



# Definition & Legal Background – Respect for diversity

*The company aims to achieve full visibility of its supply chain and the workforce involved.*

*Diversity is respected. No discrimination is allowed, on any basis, including race, ethnicity, gender, religion, medical status, sexual orientation, political opinion, national extraction or social origin. No violence, abuse and harassment, mental or physical, occur in the workplace. Company policies promote equality.*

*- Respect for Workers Principles, Principle 2*

### **Diversity and Non-Discrimination Definition**

In Malaysia there is no specific legislation covering the promotion of diversity. However, equality is guaranteed under Article 8 of the Federal Constitution.

**All persons are equal before the law and entitled to the equal protection of the law.**

**- Article 8(1) , Federal Constitution**

Businesses would be seen as promoting diversity at the workplace when;

a) the company makes reasonable provisions or adjustments in non-discrimination policies so that a diverse range of people may be recruited and allowed equal opportunities at the workplace. These may include men, women and LGBT individuals of any ethnicity or faith; of any nationality, physical capacity and /or membership of any political or social group. The only factor considered is the individual's ability to perform the job.

b) unfavorable decisions e.g. disciplinary action, transfer or retrenchment rely on objective criteria rather than for example union membership, union activism or unrelated to factors beyond the individual's control.

Discrimination sometimes arises based on the assumption that a particular characteristic limits an individual's ability to perform a task. For example, not hiring the most suitable candidate could be the result of discrimination.

### **Gender Discrimination**

Companies must ensure women and men have the same access to the same jobs. There should not be any discrimination in recruitment for positions on the basis of gender.

There are specific provisions for women workers in Malaysia.

In Malaysia, Section 2 Sabah Labour Ordinance, Section 1 Sarawak Labour Ordinance , Children and Young Persons (Employment) Act 1966, the **definition of employment of Women is "A female of the age of eighteen years or above"**.



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There are some legal restriction on some type of work of women should work is:

No female employee to work in any agricultural, forestry or industrial undertaking between the hours of 10 pm to 5 am without a period of 11 consecutive hours free from such work.

Should not be employed in any underground work (exception can be made by Minister)

For more information, please see **Section 78 Sabah Labour Ordinance, Section 79 Sarawak Labour Ordinance, Section 34 and 35 of the Employment Act 1955.**

Below are the maternity benefits given to the female employees;

1. Entitled to maternity leave for a period of 60 days.
2. Entitled to maternity benefits when she has worked for the employer for not less than 180 days (for Sabah) and not less than 4 months (for Sarawak and West Malaysia) within the period of one year or 90 days within the period of six calendar months immediately preceding the date of the notice required
3. Entitled to any maternity allowance up to her fifth children.
4. The payment of maternity allowance to be paid to the person nominated by her, if a female employee dies after giving her notice.
5. Any omission in giving the notice for the maternity benefit, the benefits will be forfeited.
6. The employer is not allowed to terminate the employment of female employee who is on confinement and who remains sick after the 60 days unless her absence exceeds 90 days after the confinement period.
7. Entitlement started on 22th week of pregnancy (only applicable in Peninsular Malaysia).
8. Entitlement started on 28th week of pregnancy (only applicable in Sabah & Sarawak).

For Peninsular Malaysia, all women are entitled to the benefits while for Sabah & Sarawak, the entitlement is subjected to the employees under the Labour Ordinance respectively.

All of the above can be refer to **Section 83 Sabah Labour Ordinance, Section 84 Sarawak Labour Ordinance, Section 37(4) Employment Act 1955.**

For failure to comply with these provisions, employers may upon conviction be fined MYR 10,000 and be required to pay the maternity allowance due to the employee. For any other offence under the Employment Act 1955, employers may, upon conviction be fined MYR 10,000 per offence pursuant to section 99A. In the case of the employer being a business, a director, manager of similar officer may be jointly charged for the offence under section 101B.

### **Nationality based discrimination**

Although foreign workers must adhere to specific Immigration requirements that do not apply to locals, employers must ensure that their local and foreign workers are treated equally.

The Employment Act 1955 does not differentiate between local and foreign workers and as such all workers are covered by all the protections and benefits mentioned in the Act ( such as annual leave, rates of pay, sick leave, entitlements to public holidays and the right to termination notice and benefits.

Both local and foreign workers are eligible for the Employment Provident Fund (EPF). However, foreign workers need to opt-in for the scheme pursuant to the First Schedule of the EPF Act 1991.

Employers should inform their foreign workers about this option to ensure their foreign workers are treated no less favorably than their local counterparts. Foreign workers who wish to contribute should complete and submit Form 16B to the nearest EPF office.

### **Discrimination based on union membership or participation**

Under Section 8 of the Employment Act, employers cannot restrict workers – local or foreign- from joining, participating in the activities of or associating with others for the purpose organizing, a trade union.

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Members of registered trade unions or those who participate in authorized industrial action should not be threatened with dismissal or other unfavorable treatment. Pursuant to Industrial Relations Act 1967 - section 2 (definition of strike) section 10, 43 and 44, a strike is the cessation or slowing down of work, by workers under a common understanding. In order for a strike to be legal, the grounds for striking must be on account of a dispute between workers and their employer in relation to which notice has been given to the department of industrial relations.

Under section 5, 39 and 59 of the Industrial Relations Act 1967 it is an offence to discriminate against, intimidate or injure workers for joining or participating in the activities of a trade union. It is an offence to contravene these provisions and upon conviction, section 60 provides that an offender depending on the offence, may be fined up to a maximum of MYR5000, be imprisoned for a maximum of 2 years or both.

To counter assumptions of discrimination that may arise, businesses can:-

- a) make opportunities for work accessible to all groups of people e.g. disabled individuals, people from religious or ethnic groups that are minorities at the work place, women (Employment Act 1955, section 37), union members (Industrial Relations Act 1967 sections 4 and 5).
- b) make reasonable adjustments to those who are pregnant, caring for people with disabilities or those with parental responsibilities;
- c) ensure migrant workers receive terms of service that are no less favorable e.g. holidays, rest days salaries, the right to union membership than those of other workers performing similar tasks (Employment Act 1955 Part XII) ;
- d) Consider all candidates applying for a job regardless of their age, gender or possible pregnancy. Jobs that have the potential to pay more such as harvesting or mill work, should not be restricted to male candidates.

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