



LABOUR LAW TOOL

Malaysia

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1. Human Trafficking Legal Framework

By way of background, there are generally two categories of employees in West Malaysia:

- a. Those who fall within the ambit of the Malaysian employment act (**EA**) (**EA Employee(s)**); and
- b. Those who fall outside (**Non-EA Employee(s)**).

EA Employees

EA Employees refer to individuals whom are employed under a contract of service in West Malaysia and are either:

- i. Earning monthly wages of RM 2,000 or less, regardless of their occupation; or
- ii. Are specified categories of blue-collar employees (i.e., manual labourers, supervisors of manual labourers in or throughout the performance of their work, and operators of commercial vehicles (such as drivers and dispatch).

The EA (and other related employment legislations) prescribe minimum standards and entitlements for EA Employees (and on occasion, Non-EA Employees) which must be complied with by employers.

Non-EA Employees

Non-EA Employees are usually not entitled to such statutory minimum standards. Their rights and entitlements are therefore dependent on their employment contract and the common law.

The distinction between EA Employees and Non-EA Employees is relevant to this Labour Law Tool. Generally, any breach of the EA or regulations, order, or other subsidiary legislation under the EA will expose a convicted offender to a maximum RM 10,000 fine for each offence.

There are two relevant laws.

A. *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007* (**Trafficking Act**)

The *Trafficking Act* deals with human trafficking of persons and the smuggling of migrants. It has wide coverage as it applies:

- Regardless of whether conduct which constitutes an offence under the *Trafficking Act* took place inside or outside Malaysia;
- Regardless of the nationality and citizenship of the offender; and
- In circumstances where:
 - The exploitation occurs in Malaysia or Malaysia is the receiving or transit country; or
 - A foreign country is the receiving or transit country, but the trafficking in persons or smuggling of migrants starts in Malaysia or transits Malaysia;
- Regardless of the consent, movement or conveyance (i.e., mode of transport) of the trafficked person.

The *Trafficking Act* criminalises a broad range of activities which are relevant to human trafficking, including but not limited to:

- The trafficking of persons for the purposes of 'exploitation' (which is defined to include forced labour or services, and slavery or similar practices);
- Trafficking of children for exploitation;

- Trafficking by means of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of the vulnerability of a person to an act of trafficking, or the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person;
- Profiting from the exploitation of a trafficked person; and
- Bringing in transit a trafficked person through Malaysia.

The *Trafficking Act* also covers smuggling of migrants and acts related to migrant smuggling including recruiting, conveying, transferring, concealing, harbouring or providing assistance to smuggling (which are similar to the offences for trafficking above).

Any person who has committed an offence under the *Trafficking Act* will, upon conviction, be punished with imprisonment for a term up to 15 years and/or a fine with no express maximum limits, depending on the offence and whether the offender is an individual or a company. If the offence is committed by a body corporate, any person who was a director, manager, secretary or other similar officer of the body corporate, may similarly be held guilty of the same offence the company is charged with.

The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants was established as a governmental agency to oversee the administration and enforcement of the *Trafficking Act* and its provisions.

B. *The Federal Constitution of Malaysia*

The Federal Constitution guarantees the freedom of individuals in Malaysia. It provides that no person is to be deprived of their life or personal liberty, except in accordance with law.

2. Recruitment Fees

The payment of recruitment fees is not expressly regulated under the *Trafficking Act* or any other criminal legislation in Malaysia. Notwithstanding, there are specific regulations in Malaysia that may impact the manner in which recruitment fees are charged or paid.

a. Fees paid for work permits or renewal

The payment of recruitment fees for work permits or renewals is not a breach of law, but payment of immigration-related fees imposed by the Malaysian Immigration Department on an employee is *administratively* prohibited under the Employment Mandatory Commitment (EMC) policy.

Under the EMC policy, all employers who employ foreign blue-collar employees are responsible for the levy payments which are charged by the Malaysian Immigration Department for work permits or renewals under the *Fees Act 1951*. Employers are required to sign a letter of undertaking (upon making an application for the work permit for a foreign blue-collar employee) issued by the Malaysian government, where the passing of such charges to a foreign blue-collar employee would constitute a breach of the undertaking.

The levy payment rate for each approved foreign blue-collar employee varies according to sector. An employer whose foreign blue-collar employee application has been approved will receive approval certification and must make the levy payment within 48 hours of the date of approval (Ministry of Home Affairs, Foreign Workers Management Division).

