INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES

Published Online: 09 January 2023 Vol 13, Issue 1, (2023) E-ISSN: 2222-6990

Amendments to the Employment Act 1955: An Analysis of the Key Changes with Reference to International Labour Standards – A Positive Improvement for Malaysia's Employment Regime?

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Abstract

In Malaysia, employment issues are primarily governed by the Employment Act 1955 [Act 265] being the key piece of legislation on the matter. Hence, it is imperative to analyze whether the amendments brought by the Employment Amendment Act are positive improvements as compared to the current provisions of the Employment Act as well as adequate according to the international labour standards as stated by the International Labour Organization. In 2022, the Employment (Amendment) Act 2022 as well as the Employment (Amendment of First Schedule) Order 2022 were passed which will bring key changes to the employer-employee relationship in Malaysia. These amendments to the Employment Act 1955 are overdue, given that the last amendments made was more than a decade ago in April 2012. The research employs a qualitative methodology and incorporates a content analysis approach by examining the relevant legislation, the conventions, recommendations and publications of the International Labour Organization, as well as other publications from researchers. The main finding of the research is that although the amendments brought by the Employment (Amendment) Act 2022 were a positive improvement, there is still much room for improvement for the employment regime, as well as to expand the amendments to the concurrent legislation in Sabah and Sarawak. However, further research should be conducted to study whether the implementation and enforcement of the amendments to the Act is successful in improving the rights of employees in Malaysia and bring positive changes to the employer-employee relationship.

Keywords: Employment Law, International Labour Organization, Employment Act 1955, Employment (Amendment) Act 2022

Introduction

On 25 October 2021, the Ministry of Human Resources tabled the Employment (Amendment) Bill 2021 [*D.R. 1/2021*] (Employment Amendment Bill) before the House of Representatives to amend the Employment Act 1955 [*Act 265*] (Employment Act) (Dewan Rakyat Debates, 2021). The Bill was passed by the House of Representatives on 21 F 2022 (Dewan Rakyat Debates, 2022, March 21) and by the Senate on 30 March 2022 (Dewan Negara Debates, 2022). On 26 April 2022, the Bill received the Royal Assent from the Yang di-Pertuan Agong and was published in the gazette on 10 May 2022 as the Employment (Amendment) Act 2022 [*Act A1651*] (Employment Amendment Act). As per subsection 1(2) of the Employment Amendment Act, it will only come into operation on a date to be appointed by the Minister of Human Resources (Minister) and was supposed to come into operation on 1 September 2022 (P.U. (B) 368, 2022, August 15). Additionally, the First Schedule of the Employment Act was also amended on 15 August 2022 by the Employment (Amendment of First Schedule) Order 2022 [*P.U. (A) 262*] (Employment Amendment Order) which was supposed to come into force on 1 September 2022, utilizing the power of the Minister to do so under section 2(2) of the Employment Act to amend the First Schedule without having to go through the legislative processes in Parliament. However, on 26 August 2022, the Minister of Human Resources announced that the operation date of both the Employment Amendment Act and the amendments to the First Schedule to the Employment Act was to be postponed to 1 January 2023 (Harun, 2022) and this was gazette on 29 August 2022.

The amendments to the Employment Act 1955 are long overdue, given that the last amendments made were more than a decade ago in April 2012 by the Employment (Amendment) Act 2012 [*Act A1419*]. It is observed that based on the Explanatory Statement of the Employment Amendment Bill, the amendments to the Employment Act are amongst others, to comply with international labour standards and practices. Malaysia intends to ratify the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) which was previously signed by Malaysia on 8 March 2018, which amongst others, contains a Labour Chapter which obligates Malaysia to comply with certain international labour standards. International labour standards are codified in various international conventions and the International Labour Organization (ILO), an agency of the United Nations, monitors compliance of countries to the international labour standards and conventions. Hence, it is imperative to analyze whether the amendments brought by the Employment Amendment Act are positive improvements as compared to the current provisions of the Employment Act as well as adequate according to the international labour standards as stated by the ILO.

