment is proven, the complainant may terminate his contract of service without notice.

(2) If the complainant terminates the contract of service under subsection (1), the complainant is entitled to –

- (a) wages as if the complainant has given the notice of the termination of contract of service; and**
- (b) termination benefits and indemnity,**

as provided for under the Act or the contract of service, as the case may be.

Offence

81F. Any employer who fails-

- (a) to inquire into complaints of sexual harassment under subsection 81B(1);**
- (b) to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(2);**
- (c) to inquire into complaints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or**

(d) to submit a report of inquiry into sexual harassment to the Director General under subsection 81D(2),

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Application of this Part irrespective of wages of employee

81G. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every employee employed under a contract of service irrespective of the wages of the employee.

PART XVI

PROCEDURE

Service of summons issued under Part XV

82. (1) Any summons issued by the Director General under Part XV may be served on any person by delivering or tendering to him a copy thereof signed by the Director General:

Provided that-

- (a) if the person to be summoned cannot be found and has an agent empowered to accept service of the summons on his behalf, service on such agent shall be sufficient;
 - (b) if the person to be summoned cannot be found and has no agent empowered to accept service of the summons on his behalf, service on **any adult member**, not being a domestic servant, of the family of the person to be summoned who is residing with him shall be deemed good and sufficient service.
- (2) When such summons is addressed to a corporation, it may be served-
- (a) by leaving a copy thereof, signed by the Director General, at the registered office, if any, of the corporation;
 - (b) by sending such copy by registered post in a letter addressed to the corporation at its principal office, whether such office be situated within Malaysia or elsewhere; or
 - (c) by delivering such copy to any director, secretary or other principal officer of the corporation.
- (3) When such summons is addressed to a firm, it may be served-
- (a) by leaving a copy thereof, signed by the Director General, at the principal place at which the partnership business is carried on;
 - (b) by sending such copy by registered post in a letter addressed to the firm at its principal office, whether such office be situated within Malaysia or

elsewhere; or

- (c) by delivering such copy to any one or more of the partners in such firm or to any person having, at the time of service, the control or management of the partnership business at the principal place at which the partnership business is carried on within Malaysia.

(4) When the person serving such summons delivers or tenders a copy of the summons to the person to be summoned or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original summons.

(5) If-

- (a) such person refuses or is unable to sign the acknowledgement; or
- (b) the serving officer cannot find the person to be summoned and there is no agent empowered to accept service of the summons on his behalf nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the person to be summoned ordinarily resides and then return the original to the Director General with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

(6) The person serving such summons shall, in all cases in which the summons has been served under subsection (4) endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served.

(7) When a summons is returned under subsection (5), the Director General shall, if the return under that subsection has not been verified by the affidavit of the person serving it, and may, if it has been so verified, examine such person on affirmation touching the manner of service and may make such further inquiry in the matter as he thinks fit and shall either declare that the summons has been duly served or order such service as he thinks fit.

(8) When the Director General is satisfied that there is reason to believe that the person to be summoned is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way, the Director General may order the summons to be served by affixing a copy thereof in some conspicuous place in or near the office of the Director General and also upon some conspicuous part of the house in which the person to be summoned is known to have last resided, or in such other manner as the Director General thinks fit, or may order the substitution for service of notice by advertisement in the Gazette and in such local newspaper or newspapers as the Director General may think fit.

(9) The service substituted by order of the Director General shall be as effectual as if it had been made personally on the person to be summoned.

(10) Whenever service is substituted by order of the Director General, the Director General shall fix such time for the appearance of the person to be summoned as he may

deem fit.

(11) Any order or notice in writing made and issued by the Director General in the exercise of the powers conferred by this Act may be served as if the same were a summons, and the provisions of this section, other than subsection (10) thereof, shall apply to the service of such order or notice.

Power to make reciprocal provisions between Malaysia and Singapore for the service, execution and enforcement of summons, warrants and orders.