The *Fees Act 1951* does not prescribe the legal penalties for breach of the EMC policy by an employer. Notwithstanding, the letter of undertaking provides that failure to comply may result in the blacklisting of the employer by the Malaysian Immigration Department (thereby impacting their ability to employ foreign blue-collar employees).

b. Fees paid for passports (and/or passport renewals)

No breach of local laws.

c. Fees paid for visas and other travel documents

No breach of local laws.

d. Fees paid for border crossings

No breach of local laws.

e. Fees paid for travel from home to work location

No breach of local laws.

f. Fees paid for work training/orientation

No breach of local laws.

g. Fees paid to employer for rent

Generally not a breach of law.

However, if such 'fees' are in fact rental payments there may be restrictions on payments. For example, EA Employees who are:

- i. Provided with centralised accommodation by employers under the *Employees' Minimum Standards of Housing, Accommodations and Amenities Act* and its regulations (**Minimum Housing Standards Act**); and
- ii. Are working otherwise than in an estate,

Are not permitted to be charged more than RM 100 rent per month by their employer or centralised accommodation provider. Note: foreign employees who are employed in Malaysia (on a Social Visit (Temporary Employment) Pass, regardless of whether they fall within the EA) must be provided with centralised accommodation under the *Minimum Housing Standards Act*, and are therefore subject to the same.

Any employer or centralised accommodation provider who contravenes the above commits an offence under the *Minimum Housing Standards Act* and is liable to a fine of not more than RM 50,000, and for each day that the offence continues, a further fine of not more than RM 1,000 for each such day.

There are no similar restrictions for Malaysian Non-EA Employees, or expatriates.

h. Fees paid for accommodation in the departure location or during transit to the work location

No breach of local laws.

i. Fees paid for 'placement' 'recruitment' or 'thank you' fees

No breach of local laws.

j. Fees paid for translation services

No breach of local laws.

k. Fees paid for document checking and certification

No breach of local laws.

l. Fees paid for health assessment

No breach of local laws.

m. Fees paid for vaccinations

No breach of local laws.

n. Fees paid for travel booking services

No breach of local laws.

o. Fees paid for guaranteeing future work

No breach of local laws.

p. Fees paid for on-the-job training

No breach of local laws.

q. Knowingly charging fees to a worker to secure a job that does not exist

This conduct will likely constitute:

- i. 'Cheating', which is a crime under the *Penal Code*¹ punishable by up to 5 years imprisonment and/or a fine (of an unspecified amount); and
- ii. 'Providing false information to the authorities' in relation to the employment offer at the point of visa application which is also a crime under the *Immigration Act 1959*² punishable by up to 5 years imprisonment and/or a fine up to RM 10,000.

1 See [Penal Code](#), section 415.

2 See [Immigration Act 1959](#), section 56.

3. Child Labour

a. Employing a child below the legal working age.

Depending on the type of work involved and the age of the child, this conduct may be a breach of law.

There are limited types of work that can be undertaken by young persons (i.e., between the ages of 15 to 17) and children (i.e., aged 14 and below) as set out in the *Children and Young Persons (Employment) Act 1966 (CYP Act)*³.

The relevant types of permitted work include light work (work which is not likely to be harmful to the individual's health, mental or physical capacity), public entertainment and some other approved employment in specified workplaces / sectors⁴.

No child or young person should also engaged in any employment shall be required or permitted to work for more than six days in any period of seven consecutive days⁵.

Pursuant to the CYP Act, the penalty for breach is imprisonment for a term not exceeding two years and/or a fine not exceeding RM50,000

b. Employing a minor to engage in hazardous work.

This conduct is a breach of law. Persons under 18 years old cannot be required to carry out hazardous work. Hazardous work includes⁶:

- i. Work related to machines, installations and other equipment;
- ii. Work conducted in hazardous environment, being work exposed to physical, chemical or biological hazards;
- iii. Work containing certain hazardous nature and condition, being:
 - Construction work including construction of building, bridges, roads, or irrigation project;
 - Work in timber industry such as cutting, transporting and unloading trees;
 - Work offshore such as working in a petroleum platform; or
- iv. Work above or near water where the risk of drowning exist such as lifeguard, fishing activities and work in water treatment plant.