Research Methodology

A qualitative method is used for this research paper, whereby content analysis is made on the Employment Act 1955 and its related regulations and orders, as well as all other related laws on employment and labour. A literature review is also conducted on relevant research regarding the Employment Act and other research regarding employment and labour law in Malaysia. Additionally, a comparative study is made on the international labour standards as stated by the International Labour Organization in its various conventions, recommendations and publications.

Literature Review: Employment Regime in Malaysia

In Malaysia, the employer-employee relationship is primarily governed by the Employment Act. Section 2 of the Employment Act provides that it only applies to both local

and foreign workers who fit the definition of an 'employee' found in the First Schedule of the Employment Act, mainly to those who are employed under a contract of service and are paid wages. Workers who are under a contract for service, such as independent contractors or gig workers, are not covered by the Employment Act. Public sector workers namely those in the service of the Government and statutory bodies, are also not covered under the Employment Act (Bhatt, 2015). The Employment Act also has a 'wage cap' whereby only employees who earn less than RM2,000 in wages fall under the application of all its provisions. The Employment Act also does not apply to employees who are minors, who are governed by the Children and Young Persons Act 1966 [*Act 350*]. Domestic employees are also excluded from the application of various provisions under the Employment Act.

It is observed that the key protections provided by the Employment Act to employees are amongst others, the provision of the payment of wages and overtime, the provision of a termination notice period, the provision of termination, lay-off and retirement benefits, the provision hours of work, rest days, holidays and other conditions of service, the form and obligatory provisions of the contract of service, the provision of maternity leave and allowance, and protections against sexual harassment in the workplace. More importantly, the provisions of the Employment Act shall override any term of the contract of service, as per section 7 of the Employment Act which states that any term less favorable than the provisions of the Employment Act, that is found in the contract of service between the employer and employee, shall be void.

The Employment Act is enforced by the Labour Department of Malaysia whereby section 69 of the Employment Act provides the Director General of the Labour Department (Director General) power to hear complaints from employee on any breaches of the Employment Act by employers, and can adjudicate any dispute between the employer and employee on any provision of the Employment Act, which is colloquially referred to as the dispute being heard in the 'labour court'. Additionally, any breaches of the provisions of the Employment Act amounts to an offence where the penalty is either specifically provided under the provision itself or under the general penalty provision of section 99A of the Employment Act, and prosecutions are conducted by the Attorney General's Chambers against errant employers.

However, it is observed section 1(2) of the Employment Act provides that the Act only applies to Peninsular Malaysia and does not apply to Sabah and Sarawak. This is because both Sabah and Sarawak have their own legislation, namely the Labour Ordinance (Sabah Cap. 67) and the Labour Ordinance (Sarawak Cap 76), respectively, which were not repealed after Sabah and Sarawak joined Malaysia on 16 September 1963. This is despite the fact that only Parliament may make laws relating to matters of labour, as per article 74(1) of the Federal Constitution read together with item 15 of the Federal List, Ninth Schedule of the Federal Constitution. The Labour Ordinances, although called ordinances by name, are treated as Acts of Parliament and any amendments made to the Labour Ordinances can only be passed by Parliament, in line with the Federal Constitution. The Labour Ordinances in Sabah and Sarawak provides a similar standard of protection to employees as provided for in the Employment Act, and both Labour Ordinances are similarly enforced by the Labour Departments of Sabah and Sarawak (Hassan,K.H,2012) The Ministry of Human Resources are currently in the process of drafting the amendments to the Labour Ordinances of Sabah and Sarawak, which are targeted to follow the amendments to the Employment Act in order to comply with international labour standards (MOHR, 2018).