83. If the Minister is satisfied that arrangements have been made by or under any legislation in force in the Republic of Singapore for the service, execution or enforcement in the Republic of Singapore of summonses, warrants or orders issued or made under this Act he may, by regulations made under this Act-

- (a) prescribe the procedure for sending such summonses, warrants and orders to the Republic of Singapore for service, execution or enforcement, and specify the conditions under which any such summons shall be deemed to have been served; and
- (b) make reciprocal provisions for the service, execution or enforcement in Malaysia of summonses, warrants or orders issued or made in the Republic of Singapore under any corresponding or similar legislation in force therein.

Jurisdiction.

84. Notwithstanding the provisions of the Subordinate Courts Act, 1948 [*Act 92*], all penalties for offences against this Act may be had and recovered in the Sessions Court or the Court of a First Class Magistrate on complaint by any person aggrieved or by the Director General or any person authorized by him in writing in that behalf.

Prosecution.

85. No prosecution shall be instituted for an offence under this Act or any regulation made under this Act without the consent in writing of the Public Prosecutor.

Right of audience

85A. The Director General, or any officer authorized in writing by the Director General, shall have the right to appear and be heard before a Magistrate Court or a Sessions Court in any civil proceedings under or arising out of this Act, or any regulation made under this Act; and such right shall include the right to appear and represent an employee in any such proceedings.

Saving clause as to civil jurisdiction of courts

86. Nothing in this Act shall be construed as preventing any employer or employee from

enforcing his civil rights and remedies for any breach or non-performance of a contract of service by any suit in court in any case in which proceedings have not been instituted before the Director General under section 69, 69B, 69C or subsection 81D(4) if instituted, have been withdrawn.

87. Power of court imposing fine

When under this Act any court imposes a fine or enforces the payment of any sum secured by bond, the court may, if it thinks fit, direct that the whole or any part of such fine or sum when recovered be paid to the party complaining.

Effect of imprisonment

88. From and after the determination of any imprisonment suffered under this Act for non-payment of the amount of any fine, together with the costs assessed and directed to be paid by any order of court, the amount so ordered shall be deemed to be liquidated and discharged, and the order shall be annulled.

Incapacity of Director General hearing inquiry.

89. Where the Director General has, for the purpose of inquiring into any matter under this Act, taken down any evidence or made any memorandum and is prevented by death, transfer or other cause from concluding such inquiry, any successor to such Director General or other officer may deal with such evidence or memorandum as if he had taken it down or made it and proceed with the inquiry from the stage at which such Director General left it.

Officers acting under Act deemed public servants

90. For the purposes of this Act the Director General and any other officer appointed or acting under this Act shall be deemed to be public servants within the meaning of the Penal Code.

90A. Protection of officers

No action shall lie or be brought, instituted or maintained in any court against-

- (a) the Director General, Deputy Director General or any other officer duly appointed under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying this Act into effect; and**
- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director General, Deputy Director General or any other officer duly appointed under this Act,**

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

PART XVII

OFFENCES AND PENALTIES

Under Parts III and IV

91. Any employer who-

- (a) fails to pay the wages or indemnity due to any employee within the time prescribed in sections 19, 20 and 21;
- (b) makes to any employee any advance of wages in excess of that permitted under section 22; or
- (c) makes deductions from the wages of an employee other than such deductions as are authorized by section 24,

commits an offence.

Part V

92. Any employer who-

- (a) pays wages, imposes any conditions in a contract of service or makes any deduction or receives any payment in contravention of section 25, 25A, 26, 27 or 28; or
- (b) provides any employee as part of the terms of his contract of service with any amenity or service, or any intoxicating liquor in contravention of section 29,
- (c) *(Deleted by Act A1026),*

commits an offence.

Under Part VIII

93. An employer of a female employee commits an offence if the female employee is employed contrary to section 34, 35 or 36.

