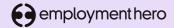


Malaysia's Employment Act (1955): A Short Guide





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Hiring employees in Malaysia, but unsure about what benefits should be offered?

As an employer or business owner in Malaysia, you'll want to understand the Employment Act (1955) (EA) clearly to ensure compliance. This short guide will give you a broad overview of all the key aspects to consider, as well as how the recent amendments made to minimum wage and the EA in 2022 may affect you.

What is Malaysia's Employment Act (1955)?

The Employment Act covers all employees in Malaysia, irrespective of wages or occupation. Domestic servants are excluded from the coverage.

However, employees earning <u>above RM4,000</u> <u>per month</u> are exempted from certain provisions in the Act, such as:

- Overtime rates for employees working on rest days;
- Overtime rates outside working hours;
- Allowance for shift-based work;
- Overtime on public holidays;
- Overtime for half working days on holidays; and
- Termination, lay-off, retirement benefits.

Gig workers are also covered by the Employment Act. An individual is considered under law to be an employee if the following conditions are met, regardless of whether there is a written contract.

The conditions are:

- Their manner of work is subject to the supervision or control of another person;
- Their working hours are under the supervision or control of another person;
- They receive tools, supplies, or equipment from another individual to do a task;
- Their work is a crucial component of another person's enterprise;
- Their effort is made purely for another person's profit; or
- They receive compensation for the task they perform on a regular basis, and this compensation makes up most of their income.



Note: Although the Employment (Amendment) Act 2022 was slated to come into effect from 1st Sept 2022, enforcement of amendments have been postponed to 1st Jan 2023 instead — this was decided by the Cabinet after industries and employers have unanimously asked for the postponement.



What law governs employees who don't fall under the Malaysian Employment Act?

Employees who don't fall under the EA, often referred to as 'Non-EA employees', will be governed by the terms of their employment contract or contract of service, subject to other statutory provisions such as minimum retirement age, Social Security Organisation (SOCSO) payments, and Employees Provident Fund (EPH) where applicable.

In essence, employers are free to set out any benefits they want for Non-EA employees, and employees who accept and sign the employment agreement are assumed to agree to those terms. The standard practice for most employers nonetheless, has been to confer the same rights and benefits to all employees, regardless of whether they are covered by the EA or not. This is inclusive of sick leave, maternity leave, annual leave and more.

What is the current minimum wage in Malaysia?

Malaysia's <u>Minimum Wage Order 2022</u> has taken effect from 1 May 2022, with all employees' minimum wage to be set at RM1,500.

There are three key segments for employers and HR professionals to take note of — and each segment will take effect from:

- 1 May 2022;
- From 1 May 2022 to 31 December 2022; and
- From 1 January 2023

Do take note however, that this order is not applicable to domestic servants.

Minimum Wage Order taking effect from 1 May 2022:

The minimum wage rates payable to an employee with effect from 1 May 2022 is as follows:

- → Monthly: RM1,500
- → Daily: For those with a 6 day work week- RM57.69
- → Daily: For those with a 5 day work week— RM69.23
- \rightarrow Daily: For those with a 4 day work week
 - -RM86.54
- → Hourly: RM7.21

The Minister of Human Resources, M. Saravanan, has also affirmed that for employees who are not paid basic wages, but are paid wages based on piece rate, tonnage, task, trip, or commission, the rate of monthly wages payable to that employee shall not be less than RM1,500, with effect from 1 May 2022.

The Minimum Wage Order for this segment affects employers who:

- → Employ five or more employees; or
- → Regardless of the number of employees employed — carries out a professional activity classified under the Malaysia Standard Classification of Occupations (MASCO) as published officially by the Ministry of Human Resources.



Minimum Wage Order taking effect from 1 May 2022 to 31 December 2022:

The minimum wage rates payable to an employee according to their place of employment from 1 May 2022 to 31 December 2022 is as follows:

City Council or Municipal Council area:

→ Monthly: RM1,200

→ Daily: For those with a 6 day work week

- RM46.15

→ Daily: For those with a 5 day work week

- RM55.38

→ Daily: For those with a 4 day work week

- RM69.23

→ Hourly: RM5.77

Other areas outside the City Council or Municipal Council area:

→ Monthly: RM1,100

→ Daily: For those with a 6 day work week

- RM42.31

→ Daily: For those with a 5 day work week

- RM50.77

→ Daily: For those with a 4 day work week

- RM63.47

→ Hourly: RM5.29

Similarly, for employees who are not paid basic wages, but are paid wages based on piece rate, tonnage, task, trip, or commission, the rate of monthly wages payable to that employee according to their place of employment from 1 May 2022 to 31 December 2022 must likewise not be less than:

- → RM1,200 for City Council or Municipal Council areas
- → RM1,100 for areas outside City Council or Municipal Council areas

The Minimum Wage Order for this segment affects employers in the aforementioned segment. Refer to <u>this list</u> to find out which place of employment falls under a City Council, Municipal Council, or District Council in Malaysia.

Minimum Wage Order taking effect from 1 Jan 2023:

From 1 Jan 2023, the minimum monthly wage payable to an employee will be RM1,500 across the board for all employers, regardless of whether you employ less than five employees or more.



What are the required statutory deductions from an employee's salary?

Regardless of whether the employee is under the purview of the EA, you are required to make the following statutory deductions from the employee's salary, to contribute to:

- 1. The Employees Provident Fund (EPF)
- 2. The Social Security Organisation (SOCSO)
- 3. The Employee Insurance System (EIS)
- 4. The Inland Revenue Board (IRB)
- 5. Trade Union Subscription Fees (if requested in writing by the employee)
- 6. The National Higher Education Fund Corporation (PTPTN) loan repayment (if requested in writing by the employee)

In addition to making these deductions, as an employer, you must also make employer contributions to your employee's EPF and SOCSO accounts, so remember to factor these costs into your payroll and headcount budget.

For more information, download our <u>Guide To Payroll in Malaysia.</u>

What are the minimum requirements for annual leave?

Under the Employment Act, the minimum requirements for annual leave are:

Length of service	Annual leave entitlement
More than 1 year but less than 2 years	8 days
2 years or more, but less than 5 years	12 days
More than 5 years	16 days

It can also be prorated, if an employee has worked less than a full year in that calendar year.

While on annual leave, employees are still entitled to sick or maternity leave. In applicable cases, the annual leave should be cancelled, and the alternative leave type should be taken instead. Employees can also be paid in lieu of annual leave at the request of the employer, but they must agree in writing.



Quinn's Hero Tip

Leave management can be a challenging process, especially when you're managing many employees. Employment Hero's Leave Management tool allows your employees to see their leave balance at any time, and easily apply for leave digitally via our platform or mobile app. Managers are also able to get an overview of everyone's leave via a leave calendar, and easily approve or deny leave requests.



What are the minimum requirements for sick leave?

Under the Employment Act, the minimum sick leave entitlements are:

Length of service	Sick Leave Entitlement (per annum); where hospitalisation is not necessary
Less than 2 years	14 days
2 years of more, but less than 5 years	18 days
More than 5 years	22 days

In cases where hospitalisation is required, employees covered under the Employment Act are entitled to <u>60 days</u> of hospitalisation leave per year, <u>on top of paid sick leave entitlement.</u>
This must be certified by a registered medical practitioner, officer, or dental surgeon.

How many public holidays are employees entitled to?

According to the Employee Act, employees are entitled to:

- → 11 gazetted public holidays, 5 of which must be National Day, the Birthday of the Yang di-Pertuan Agong (The King's birthday), the Birthday of the Ruler or the Yang di-Pertua Negeri of the state (Head of State) where the employee works, Worker's Day/Labour Day, and Malaysia Day.
- → In addition to the 11 gazetted public holidays, employees are also entitled to any public holiday declared under Section 8 of the Holidays Act 1951

Aside from the 5 required public holidays, the other 6 can be chosen by the employer from the <u>list of gazetted public holidays</u>. If a particular public holiday falls on a rest day (usually a Sunday), the next working day immediately thereafter should be recognised as a public holiday in substitution.

In addition, before the start of each calendar year, employers must conspicuously display a notice regarding the 6 chosen public holidays their employees are entitled to. Employers and employees can also mutually agree to using other days as a substitution, for one or more of the 6 chosen public holidays.

If any of the 11 public holidays or substituted days falls within the period during which an employee is on sick or annual leave, the employee is entitled under the EA to be granted another day as a paid holiday, in substitution for the public holiday they missed.



Do employers have to observe 'sudden' public holidays too?