It is further observed that although the Employment Act and by extension, the Labour Ordinances are the main employment legislation in Malaysia, there are various other legislation covering other aspects of employment, amongst others, the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 [*Act 446*], the Trade Unions Act 1959 [*Act 262*], the Industrial Relations Act 1967 [*Act 177*], the Occupational Safety and Health Act 1994 [*Act 514*], the Employees' Social Security Act 1969 [*Act 4*], the Self-Employment Security Act 2017 [*Act 789*], the Employment Insurance System Act 2017 [*Act 800*], the National Wages Consultative Council Act 2011 [*Act 732*], the Minimum Retirement Age Act 2012 [*Act 753*], the Holidays Act 1951 [*Act 369*], the Weekly Holidays Act 1950 [*Act 220*], the Employment (Restriction) Act 1968 (Revised 1988) [*Act 353*], and the Employment Information Act 1953 [*Act 159*].

There have also been numerous articles written by various commentators regarding the amendments to the Employment Act via the Employment (Amendment) Act 2022 (Kho et. al, 2021; Wong et. al., 2022; Venugopal et. al., 2022). However, it is observed that these articles provide only a summary of the amendments and scarce literature available regarding the amendments with reference to the international labour standards as stated by the ILO.

Previously, research regarding the Employment Act was specialized and concentrated on specific issues such as individual contracts of employment (Muniapan, et. al., 2010), pregnancy and maternity entitlements (Bhatt, 2015), sexual harassment (Hassan & Lee, 2015), and employment rights during the COVID-19 Pandemic (Razak et. al., 2021).

In their study, Muniapan et al (2010) gave an overview of the relevant legislation and common law that governs employment and labour relations in Malaysia, and in regard to the Employment Act, it only discusses what types of employees fall under the application of the Employment Act without any reference to the international labour standards. Similarly, Nadzri, N. R. B. M. (2012) in her discussions to the key changes to the amendments of the Employment Act, did not refer to the international labour standards or whether the amendments to the Employment Act is in line with the international labour standards.

In her study, Bhatt (2015) discussed the scope of application of the Employment Act to women workers and recommendations on their enforceability and benefit to women workers, without any reference to the international labour standards. In the same vein, (Hassan & Lee, 2015) discussed the legal provisions on sexual harassment in the workplace brought by the Employment (Amendment) Act 2012 and the new regime on dealing with sexual harassment cases. However, there was no discussion whether the provisions are in line with any international labour standards.

In dealing with employment rights during the COVID-19 pandemic (Razak et. al, 2021) discussed the rights of and the scope of protection provided under the Employment Act 1955, particularly regarding the payment of wages, entitlement of leave and retrenchment of employees during the COVID-19 pandemic and similarly, there was no mention of whether they comply with the international labour standards.

In light of the above, it is important for this study to discuss whether the amendments brought by the Employment Amendment Act are in line with the relevant international labour standards given that Malaysia is a member of the ILO and we are a party to several ILO Conventions. International labour standards are also important in improving economic performance and providing a full and productive employment and decent work for all workers (Hughes et. al, 2022).

Discussion & Results

This section examines the key changes to the Employment Act and makes references to the relevant international labour standards, if applicable, as well as recommendations for further improvements.

Removal of the Wage Cap

The most important change to the Employment will be the removal of the 'wage cap' or 'salary cap' system. At present, section 2(1) of the Employment Act provides that the Employment Act only applies to workers who meet the category of an 'employee' under the First Schedule. There is a 'wage cap' whereby save for certain categories of employees, only employees who earn less than RM2,000 in wages are entitled to the full protection of all of the provisions under the Employment Act. Only the provisions regarding sexual harassment in Part XVA of the Employment Act applies to all employees irrespective of wages as per section 81G, and the provisions regarding maternity leave in Part IX applies to all female employees irrespective of wages, as per section 44A. However, employees who earn more than RM2,000 in wages but not more than RM5,000 in wages are entitled to make complaints regarding disputes related to the provisions of their contract of service to the Director General as per section 69B of the Employment Act.