Pursuant to the CYP Act, the penalty for breach is imprisonment for a term not exceeding two years and/or a fine not exceeding RM50,000

3 See [Children and Young Persons \(Employment\) Act 1966](#), section 1A.

4 See [Children and Young Persons \(Employment\) Act 1966](#), section 2.

5 See [Children and Young Persons \(Employment\) Act 1966](#), section 4.

6 See [Children and Young Persons \(Employment\) Act 1966](#), Fourth Schedule.

4. Wage Deductions

a. Withholding wages as a bond

This conduct is a breach of law for EA Employees. Employers are not permitted to withhold wages from EA Employees.⁷ Deducting wages for this purpose is prohibited unless written approval has been obtained from the Director General of Labour (DGL)⁸, and this is unlikely to be granted. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

While there is no statutory restriction for withholding wages for non-EA Employees, the right to withhold wages must be set out in the employment terms.

b. Withholding wages as forced savings

See 4(a) above.

c. Withholding wages as punishment for being late to shift

See 4(a) above.

d. Withholding wages for refusing overtime

See 4(a) above.

e. Withholding wages for missing goods

See 4(a) above.

f. Withholding wages for accommodation (without explicit consent)

This conduct is a breach of law for EA Employees. Employers cannot withhold wages from EA Employees for this purpose, but deductions may be permitted with written consent from the EA Employee and DGL's written approval⁹. DGL approval will likely be granted for accommodation-related deductions, but the written consent of employees is required as well.

For non-EA Employees, the right to withhold wages must be set out in the employment terms.

g. Withholding wages for bills such as water (without explicit consent)

This conduct is a breach of law for EA Employees. Employers cannot withhold wages from EA Employees for this purpose, but deductions may be permitted with written consent from the EA Employee and DGL's written approval¹⁰. DGL approval will likely be granted for expense-related purposes associated with the accommodation including rent and the cost of services, food and meals provided by the employer to the employee at the employee's request, but the written consent of employees is required as well.

For non-EA Employees, the right to withhold wages must be set out in the employment terms.

⁷ See [Employment Act](#), section 19.

⁸ See [Employment Act](#), section 24(7).

⁹ See [Employment Act](#), section 24(4)(e).

¹⁰ Ibid.

h. Withholding wages to pay back recruitment fees

This conduct is a breach of administrative policy for foreign employees (to the extent that it relates to fees charged by the government for work permits or renewal of work permits. See response to Question 2(a) above.

For EA Employees (which typically include foreign employees), withholding wages is not permitted¹¹, and such deductions are only permitted with the DGL's written approval. DGL approval will unlikely be granted for this purpose, particularly in the current climate where there is increased public scrutiny on the exploitation of employees and the payment of recruitment fees. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

For non-EA Employees, the right to withhold wages must be set out in the employment terms.

i. Withholding wages for absence/illness (outside of legal terms in employment contract)

For EA Employees:

1. Employers may withhold wages if the employee is absent *without* leave;
2. Employers are not permitted to withhold wages if the employee is absent *with* leave.

Withholding wages of EA Employees is not permitted.¹² Deductions for this purpose can only be made with the written approval of the DGL¹³ and DGL approval is unlikely to be granted for this purpose. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

For non-EA Employees, the right to withhold wages must be set out in the employment terms.

j. Withholding wages for uniform/work equipment

This conduct is a breach of law for EA Employees. Employers are not permitted to withhold wages from EA Employees.¹⁴ Deductions for this purpose can only be made with the written approval of the DGL¹⁵. If the uniform/equipment is required by the employer or is mandatory for the purposes of the employees' work, DGL approval will unlikely be granted. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

For non-EA Employees, the right to withhold wages must be set out in the employment terms.

11 See [Employment Act](#), section 19.

12 Ibid.

13 See [Employment Act](#), section 24(7)

14 See [Employment Act](#), section 19.

15 See [Employment Act](#), section 24(7).

k. Taking control of the workers' bank account

In the absence of a power of attorney granted to the employer to deal with an employee's bank account, there is no lawful right for an employer to deal with or control an employee's bank account. If this is contravened, an employer may potentially be criminally liable for 'dishonest misappropriation of property'¹⁶.

In addition, if an employer takes steps to control an employee's bank account, those steps may also attract criminal liability under the *Penal Code*, for extortion¹⁷ or criminal intimidation¹⁸.

Further, for EA Employees, it is a breach of law for an employer to impose any condition in the contract of service to control the manner which an employee spends their wages¹⁹.