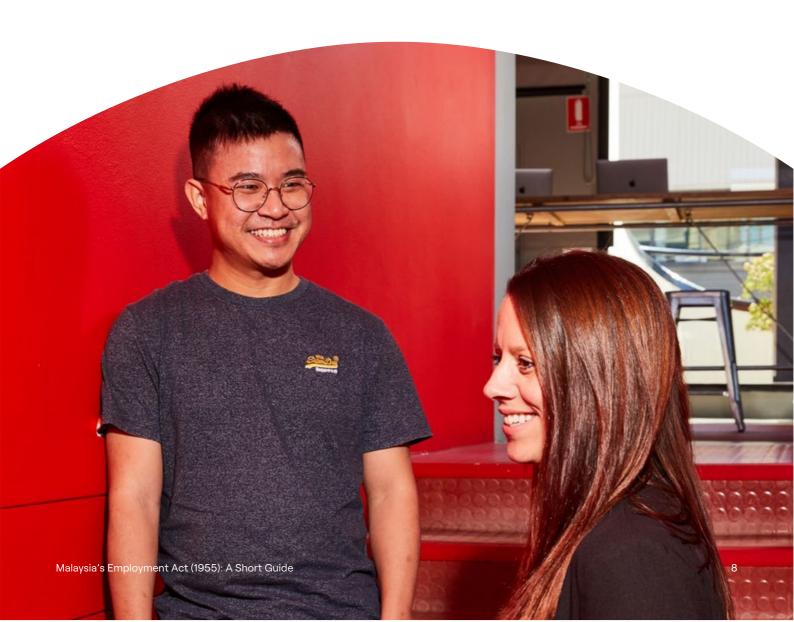
The Malaysian government has declared 'sudden' public holidays without much warning to the public before, which leaves employers confused as to whether they are required to observe those public holidays.

Some examples would be:

- → 31 December 2010: To celebrate Malaysia's win of the ASEAN Football Federation (AFF) Suzuki Cup.
- → 24 April 2017: To celebrate the installation of Sultan Muhammad
 V as the 15th Yang di-Pertuan Agong.

Both public holiday declarations were made pursuant to the Holidays Act 1951.

In cases like the aforementioned, according to the EA, the employer has the right and prerogative to grant their employees any other day as a paid public holiday in substitution. Essentially, as an employer, in consideration of operational requirements or business exigencies, you can require your employees to work on the date declared as a public holiday, but you need to provide another day as a public holiday in substitution. Alternatively, you can also choose to grant employees an additional day of annual leave in substitution.





What are the overtime rates?

Employees are entitled to overtime pay under the Employment Act. The rates are as follows:

Normal work day, but working in excess of normal working hours	1.5 times hourly rate
Rest day, but working normal working hours	For employees employed on a daily, hourly or other similar rate of pay: • If work does not exceed half the normal hours of work: 1 day's wages at the ordinary rate of pay • If work is more than half but does not exceed normal hours of work: 2 days wages at the ordinary rate of pay For employees employed on a monthly or weekly rate of pay: • If work does not exceed half the normal hours of work: half the ordinary rate of pay • If work is more than half but does not exceed normal hours of work: 1 day's wages at the ordinary rate of pay
Rest day, but working in excess of normal working hours	2 times hourly rate
Public Holiday, but working normal working hours or less than normal working hours	2 days wages at the ordinary rate of pay
Public holiday, but working in excess of normal working hours	3 times hourly rate

For non-EA employees, employers can stipulate relevant provisions relating to overtime rates within their employment contracts.

According to the Employment Act, the ordinary rate of pay on a monthly basis shall be calculated by dividing the monthly salary with 26 working days.



What maternity protections do female employees get?

With new amendments made to the EA via the Employment (Amendment) Act 2022, there have been a few changes to maternity protections.

The length of paid maternity leave has been increased from 60 consecutive days to 98 consecutive days now. However, it shall not commence earlier than 30 days immediately preceding her confinement, or later than the day immediately following her confinement. In addition, a female employee may, with the consent of her employer, commence work at any time during the maternity leave — if she has been certified fit to resume work by a registered medical practitioner.