The wage cap will be removed once the Employment Amendment Order comes into force on 1 January 2023, whereby the provisions of the Employment Act will be applicable to all employees regardless of their wages, except for subsections 60(3), 60A(3), 60C(2A), 60D(3), 60D(4) and section 60J of the Employment Act which are not applicable to employees whose wages exceed RM4,000. The excluded provisions deal with overtime pay outside working hours and on rest days and holidays, allowances during shift work, as well as termination, lay-off and retirement benefits. This is a huge benefit to the employees who are not covered by the Employment Act due to the wage cap, as they can now rely on the various statutory protections provided under the Employment Act and can now file complaints to the Labour Department where the Labour Department can prosecute errant employers for breaches of the Employment Act. However, the removal of the wage cap will require additional labour officers in order for there to be sufficient enforcement and inspection officers to ensure that an efficient system of labour inspection is maintained, as stated in the Labour Inspection Convention, 1947 (No. 81) and the Protocol of 1995 to the Labour Inspection Convention, 1947. The ILO recommends that the ratio of labour officers to employees should be 1:20,000, however at present, the Labour Department of Peninsular Malaysia has only 580 officers which amounts to a ratio of 1:24,407, and the Ministry of Human Resources have requested for additional funding to increase their number of labour officers given that the application of the Employment Act will be expanded from 7.2 million employees to 14.04 million employees with 787,322 employers in Peninsular Malaysia (Dewan Rakyat Debates, 2022, March 21).

It is observed that this may be the single biggest positive change that will be brought forth by the Employment Amendment Act, given that all employees irrespective of wages, can now fall under the protection of most provisions of the Employment Act, and not just rely on the terms of the contract of service which may fall below the minimum standards of protection provided by the Employment Act. However, the wage cap system should have been fully removed to allow employees earning RM4,000 and above to be entitled to all of the benefits of the Employment Act, in order to allow for fairness and equality among all

employees irrespective of wages, particularly given that the international labour standards does not provide for the discrimination of employees based on wages.

Increase of Maternity Leave

The paid maternity leave provided to female employees will be increased by the Employment Amendment Act. At present, a female employee was only entitled to paid maternity leave of not less than 60 consecutive days as per subsection 37(1) of the Employment Act. Section 12 of the Employment Amendment Act will amend subsection 37(1) to increase the entitlement of paid maternity leave to 98 consecutive days.

This is in line with the minimum maternity leave required by international labour standards found in the Maternity Protection Convention, 2000 (No. 183). The ILO has stated that out of 185 countries and territories studied, only 98 countries meet the ILO standard of 98 days maternity leave (Addati et. al., 2014). However, the ILO has stated in the Maternity Protection Recommendation, 2000 (No. 191) that the period of maternity leave should be further increased to 126 days. As at 2014, only 42 countries meet or exceed the recommended period of maternity leave of 126 days (Addati et. al, 2014). It is reported that Indonesia is in the process of legislating an increase of maternity leave of 182 days (Hayon, M.E., 2022, July 13) and Singapore currently provides a minimum maternity leave of 112 days (Ministry of Manpower, 2022).

This is a positive improvement given that the international labour standards have finally been complied with by Malaysia. However, considerations should be made to further increase the maternity leave above 98 days in line with Recommendation No. 191 by the ILO, and with reference to the higher maternity leave found in neighbouring countries such as Singapore and Indonesia.

Protection against Termination of Female Employees on Maternity Leave

Another key change brought by the Employment Amendment Act is in regard to the protection against the termination of female employees during their maternity leave. At present, the protection provided under the Employment Act is found in subsection 37(4) of the Employment Act, whereby any employer who terminates the service of an employee while she is on maternity leave commits an offence. This protection has been criticized as insufficient, given that the provision does not prevent an employer from terminating the employment of an employee while on maternity leave or during her pregnancy, as the employer may do so knowing that they are only subjected to a small fine of RM10,000 under the general penalty provision of section 99A which is insufficient to serve as a prohibitory amount and is an inadequate protection (Bhatt, 2015). Another criticism is against the exception contained in the provision which provides that termination may be conducted if it is on the closure of the employer's business, was a watering down of the provision as prior to the Employment (Amendment) Act 2012 [*Act A1419*], the Employment Act did not allow the termination of employees under maternity leave at all (Bhatt, 2016). Similarly, the protections only apply to female employees earning less than RM2,000 due to the wage cap system (Bhatt, 2015).