The penalty for 'dishonest misappropriation of property' is imprisonment of not less than 6 months and not more than 5 years, a fine and/or whipping. The penalty for extortion, is imprisonment for a term of up to 10 years, a fine, and/or whipping.

5. Employment Contracts

a. Workers do not have necessary legal work permits

This is a breach of law for both the employer and the employee

Carrying out work in Malaysia without a valid work permit / pass is an offence under the *Immigration Act 1959*²⁰.

Employers (companies, their directors, managers, secretary, or persons holding an office or similar position within the company) who engage foreigners illegally may be subject to the following penalties.

- Employing a foreign worker without a valid work permit attracts a penalty of fine of RM10,000 to RM50,000; imprisonment of a term between 6 months to 5 years; and/or whipping of a maximum of six strokes.
- Permitting illegal immigrants to enter or remain on their premises attracts a penalty of a fine of RM10,000-RM30,000 and/or imprisonment of a term of up to two years.
- Harboursing a foreign worker whom the company has reasonable grounds to believe is in contravention of the immigration laws (i.e., does not possess a proper work permit) attracts a penalty of a fine of up to RM10,000-RM50,000; imprisonment of a term between 6 months to 5 years; and/or whipping of a maximum of six strokes.

Employees working in Malaysia without a valid work permit/pass may be subject to a fine not exceeding RM10,000 or imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.

16 See [Penal Code](#), section 403.

17 See [Penal Code](#), section 383.

18 See [Penal Code](#), sections 503, 506.

19 See [Employment Act](#), section 26.

20 See [Immigration Act 1959](#), section 6(3).

b. Employment contract is not in writing

This conduct is a breach of law when employing EA Employees. Written employment contracts are required²¹. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

For Non-EA Employees, it is not unlawful for the employer not to provide a written employment contract, but it is typically provided.

c. Employment contract is not signed by the worker

No breach of local laws. The law is silent on this. Although this may potentially give rise to enforceability/validity issues.

d. Employment contract is not signed by the employer

No breach of local laws. The law is silent on this. Although this may potentially give rise to enforceability/validity issues.

e. Employment contract does not comply with local law

To the extent that an EA Employee's employment contract does not conform with the EA's Minimum Standards, it will not be a breach of law, as they will be superseded by the EA's minimum standards terms. If an employer implements (in practice) standards which are less favourable than the EA, it will be a breach of law.

Where there has been a failure or non-compliance in relation to rest days, overtime, holidays, annual leave and sick leave, upon conviction, the court would order the employer to pay the amount owed/recoverable as if it were a fine imposed by such court.

Further, there is a general penalty provision pursuant to the EA that stipulates that any failure to comply with the relevant provisions of the EA would, upon conviction, impose a penalty of a fine not exceeding RM10,000.

Non-compliance with the EA's Minimum Standards could also give rise to constructive dismissal claims (where the employee resigns in response to a breach of their employment contract by the employer), thereby exposing the employer to unfair dismissal liability. In a successful unfair dismissal claim, an impacted employee may be compensated with up to 24 months of backwages (or 12 months for probationers), plus 1 month's salary for year of service as compensation in lieu of reinstatement (or 2 months, in rare cases of victimization).

Non-EA Employees' entitlements depend upon their employment contract, save for maternity leave benefits prescribed under the EA which apply regardless of whether they are an EA or Non-EA Employee.

f. Employment contract is not in the worker's native language

No breach of law laws. Although this may potentially give rise to enforceability/validity issues, particularly in respect of whether the employee gave free consent (to terms they do not understand).

There is no legal requirement that the employment contract is in the worker's native language unless a Memorandum of Understanding between the government of Malaysia and the government of the foreign employees' home country has been executed requiring it.

21 See [Employment Act](#), section 10(1); Employment Regulations 1957, Regulation 8.A

g. Contract excludes key components

i. Wages estimates

This is a breach of local laws for EA Employees. The *Employment Regulations 1957 (EA Regulations)*²² provide that employment entitlements (including wage rates, other allowances payable and rates, and overtime rates) must be set out in writing in an employee's employment terms (e.g. in an employment contract, handbook etc.). These entitlements cannot be excluded from the written employment terms, and any such exclusion is a breach of law. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

No breach of local laws for Non-EA Employees.

ii. Early termination with notice

This is a breach of local laws for EA Employees. The EA requires that employment contracts for EA Employees include termination provisions (whether or not with notice)²³. Further, EA Regulations provide that details in respect of the agreed period of notice for termination of employment (or payment in lieu of notice) must be set out in writing in an employee's employment terms (e.g. in an employment contract, handbook etc.)²⁴. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