If a female employee is pregnant or is suffering from an illness arising out of her pregnancy, the employer may not terminate her employment, or give her notice of termination of employment, except on the grounds of

- 1. Wilful breach of a condition of the contract of service;
- 2. Misconduct; or
- 3. Closure of the employer's business

For cases in which a female employee is terminated under the aforementioned conditions, the employer bears the burden of proving that the female employee's termination from employment was not on the grounds of her pregnancy or an illness arising out of her pregnancy.

An employer is also required to pay maternity allowance to an employee, if she has been employed for:

- → At least 90 days during the 9 months immediately before her confinement; and
- → She has been employed at any time in the four months immediately before her confinement

However, a female employee shall not be entitled to any maternity allowance at the time of her confinement, if she has five or more children.

Based on the Employment Act, a female employee is required to notify her employer of the expected confinement period and maternity leave start date within 60 days prior. Failure to do so or commencing maternity leave without any notice to the employer will cause her to lose her entitlement to maternity allowance.

On the other hand, a female employee who is planning to resign from the company, and knows that she will be confined within four months from the date upon she leaves, needs to notify her employer of her pregnancy — failure to do so will also result in a loss of maternity allowance.



Do male employees get paternity leave?

Although there was no statutory requirement previously for employers in Malaysia to provide paternity leave to new fathers, thanks to the Employment (Amendment) Act 2022, married male employees are now entitled to seven consecutive days of paternity leave.

To qualify for paternity leave, married male employees must be:

- → Employed by the same employer at least twelve months immediately before the commencement of such paternity leave; and
- → Have notified his employer of his spouse's pregnancy at least thirty days from the expected confinement or as early as possible after the birth.

What is the weekly limit on the number of working hours?

Previously, Malaysia's standard working hours were 8-hour work days, up to 48 hours per week. Employees cannot be required to work more than 5 consecutive hours without a break of at least 30 minutes; more than 8 hours each day; or more than 48 hours in one week — there are some exceptions to this.

With the changes implemented by the Employment (Amendment) Act 2022 however, the weekly limit on regular working hours has now been reduced from 48 hours to 45 hours.

Do employers have any obligations regarding sexual harassment complaints?

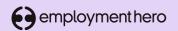
Under the Employment Act, an employer is required to inquire into all complaints of sexual harassment, regardless of whether the employee involved is an EA or Non-EA employee. Failure to do so by the employer will result in a fine of RM50,000, up from the previous amount of RM10,000.

The Employment (Amendment) Act 2022 has also further stipulated that employers are required to conspicuously exhibit a notice to raise awareness of sexual harassment in the workplace.

Can employees submit requests for flexible work arrangements?

The Employment (Amendment) Act 2022 has enabled employees to submit a written application to their employer, for a flexible working arrangement to vary the hours of work, days of work, or place of work.

Employers who receive such applications will be required to approve or refuse the application within 60 days, and inform the employee of the decision made in writing. If the application is refused, the employer must provide valid grounds for refusal.



About Employment Hero



For growing Malaysian businesses looking to manage your employees more effectively, why not do it with <u>Employment Hero?</u>?
HR and payroll compliance doesn't have to be tedious, confusing and complicated.

Our all-in-one payroll and HR software allows you to manage your business much more easily by streamlining processes and automating manual tasks. Get access to built-in policies, contracts and templates ready to go when you need them.

Enjoy fuss-free paperless onboarding with new hires quickly and compliantly — by having virtual contracts, policy acknowledgements, and employee files completed electronically, regardless of where they're located.

You can also automate payroll processes via our platform, so you save hours of administration time and reduce the risk of human error. Auto-calculate each of your employees MTD requirements every month, based on your employee's profile.

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There's also a whole bunch of other great features such as:

→ Employee self-service

Employees submit leave requests and timesheets, access and upload certifications, policies and more via the platform.

→ Rostering, time and attendance Budget and allocate shifts based on skills required, automate timesheets.

→ Reporting and analytics

Have complete oversight over company data, including diversity and inclusion, leave liabilities, and compliance.

→ Reward and recognition

Reduce turnover and improve engagement by rewarding and recognising employee milestones, along with peer-to-peer recognition.

→ Leave management

Electronic leave requests can be submitted and approved through the mobile app, available leave is displayed in real time, and the leave calendar provides an overview of everyone's leave dates.

→ Asset register

Assign and track important company equipment including security passes, laptops, keys and more, and track depreciation of expensive items for tax purposes.

→ Performance reviews

Create templates, set review schedules and trigger automated reminders to both employees and their managers during the review period.