Under Part IX

94. Any employer who-

- (a) fails to grant maternity leave to a female employee employed by him and entitled thereto under Part IX;
- (b) fails to pay the maternity allowance to a female employee employed by him and entitled thereto under Part IX, or to her nominee, or to her personal legal representative;
- (c) fails to pay maternity allowance in the manner prescribed in section 38; or
- (d) contravenes the provisions of section 42 or 44,

commits an offence, and shall also-

(aa) in the event of a conviction for an offence under paragraph (a), be ordered by the court before which he is convicted to pay to the female employee concerned the maternity allowance to which she may be entitled under Part IX in respect of every day on which the female employee had worked during the eligible period referred to in section 37(1)(a), the payment so ordered being in addition to the wages payable to her, and the amount of maternity allowance so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court; and

(bb) in the event of a conviction for an offence under paragraph (b), be ordered by the court before which he is convicted to pay to the female employee concerned the maternity allowance to which she is entitled under Part IX, and the amount of maternity allowance so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

95. *(Deleted by *Act No. 40 of 1966).*

96. *(Deleted by *Act No. 40 of 1966).*

Under Part XIII

97. An employer who-

- (a) fails to keep a register required under section 61, or to preserve the register for a period of not less than six years;
- (b) destroys, alters or mutilates the register referred to in paragraph (a), or causes or permits the register to be destroyed, altered or mutilated;
- (c) fails to comply with any regulations made under section 62;
- (d) fails, without reasonable cause (proof of which shall lie on him), to forward to the Director General such returns as are prescribed under section 63 or forwards any of the returns knowing that it contains any false particulars; or
- (e) being an owner of any estate, mine or factory to which section 64 applies, fails to comply with the requirements of the section,

commits an offence.

Under Part XIV

98. Any person who-

- (a) refuses the Director General exercising his powers under Part XIV, access to any premises or part thereof;
- (b) assaults, obstructs, hinders or delays the Director General in effecting any entrance into any premises or part thereof which he is entitled to effect;
- (c) furnishes the Director General as true, information which he knows or has reason to believe to be false; or

- (d) fails to produce, or conceals or attempts to conceal any document which he may be required to produce under Part XIV, or hinders or obstructs the Director General in effecting possession of the documents,

commits an offence.

Under Part XV

99. Any employer who prevents or attempts to prevent any employee from appearing before the Director General under Part XV commits an offence.

General penalty

99A. Any person who commits any offence under, or contravenes any provision of, this Act, or any regulations, order, or other subsidiary legislation whatsoever made thereunder, in respect of which no penalty is provided, shall be liable, on conviction, to a fine not exceeding ten thousand ringgit.

Penalties for failure or non-compliance in relation to rest days, overtime, holidays, annual leave, and sick leave

100. (1) Any employer who fails to pay any of his employees wages for work done by his employee on a rest day or pays wages less than the rate provided under section 60 commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the wages due for work done on every rest day at the rate provided under section 60, and the amount of such wages shall be recoverable as if it were a fine imposed by such court.

(2) Any employer who fails to pay to any of his employees any overtime wages as provided under this Act or any subsidiary legislation made thereunder commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the overtime wages due, and the amount of overtime wages so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(3) Any employer who fails to pay to any of his employees wages as provided under section 60D, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the wages due for any work done on any such holiday at the rate provided under section 60D, and the amount of wages so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(4) Any employer who fails to grant to any of his employees annual leave or any part thereof as provided under section 60E commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the ordinary rate of pay in respect of every day of such leave not so granted, the payment so ordered being in addition to the wages payable to the employee for the work done on any such day, and the amount so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(5) Any employer who fails to grant sick leave, or fails to pay sick leave pay, to any of his employees, as provided under section 60F commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the sick leave pay for every day of such sick leave at the rate provided under section 60F, and the amount so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

Offence in connection with inquiry or inspection

101. In any inquiry, investigation, entry or inspection made by the Director General, or by any officer lawfully exercising the powers of the Director General under this Act, any person committing with respect to such inquiry, investigation, entry or inspection any offence described in Chapter X of the Penal Code shall on conviction be punished as prescribed in such Chapter.

Power to compound offences

101A. (1) The Director General, **Deputy Director General or any officer authorized in writing by the Director General**, may with the consent in writing of the Public Prosecutor, compound any offence committed by a person which is punishable under this Act or any regulation made under this Act.

(2) The Director General, **Deputy Director General or any officer authorized in writing by the Director General** may, in a case where he deems it fit and proper so to do, compound an offence by making a written offer to the person who has committed the offence to compound the offence on payment to the Director General, **Deputy Director General or any officer authorized in writing by the Director General**, as the case may be, within such time as may be specified in the offer, of such sum of money, as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which the person would have been liable if he had been convicted of the offence.