No breach of local laws for Non-EA Employees.

iii. Early termination without notice

This is a breach of local laws for EA Employees. The EA requires that employment contracts for EA Employees include termination provisions (whether or not with notice)²⁵. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

No breach of local laws for Non-EA Employees.

iv. Details of mandatory recruitment fees

No breach of local laws.

v. Transportation terms (including repatriation costs at end of contract)

For EA Employees, if transportation terms are included as a benefit for the employee, then those benefits must be set out in writing in their employment terms (e.g. in an employment contract, handbook etc.)²⁶. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

No breach of local laws for Non-EA Employees.

22 See [Employment Regulations 1957](#), Regulation 8.

23 See [Employment Act](#), section 10.

24 See [Employment Regulations 1957](#), Regulation 8.

25 See [Employment Act](#), section 10.

26 See [Employment Regulations 1957](#), Regulation 8.

vi. Accommodation terms (if relevant);

For EA Employee, if accommodation terms are included as benefit for the employee, then those benefits must be set out in writing in their employment terms (e.g. in an employment contract, handbook etc.)²⁷.

No breach of local laws for Non-EA Employees.

vii. Discipline terms (lateness, illness etc.)

No breach of local laws.

viii. Standard holiday entitlements

This is a breach of local laws for EA Employees. Their employment entitlements (including number of days of entitlement to holidays and annual leave with pay) must be set out in writing in their employment terms (e.g. in an employment contract, handbook etc.)²⁸.

No breach of local laws for Non-EA Employees.

ix. Illness entitlements

This is a breach of local laws for EA Employees. Their employment entitlements (including details of sick leave with pay) must be set out in writing in their employment terms (e.g. in an employment contract, handbook etc.)²⁹.

No breach of local laws for Non-EA Employees.

h. Illiterate workers have not been read their contract

No breach of local laws, but the contract may not be legally binding.

i. Employment contract has been substituted or amended after signing

No breach of law. Depending on the terms that are being amended or substituted, consent of the employees may be required. Failure to do so exposes the employer to a risk of constructive dismissal claims.

j. Workers are not provided a copy of their contract

This is a breach of local laws for EA Employees. Their employment entitlements must be set out in writing in their employment terms (e.g. in an employment contract, handbook etc.), which must then be provided to the employee³⁰. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

No breach of local laws for Non-EA Employees but there is a risk of potential dispute regarding the terms of employment.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.

6. Payment Issues

a. Payslips are not provided to workers

This is a breach of local laws for EA Employees. Employers must provide, in a separate document (similar to a payslip), details of wages and other allowances earned³¹.

While EA Regulations do not apply to Non-EA Employees, the *Employees Provident Fund Rules 1991* provides that all employees (including Non-EA Employees) are required to be provided with a statement of wages which prescribes the same³².

Under the EA, failure to provide details of wages (similar to a payslip) attracts a fine not exceeding RM10,000.

Pursuant to the Employees Provident Fund Rules, employers who fail to provide a statement of wages (applicable to both EA and Non-EA Employee) may be liable to imprisonment for a term not exceeding 3 months and/or to a fine not exceeding RM1,000

b. Payslips are not compliant with local laws, if any

This is a breach of local laws for EA Employees. Employers must provide, in a separate document (similar to a payslip), details of wages and other allowances earned³³. There are prescriptive requirements relating to the content of payslips, including but not limited to details relating to rate of pay, hours worked, overtime hours, leave entitlements, deductions, allowances and advances.

While EA Regulations do not apply to Non-EA Employees, the *Employees Provident Fund Rules 1991* provides that all employees (including Non-EA Employees) are required to be provided with a statement of wages which contains the following particulars:

- i. Full name of employee;
- ii. Employees Provident Fund membership number;
- iii. Sex;
- iv. Identity Card number and colour;
- v. Duration period of wage payment;
- vi. Wages for the period;
- vii. Other remuneration for the period;
- viii. Amount deducted for Employees Provident Fund contributions;
- ix. Employer's registration number;
- x. Amount paid for employer's share of contributions; and
- xi. Full name of employer/employer representatives, signature and date of issue of statement³⁴.

Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

31 See [Employment Regulations 1957](#), Section 9.

32 See [Employees Provident Fund Rules 1991](#), Rule 23.

33 See [Employment Regulations 1957](#), Section 9.

34 See [Employees Provident Fund Rules 1991](#), Rule 23.

c. Payslips are not legible

Strictly speaking, this is not a breach of law, but as employees are required to be provided with details / statement of wages which contains the information prescribed in 6(b) above, it is presumed that the details of such statements must be easily discernible.

d. Workers are not paid the salary agreed in their contract of employment

This is a breach of law for EA Employees. Employers must pay EA Employees' salary by the seventh day after the last day of when the employee earned such wages³⁵. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

Further, failure to pay salaries which are contractually agreed (for EA and Non-EA Employees) is a breach of the employment contract.

e. Workers are paid late

This is a breach of law for EA Employees. Employers must pay EA Employees' salary by the seventh day after the last day of when the employee earned such wages³⁶. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

While there is no statutory restriction against late payments for non-EA Employees, it would likely amount to a breach of the employment contract.

f. Workers are not paid minimum wage

This is a breach of law for EA Employees. The *Minimum Wages Order 2020* provides that the minimum wage in the following City Council or Municipal Council areas (**Prescribed City Council or Municipal Council Areas**) is RM 1,200.00 per month, or RM 5.77 per hour:

- City Council areas - Johor Bahru; Iskandar Puteri; Alor Setar; Melaka Bersejarah; Pulau Pinang; Seberang Perai; Ipoh; Shah Alam; Petaling Jaya; Kuala Terengganu; Kuching Utara; Kuching Selatan; Miri; Kota Kinabalu; Kuala Lumpur; and Seremban.
- Municipal Council areas - Batu Pahat; Kluang; Kulai; Muar; Segamat; Pasir Gudang; Kulim; Sungai Petani; Langkawi; Kubang Pasu; Kota Bharu; Alor Gajah; Jasin; Hang Tuah Jaya; Port Dickson; Jempol; Kuantan; Temerloh; Bentong; Manjung; Kuala Kangsar; Taiping; Teluk Intan; Kangar; Ampang Jaya; Kajang; Klang; Selayang; Subang Jaya; Sepang; Kemaman; Dungun; Padawan; Sibul; Kota Samarahan; Bintulu; Sandakan; Tawau; Labuan; and Putrajaya.

For other areas which are not listed above, the minimum wage is RM 1,100.00 per month, or RM 5.29 per hour.

The National Wages Consultative Council Act provides that employers who fail to pay the minimum wage are liable for a fine of up to RM10,000 for each employee.

³⁵ See [Employment Act](#), section 19.

³⁶ Ibid.

g. Workers are paid a piece-rate that is not equal to minimum wage

This is a breach of law for EA Employees.

- Minimum monthly basic wages for employees paid based only on piece rate in the Prescribed City Council or Municipal Council Areas is RM 1,200 per month / RM 5.77 per hour.
- Minimum monthly basic wages for employees paid based only on piece rate outside the Prescribed City Council or Municipal Council Areas is RM 1,100 per month / RM 5.29 per hour.

The National Wages Consultative Council Act provides that employers who fail to pay the minimum wage are liable for a fine of up to RM10,000 for each employee.

h. Workers are not provided with holiday pay

This is a breach of law for EA Employees. The EA provides for:

- i. Paid annual leave³⁷;
 - 8 Days for every 12 months of continuous service with the same employer if the employee has been employed by that employer for a period of less than 2 years;
 - 12 Days for every 12 months of continuous service with the same employer if the employee has been employed by that employer for a period of 2 years or more but less than 5 years; and
 - 16 Days for every 12 months of continuous service with the same employer if the employee has been employed by that employer for a period of 5 years or more.
- ii. Paid public holidays³⁸ which include provision of a minimum of 11 paid public holidays, 5 of which must be
 - National day (31 august);
 - Birthday of the yang di-pertuan agong (king of malaysia);
 - Birthday of the ruler or the state;
 - Malaysia day (september 16); and
 - Workers' day (may 1); and
- iii. Maternity leave³⁹. Every female employee (regardless of whether they are an ea or non-ea employee) is entitled to maternity leave for a period of not less than 60 consecutive days for each occasion. Such maternity leave will be paid in the form of maternity allowance, that is essentially wages paid at the ordinary rate of pay that the employee would have earned during that period) if:
 - The employee does not have more than 4 surviving natural children at the time of delivery (excluding the new born baby); and
 - The employee has been an employee of the company for more than 90 days during the 9 months immediately preceding the employee's delivery and for at least 1 day during the 4 months before delivery.