Section 13 of the Employment Amendment Act will introduce a new section to the Employment Act, namely section 41A, which prohibits an employer from terminating a pregnant female employee, except on grounds of breach of the contract of service, misconduct, or the closure of the employer's business. This is intended to increase the protection against termination of female employees during their maternity leave, in line with

Malaysia's obligations under Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Dewan Rakyat Debates, 2022, March 21). Although the new provision added two new grounds in allowing the termination of an employee under maternity leave, it is observed that further protection to the employee is provided given that it is now the burden of the employer to prove that the termination of the employee is not on the grounds of her pregnancy or on the ground of illness arising out of her pregnancy. Additionally, the penalty for breaching the provision is increased to RM50,000 as the general penalty under Section 99A of the Employment Act will be increased to RM50,000 by section 43 of the Employment Amendment Act.

This is a positive improvement to the protection provided against the termination of female employees undergoing maternity leave, and addresses some criticisms made against the effectiveness of the protection provided given that the penalty to the offence has been increased to RM50,000 and the provision now applies to all female employees, irrespective of their wages due to the removal of the wage cap.

Introduction of Paternity Leave

The Employment Amendment Act will introduce the concept of paternity leave. Section 23 of the Employment Amendment Act will introduce a new provision namely section 60FA which provides married male employees a paid paternity leave at his ordinary rate of pay for a period of 7 consecutive days after the birth of the child. However, in order to be entitled to the paternity leave, the employee must be employed by the employer for at least 12 months prior to the paternity leave and has notified his employer of the pregnancy of his spouse 30 days prior to the expected birth of the child. Additionally, the paternity leave is restricted to only five children.

The ILO stated that although no ILO standard exists concerning paternity leave, paternity leave provisions have become more common over time, whereby 79 out of 167 countries studied by the ILO have legislation providing for the statutory right of paternity leave, wherein 70 of these countries provide paid paternity leave and only 5 countries provide paternity leave of more than 14 days (Addati et. al, 2014). The ILO however states that the Resolution concerning gender equality at the heart of decent work adopted by the International Labour Conference, 98th Session, 2009 recognizes that work-family reconciliation measures concern both men and women and therefore it the development of policies for a better balance of work and family responsibilities and includes the introduction of paternity leave (Floro & Meurs, 2009). It has also been argued that there is a need to widen entitlements and provide paternity leave to reflect sex equality and the sharing of family responsibilities between men and women workers, as acknowledged in human rights instruments such as CEDAW (Bhatt, 2015).

This is a positive improvement given that this will enable employees who are fathers to share the responsibility of raising their children, in line with the recommendations by the ILO and CEDAW. However, the paternity leave should be further increased to provide more shared responsibility on the part of employees who are fathers.

Removal of Prohibition of Labour for Women

Another key change to the Employment Act will be the removal of all prohibitions against women working in night work and underground work, which are contained in Part VIII of the Employment Act. Section 34 of the Employment Act prohibits women from working in industrial or agricultural work at night and section 35 of the Employment Act provides that no

female employee shall be employed in any underground work. Furthermore, section 36 of the Employment Act provides that the Minister of Human Resources may further prohibit female employees in other categories of work through an Order. Section 10 of the Employment Amendment Act will entirely delete Part VIII of the Employment Act in order to comply with the requirements of the International Labour Organization and the international labour standards stated in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (Dewan Rakyat Debates, 2022, March 21).

Previously, international labour standards provide for the prohibition of female employees from night work and underground work as per the Night Work (Women) Convention, 1948 (No. 89) and the Underground Work (Women) Convention, 1935 (No. 45), respectively. However, the developments in international labour law has changed where these provisions are to be removed for purposes of gender equality (ILC & ILO, 2001). This will also be in line with Malaysia's obligations under CEDAW which was ratified in August 1995, particularly where Article 11 of CEDAW provides that discrimination against women should be eliminated in all fields of employment. Therefore, the removal of the prohibitions will be a positive improvement in gender equality regarding employment.

