



Implementation Guidance – Guidelines for Contract Terms and Conditions

Contract Component	Malaysian Legal Guidelines
Names of the employer and worker.	Every contract should provide the name and address of the legal employer and worker. The employer is the business entity directing the work of the worker and paying the salary and all other benefits to the worker. The department of immigration requires that migrant workers only work for the employer stated in their employment passes (the as stated in the sticker in their passports).
Job title and description.	This should be as descriptive as possible to give workers notice of what is expected of them.
Place of work.	This should be as precise as possible. Where accommodation is provided, the time taken to travel to and from place(s) of work should be within reason. Transport arrangements should be provided where foreign workers are accommodated more than an unreasonable walking distance from the place of work. Section 22(d) of the Employment Act 1955 allows for the business to provide workers with an advance of salary and make lawful deductions to purchase a car, motorcycle or bicycle.
Employment start date, and end date if on a fixed term contract.	This is to give workers notice of when their contracts expire. In the event it is proposed that the contract is being renewed, a fresh contract should be issued before the expiry of the previous. The practice of issuing short extensions should be avoided as they do not provide workers with security.
Salary, Rates of pay or the way pay is calculated, including overtime pay.	The salary, rates of pay including overtime pay and the way pay is calculated and paid should be expressly described in the employment contract. Overtime assigned to workers should not exceed 104 hours per month. These terms should not be less favourable than those listed in Section 19, section 24, section 60A, 60B and 60C Employment Act 1955. For fuller details see the implementation guidance on wages and working hours.



Earthworm Foundation Implementation Guidance

<p>Dates and methods of payment.</p>	<p>Under section 22 of the Employment Act 1955, wages should be paid before the 7th day after the wage period. If the wage period is monthly, wages should be paid before the 7th of the following month. Wages should also be paid into a bank account unless a worker requests that it be paid by cash or cheque pursuant to section 25 and 25A of the Employment Act 1955.</p>
<p>Description of additional benefits (such as flights, accommodation and meals).</p>	<p>Additional benefits such as accommodation, flight tickets, medical treatment in the case of illness or injury and transport should also be described in the contract. In addition to stating the benefit, the conditions a worker should meet to become entitled should also be described. All minimum requirements have been described more fully in the implementation guidance relating to accommodation and safety and health.</p>
<p>Fees, deposits and advances.</p>	<p>Employers commonly take deposits from workers for a variety of reasons. Some common reasons include returning to work after a short break in the home country. Most of these reasons are prohibited under section 136 (b) Financial Services Act 2013. This practice should be aborted.</p> <p>In relation to advances, section 22 Employment Act 1955 describes the few situations when advances may be made to workers and deductions to wages are required to be aligned with these advances. These rules are more fully described in the Implementation Guidance relating to Wages and Hours.</p> <p>Charging interest on advances made to workers is prohibited under section 27 Employment Act 1955.</p>
<p>Expected working hours, days and overtime procedures.</p>	<p>Many businesses determine the hours of work required of their workers in accordance with their operational requirements. However, section 59, section 60A, section 60B and section 60C Employment Act 1955 Regulation 2 Employment (Limitation of Overtime) Regulations 1980 describe the legal limits of a workers hours. Contracts of employment should not only describe the hours of work, they should also be compliant with legal requirements. These are more fully described in the implementation guidance relating to hours of work.</p>



Earthworm Foundation Implementation Guidance

<p>Terms of holiday entitlement, other time off, and how payment is calculated during these periods.</p>	<p>Many businesses determine workers time off and holidays in accordance with their operational requirements. However, section 60, section 60D and section 60E, section 60I Employment Act 1955 describe the rest day, public holidays, annual leave and means of calculating wages when compensating employees who work on these days. Generally, employees are entitled to</p> <ol style="list-style-type: none">a) a minimum of one rest day a week. If a weekly or monthly roster determines the worker's days off, information about when and by whom the roster is issued should be expressly stated;b) between 8 and 16 days of annual leave per year (depending on years of service) andc) 11 public holidays per year. Contracts of employment should particularise the holidays an employee is entitled to.
<p>Sick leave and how payment is calculated during this period</p>	<p>Due to tight operational schedules, sometimes, sick leave by workers is discouraged. However, in accordance with section 60F Employment Act 1955 all workers are entitled to paid sick leave of between 18 and 22 days (depending on their years of service) and up to 60 days if they should be hospitalised. Contracts of employment should reflect these entitlements.</p>
<p>Probation Period</p>	<p>Probation periods are fixed at the initial phase of a contract to determine the suitability of an employee for the role. Depending on the complexity of the role, probation may be between two and six months. Midway during the probation period, the employee's performance should be reviewed to allow for improvements to be made before the end of the probation period. At the end of the probation period, if found satisfactory, the employee must be either confirmed in employment or issued with a letter of non-confirmation.</p>
<p>Termination and Notice Periods</p>	<p>Section 10 and 11 of the Employment Act 1955 provide that all contracts of employment should inform parties of the manner by which the contract may be terminated. Notice (usually between 1 week and 2 months) to be given by either party should be equal.</p>
<p>Insurance or compensation in the event of death, occupational disease or personal injury</p>	<p>All contracts of employment should provide particulars of insurance taken on behalf of workers (as required by immigration authorities) and the benefits due to them, in the event of death, personal injury or occupational disease. The requirement to provide insurance and / or compensation are in accordance with section 4, 8 and 9 of the Workmen's Compensation Act 1952 and Section 5 and 15 Employees' Social Security Act 1969.</p>



Earthworm Foundation

Implementation Guidance

DISCLAIMER: The information in this document is prepared for a brief and general guideline on recruitment and have been compiled using various sources publicly available. Efforts have been made to ensure that relevant information have been included; however EF does not claim that the information in this guideline is exhaustive. Further, this document does not purport to contain all the information that the end user or reader including but not limited to employers, buyers, importers, manufacturers, suppliers or distributors (collectively "End User") may desire in understanding regarding the processes, practices or laws in Malaysia in respect of guideline for contract terms and conditions. The intent of this document is to provide basic guidelines which may be of some help to the end user. With the help of this document, the end user should ensure that the relevant laws, rules, regulations and guidelines are applicable, suitable, updated and relevant to their company or business as a whole. EF, its subsidiaries, related corporation, affiliates, associates, business partners (collectively, "EF Group") and EF's directors, shareholders, officers, employees, agents, representatives and advisers ("Representatives") do not:- (i) make any representation, undertaking or warranty, express or implied, nor any of them, to the extent permitted by law, have any responsibility or liabilities whatsoever in respect of the truth, accuracy or completeness of, or omission from, this document or any related documents or information, whether written or oral, supplied at any time or in respect of any statement, disclosure, or opinion expressed or omitted; (ii) owe any duty of care or otherwise owed by EF Group or its Representatives to the End User in respect of or in connection with this document; (iii) have any obligation to update this document or to correct any inaccuracies, incompleteness or omissions therein; and (iv) accept any responsibility or liability to any reader or third party for any damages, loss, cost or expense, or any loss of profits, business or anticipated savings or for any consequential loss whatsoever, whether directly or indirectly, due to or in connection with any negligence, error, misstatement, misrepresentation or omission by EF Group or its Representatives.