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Amendments to the Industrial Relations Act 1967: Highlights for employers



The majority of the Industrial Relations (Amendment) Act 2020 came into force on 1 January 2021, bringing a slew of significant changes employers should heed. In general, the amendments widen access to the Industrial Court, which has first instance jurisdiction over unfair dismissal cases and other industrial relations matters. The amendments simplify the procedure for bringing complaints to the Industrial Court and allow cases to be brought or continued by a greater variety of claimants. At the same time, the Industrial Court gained harsher powers to impose penalties on unsuccessful defendants. Overall, the amendments skew Malaysian labour law—particular in respect of protection against termination of employment—ever further in favour of employees.

We consider below several key changes especially likely to be of concern to employers.

I. Automatic references to Industrial Court if conciliation fails

Previously, if the Director General of Industrial Relations (DGIR) is satisfied that an unfair dismissal complaint cannot be settled by conciliation, he would refer the complaint to the Minister of Human Resources. The Minister had a discretion over whether to refer the matter to the Industrial Court; for example, a reference may be refused if the Minister considers the complaint vexatious or frivolous.

Now, references are automatic: Any complaint where conciliation has failed *must* be referred to the Industrial Court by the DGIR. While cases may proceed faster as a result, it remains to be seen whether the removal of the Minister's filtering function will result in the Industrial Court being inundated by cases without merit.

II. Continuation of proceedings despite uncertain or disputed date of dismissal

A workman who considers himself unfairly dismissed must make a representation to the DGIR within 60 days of the dismissal. However, where the date of dismissal in the DGIR's reference to the Industrial Court is incorrect or disputed, the amendments

grant the Industrial Court the power to continue proceedings nevertheless and identify for itself the date of dismissal.

III. Continuation of proceedings after claimant's death

It used to be the case that an unfair dismissal claim is considered a personal action, which would be struck out if the claimant passes away. Post-amendments, the Industrial Court may continue proceedings despite the death of the claimant, and may grant backwages and compensation in lieu of reinstatement to the next-of-kin of the claimant.

IV. Workmen of statutory authorities able to file unfair dismissal claim

Another removed restriction is that of only workmen employed by private entities being able to file for representations for unfair dismissal. Such representations have now been made available for employees of specified statutory authorities as well.

V. Representation in conciliation meetings

Lastly in terms of facilitating access to the Industrial Relations system, during conciliation meetings, employees may now be represented by any person of their choice (except advocates and solicitors), subject to the DGIR's consent.

VI. Power to impose interest

Turning to harsher penalties, the Industrial Court has been granted a new power to impose interest on its monetary awards, at a maximum of 8% per annum, by default commencing from the 31st day from the date of the award.

VII. Higher maximum fines

Finally, where a person complains that an award of the Industrial Court has not been complied with and the Court makes an order in that regard, the maximum fine for a failure to comply with that order has been increased from MYR 2,000

to MYR 50,000, with a further fine of not more than MYR 500 for each day where the offence continues. More generally, the default monetary penalty for a contravention of the Industrial Relations Act 1967 or any orders made under it has been increased from MYR 5,000 to MYR 50,000.

There are two main takeaways for employers in respect of the amendments: First, the amendments affect only cases filed after the amendments came into force; an employer should note the difference in procedure and potential liabilities between cases filed before and on/after 1 January 2021. Second, to minimise the risk of litigation in a jurisdiction where employees enjoy a very high standard of protection against unfair dismissal, it is more important than ever for employers to have clear, comprehensive terms of employment, to understand the grounds on which an employee can be lawfully terminated, and to take meticulous care in ensuring compliance with proper termination procedure.

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