Awareness on Sexual Harassment

A requirement for employers to display a notice on the awareness in regard to sexual harassment will be introduced by the Employment Amendment Act. At present, the Employment Act contains a chapter on sexual harassment, namely Part XVA. Section 81A allows complaints of sexual harassment to be made by either employees or employers. The complaint may be made either to the employer under section 81B, or to the Director General under section 81D. If the complaint is made to the employer, the employer shall inquire into the complaint of sexual harassment and may refuse to inquire under the grounds provided in section 81B, however he must inform the reasons of his refusal in writing. This refusal may be referred to the Director General where the Director General may inquire into the case further. As per section 81C, if the employer decides that there is a valid ground of sexual harassment, he shall take disciplinary action against the offending party which may include dismissal. On the other hand, if the complaint is made to the Director General, the Director General may direct an employer to inquire into the complaint, similar to the procedure provided for in sections 81B and 81C. However, the Director General may inquire into the complaint himself if the employer is a sole proprietor. If the Director General decides in his inquiry that the sexual harassment is proven, the complainant may terminate his service without notice, and is entitled to wages, termination benefits and indemnity as if he was terminated by his employer. Any employer who fails to comply with the duties of inquiry and information under Part XVA will commit an offence under section 81F and is punishable with a fine not exceeding RM10,000.

Commentators have criticized that these existing provisions are inadequate to fully address the issue of sexual harassment and calls for a full sexual harassment bill to be passed as sexual harassment not only occurs in the workplace, and that harsher penalties than those provided in the Employment Act are required (Alagappar & Marican, 2015; Hassan & Lee, 2015). Section 36 of the Employment Amendment Act will introduce a new provision, section 81H which provides that employers must at all times, exhibit a notice to raise awareness on sexual harassment at the workplace. However, there are no penalties provided for under the section and any breaches of this section shall follow the general penalty provided for under section 99A of the Employment Act. Additionally, the penalty stated under section 81F of the

Employment Act will be increased from RM10,000 to RM50,000 as per section 34 of the Employment Amendment Act.

Although this is a positive improvement, it does not substantially improve upon the existing system of dealing with cases of sexual harassment as provided for under the Employment Act as it merely provides for the new requirement of raising awareness of sexual harassment and increases the penalty for employers who do not comply to RM50,000. However, it is observed that a new sexual harassment legislation, namely the Anti-Sexual Harassment Bill 2021 [*D.R. 18/2022*] had been passed by Parliament on 20 July 2022 (Dewan Rakyat Debates, 2022, July 20) which establishes the Tribunal for Anti-Sexual Harassment which allows victims of sexual harassment to bring their cases to the tribunal instead of other methods such as filing a police report or seeking redress in the civil courts. The tribunal can order the offender to pay compensation to the victim of up to RM250,000 (Indramalar,2022).

Maximum Working Hours

The Employment Amendment Act will also decrease the maximum weekly working hours of employees. At present, paragraphs 60A(1)(a) to (d) of the Employment Act provides that an employee shall not be required under his contract of service to work more than five consecutive hours without a period of at least 30 minutes rest, or more than 8 hours in one day, or more than a spread over period of 10 hours in one day, or more than 48 hours in one week, respectively. This is the normal working hours of the employee, and any hours worked outside of normal working hours is entitled to be paid overtime, as per section 60A (3) of the Employment Act.

Section 20 of the Employment Amendment Act will amend subsection 60A (1) of the Employment Act, to decrease the maximum weekly working hours of an employee to 45 hours in a week. However, there will be no amendments to the maximum daily working hours in the categories provided for under paragraphs 60A(1)(a) to (c). The maximum weekly working hours of 48 hours is as per the requirements of the Hours of Work (Industry) Convention 1919 (No. 1) and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Nevertheless, it is noted that the standard set by both conventions were set more than a century ago.