(3) An offer under subsection (2) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Director General, **Deputy Director General or any officer authorized in writing by the Director General** may grant, prosecution for the offence may be instituted at any time (hereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2) -

- (a) no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made; and
- (b) any book, register or document seized in connection with the offence shall be released immediately.

(5) Any moneys paid to the Director General, **Deputy Director General or any officer authorized in writing by the Director General** pursuant to subsection (2) shall be paid into and form part of the Federal Consolidated Fund.

Offence by body corporate, etc

101B. Where an offence under this Act has been committed by a body corporate, partnership, society or trade union -

- (a) in the case of a body corporate, any person who is a director, manager or other similar officer of the body corporate at the time of the commission of the offence;
- (b) in the case of a partnership, every partner in the partnership at the time of the commission of the offence; and
- (c) in the case of a society or trade union, every office-bearer of the society or trade union at the time of the commission of the offence,

shall be deemed to have committed the offence and may be charged jointly or severally in the same proceedings as the body corporate, partnership, society or trade union.

PART XVIII

REGULATIONS

102. Regulations

(1) The Minister may from time to time make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of the foregoing the Minister may make regulations-

- (a) limiting the powers of officers appointed under section 3(2);
- (b) prescribing the conditions under which female employees may work at night;
- (c) prescribing the rate of the maternity allowance to which female employees shall be entitled during the eligible period;
- (d) prescribing the maximum period during which notice of dismissal given by her employer to a female employee who is absent from her work as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement shall not expire;
- (da) *(Omitted).*
- (e) *(Deleted by *Act No. 40 of 1966).*
- (f) prescribing the times which employees shall be entitled to take off from work for meals and which they shall be entitled or required to take off for rest;
- (g) prescribing the form of any register, summons or order required to be kept, issued or made under this Act;
- (h) prescribing the procedure for sending summonses, warrants and orders

issued or made under this Act in Malaysia for service or execution in the Republic of Singapore, and making provisions for the service or execution in Malaysia of summonses, warrants and orders issued or made in the Republic of Singapore;

- (i) prescribing fees to be paid for filing of claims under section 69, 69B or 69C and for copies of notes of evidence recorded under Parts XV and XVA;**
- (j) prescribing penalties for failure to comply with or contravention of any regulation made under this section;**
- (k) prescribing the forms of notice and returns of particulars used under section 60K;**
- (l) prescribing the procedure to inquire into complaints of sexual harassment under Part XVA; and**
- (m) prescribing the terms and conditions of service of a domestic servant.**

PART XIX

REPEAL AND SAVING

103. Repeal and saving

The written laws specified in the first and second columns of the Second Schedule are hereby repealed to the extent set out in the third column of the said Schedule:

Provided that any appointment made under such written law hereby repealed shall be deemed to be made under this Act:

Provided further that references to any provision of any written law hereby repealed in any other written law or in any contract or other instrument in writing shall, in so far as such provision is not inconsistent with the corresponding provision of this Act, be construed as references to such corresponding provision.

Employment

FIRST SCHEDULE

[Subsection 2(1)]

Employee

Provision of the Act
not applicable

1. 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 **two thousand** ringgit a month.

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which-

(1) he is engaged in manual labour including such labour as a artisan or apprentice:

Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one half of the total time during which he is required to work in such wage period;

(2) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;

(3) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;

(4) he is engaged in any capacity in any vessel registered in Malaysia and who -

Part XII

(a) is not an officer certificated under the Merchant Shipping Acts of the United Kingdom as amended from time to time;

(b) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance, 1952 [F.M. 70/1952]; or

(c) has not entered into an agreement under Part III of the Merchant Shipping Ordinance 1952; or

Employee

Provision of the Act
not applicable

(5) he is engaged as a domestic servant.

Section 12, 14, 16,
22, 61 and 64, and
Parts IX, XII and
XIIA

3. For the purpose of this Schedule "wages" means wages as defined in section 2, but shall not include any payment by way of commission, subsistence allowance and overtime payment.