



Definition & Legal Background – Employment Contract

Employment contracts are provided to all workers

Workers are employed of their own free will and all workers have a signed contract and understand the terms and conditions of their contract. These conditions must comply with basic labour standards such as minimum wage and standard working hours. The right to freedom of movement is not restricted in any way. Where advances and loans are used these are legal, transparent, in the interests of workers and the repayment terms are fair.

- [EF Respect for Workers Principle, Principle 4](#)

LEGAL BACKGROUND

In Malaysia, there are 3 separate pieces of legislation for Malaysian employees. The [Employment Act 1955](#) for Peninsular Malaysia, [Sabah Labour Ordinance 1950](#) for Sabah and [Sarawak Labour Ordinance 1952](#) for Sarawak. Workers covered under the Employment Act 1955 are all workers whose earnings do not exceed RM2,000 a month and all manual workers irrespective of their earnings. For Sabah and Sarawak, the Labour Ordinance covered workers who earned below RM2,500 per month and also manual workers irrespective of their earnings.

The purpose of this legislation is to provide a number of minimum benefits for those workers covered by the Act and the Ordinances, as well as to establish certain rights for both employers and employees.

Labour legislation in Malaysia does not differentiate between part-time workers, temporary workers, local or migrant workers. All such workers are protected equally by the law.

Contracts for Migrant Workers

The Ministry of Human Resources has issued a standard employment contract for migrant workers describing the compulsory terms that should be provided to workers. Aside from the minimum benefits under the Employment Act and the Ordinances, the contract also describes some of their rights and obligations under the [Malaysian Immigration Act 1959/63](#). Deductions for approved facilities or services can be made with the written permission of the Director General of Labour and this may not exceed 50% of their monthly wages. Often the embassies of migrant workers also prescribe standard contracts for employers to agree to. For example:



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- (i) [Standard Contract, Embassy of Nepal](#)
 - (ii) [Standard Employment Contract, Embassy of Philippines](#)
 - (iii) [Contract of Employment, Bangladesh High Commission](#)

In the case of conflict between two different contracts employers are encouraged to adhere to the contract with the more favourable terms.

Short term or fixed term contracts

Short term or fixed term contracts are usually issued for the completion of a specific project or task or a time bound duration. Many employers seek to avoid the challenges associated with terminating the services of employees by allowing fixed term contracts to expire. Fixed term contracts also deprive workers of security of tenure.

Temporary or Casual workers

Casual workers are in an even more precarious situation than fixed term workers as their employment sometimes is not documented at all. Workers known to the manager or workers from a pool of “regulars” may be called in as and when- needed to perform specific tasks. They are usually paid at the end of the day or week. Due to its informal and inconsistent nature, many employers may not have records of their casual workers, beyond the payment voucher signed by workers for wages paid to them. Casual work differs from part-time work which may be regular and for a fixed number of hours per week. There is no Malaysian immigration or labour provision authorising this but it remains a common practice in the agricultural sector.

Labour agents

Labour agents are engaged by businesses to supply them with workers. Labour agents should not be used to supply workers performing the main activities of any business. Some businesses which prefer to avoid accountability for the welfare of workers attempt to transfer their legal obligations to third parties by hiring workers through these intermediaries. According to the conditions of migrant worker employment passes, workers must be paid by and may only work at the premises of their formally stated employer.

Collective Agreements

Collective agreement refers to an agreement in writing concluded between an employer or a trade union of employers on the one hand and a trade union of workmen on the other relating to the terms and conditions of employment and work of workmen or concerning relations between such parties. Some contracts of employment are negotiated collectively through a collective agreement between a trade union and the employer. However, even if workers come under a collective agreement, they should still be provided a detailed employment contract or letter of appointment reflecting their rights.

Termination of a Contract of Employment



The length for a minimum number of weeks of notice due to workers in the case of termination are summarised as follows:

For less than 2 years of service	4 weeks' notice
2 years to less than 5 years of service	6 weeks' notice
More than 5 years of service	8 weeks' notice

This can be applied to Sabah and Sarawak. For more information, please see **Section 12 of the Employment Act** for Peninsular Malaysia, **Section 11(2) Sabah Labour Ordinance** for Sabah and **Section 12(2) Sarawak Labour Ordinance** for Sarawak.

Termination and layoff benefits

Regulations provide for:

Less than 2 years' service	10 days wages/year
2 years or more but less than 5 years' service	15 days wages/year
5 years or more service	20 days wages/year

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