The ILO states that Convention No. 1 was its first international labour standard, establishing the 8-hour working day and the 48-hour working week in the industrial sector, and this protection was then extended to employees in commerce and offices through Convention No. 30 (ILC, 2018). The ILO further states that the Forty-Hour Week Convention, 1935 (No. 47) was adopted to require countries to take measures to secure a 40-hour working week for employees, and that the Reduction of Hours of Work Recommendation, 1962 (No. 116) was designed to supplement and facilitate the implementation of existing international instruments by indicating practical measures for the progressive reduction of hours of work, taking into account the different economic and social conditions in the various countries. The ILO reported that the average weekly working time in the world is 43 hours per week, with Western European countries having the lowest reported average weekly working time of 36.4 hours per week. In Southeast Asia and the Pacific, the average weekly working time is 42.9 hours (ILC, 2018).

Therefore, although the reduction of the weekly working hours from 48 hours to 45 hours is a positive improvement particularly given that Malaysia did not even ratify the three aforementioned ILO conventions, it is still falling behind the global average weekly working time of 43 hours and the Southeast Asian average of 42.9 hours. It is recommended that the

minimum weekly working hours should be reduced further, as well as to consider reducing the minimum daily working hours as well.

Flexible Working Arrangements

Provisions concerning flexible working arrangements will also be introduced by the Employment Amendment Act. At present, the Employment Act does not provide any provision on flexible working arrangements, which had become the norm during the outbreak of the Novel Coronavirus (COVID-19) in Malaysia. Section 27 of the Employment Amendment Act will introduce two new sections to the Employment Act, namely sections 60P and 60Q. Both sections are to provide for flexible working arrangements for employees. However, the provision is not automatic in nature, as section 60P merely mentions that an employee may apply to their employer for a flexible working arrangement to vary the hours, days, or place of work of his employment, and this is subject to the provisions of Part XII (Rest Days, Hours of Work, Holidays and Other Conditions of Service) of the Employment Act and the terms and conditions of his contract of service. However, the employee is not entitled to the flexible working arrangement being granted, and the employer has full discretion whether to approve or refuse the application. Section 60Q only provides that the employer must approve or refuse the application 60 days after they receive it, and if the employer refuses the application, the employer shall state the ground of such refusal to the employee. At present, there are no obligations or protections under the international labour standards for employees to be given the right to flexible working arrangements. However, the ILO views that flexible working arrangements can provide some of the most cost-effective solutions to achieve work-life balance for employees (ILC, 2018).

This is a positive improvement as it recognizes flexible working arrangements, however, it does not provide any entitlements for employees to be given flexible working arrangements as the decision is solely up to the discretion of the employer. Therefore, it is recommended that the provision be improved in the future to provide for valid grounds where it is mandatory for the employer to provide flexible working arrangements, such as when there occurs an outbreak of an infectious disease.

Conclusion

Based on all the discussions made above, it is concluded that the amendments under the Employment Amendment Act are generally positive improvements that improve the working conditions and protections provided to employees in Malaysia. However, despite the welcome improvements that will be made through the Employment Amendment Act, it is observed that there is still room for Malaysia to improve the Employment Act with reference to the international labour standards, in order to ensure that the standards of protection provided to Malaysian employees comply with the international labour standards. Furthermore, at the time being, the improvements will only apply to West Malaysia whereby the Labour Ordinances of Sabah and Sarawak have not been amended and the Ministry of Human Resources must ensure that the same amendments brought by the Employment Amendment Act are extended to the Labour Ordinances of Sabah and Sarawak to ensure consistency and for the same protections to be accorded to employees throughout Malaysia and not only to West Malaysia. Additionally, the Ministry of Human Resources should ensure that all other employment legislation be amended to comply with the international labour standards for comprehensive protection to employees throughout Malaysia and bring positive changes to the employer-employee relationship.

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