37 See [Employment Act](#), section 60E.

38 See [Employment Act](#), section 60D.

39 See [Employment Act](#), section 37

Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

Non-EA Employees are not entitled to paid annual leave or paid public holidays, but such entitlements are typically included within the employment agreement.

i. Workers are not provided with sick pay

This is a breach of law for EA Employees. The EA provides for statutory minimum paid sick leave⁴⁰.

- i. If hospitalisation is not necessary, the employee is entitled to:
 - 14 days in aggregate in each calendar year if the employee has been employed for less than 2 years;
 - 18 days in aggregate in each calendar year if the employee has been employed for 2 years or more but less than 5 years; and
 - 22 days in aggregate in each calendar year if the employee has been employed for 5 years or more.
- ii. If hospitalisation is necessary, the employee is entitled to 60 days in aggregate in each calendar year.

Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

Non-EA Employees are not statutorily entitled to sick pay leave, but such entitlements are typically included in the employment contract, and any breaches would amount to a breach of contract.

j. Workers are paid 'in-kind' through other means (like 'work-for-benefits')

There is no legal recognition of such 'payment' methods in Malaysia. Such payments will be a breach of local laws if they are not accompanied by other monetary payments which meet the minimum wage described in 6(f). See also 6(k) below.

k. Workers are not paid in legal tender

This is a breach of law for EA Employees. Payment must be paid in legal tender. Payment of wages made in other form will be illegal, null and void⁴¹. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

For non-EA Employees, some element of monetary remuneration is still required for compliance with the *Minimum Wage Order 2020*, which sets the minimum wage threshold in monetary terms.

l. Workers are required to work compulsory overtime

This may be a breach of law for EA Employees. EA Employee must not be required to work more than a total of 12 total hours (inclusive of overtime) per day⁴² and 104 hours of overtime in any one month⁴³. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

There are no similar restrictions for Non-EA Employee. Employers may expressly provide for overtime work in their employment contract.

In any case, requests for overtime by EA Employees should be justified to avoid unfair dismissal liability. For non-EA Employees, as

40 See [Employment Act](#), section 60F.

41 See [Employment Act](#), section 25.

42 See [Employment Act](#), section 59(1).

43 See [Employment \(Limitation Of Overtime Work\) Regulations 1980](#), section 2.

m. Workers are not paid for overtime work

This is a breach of law for EA Employees. EA Employees must be paid special rates for undertaking overtime work beyond their regular hours of work, on a rest day, and on public holidays⁴⁴. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

There is no breach of law for non-EA Employees. That said, employers should expressly provide in the employment contract that any overtime work done will not be remunerated.

n. Overtime work is used to discipline workers

No breach of local law. An employer may on the grounds of misconduct inconsistent with the fulfilment of the conditions of the employee's service, impose any punishment lesser than a dismissal or downgrading which the employer deems just and fit, after a due inquiry.

For EA Employees, despite it being a proportionate punishment for the employee's misconduct, the employer should still comply with the statutory overtime limit (not more than a total of 12 hours per day).

For non-EA Employees, there is no statutory limit on how much overtime work that can be imposed on the employee (as punishment). That said, practically speaking, it should still be reasonable and proportionate to the misconduct committed.

o. Overtime pay is not in line with legal minimum wage

This is a breach of law.

EA Employees must be paid special rates for undertaking overtime work beyond their regular hours of work, on a rest day, and on public holidays⁴⁵. Pursuant to the EA, the penalty for breach is a fine not exceeding RM 10,000.

While Non-EA Employees are not entitled to statutory special rate payments, to the extent that they are earning wages on an hourly basis, they must be paid the minimum wage per hour. Please see 6(f) for further details.

⁴⁴ See [Employment Act](#), sections 60 and 60A.

⁴⁵ Ibid.

7. Withholding of Passports and Documents

a. Workers' documents (passport, identity documents etc.) are held and they are unable to access them if they want to

This is a breach of law. This conduct (by any person) is prohibited under the Malaysian *Passport Act 1966*⁴⁶. The penalty is a fine not exceeding RM 10,000 and/or imprisonment for a term not exceeding 5 years.

Living in Malaysia without a valid passport/pass/permit is an offence under the *Immigration Act*⁴⁷. Failure to produce a passport, travel document or entry permit upon demand is also an offence under the *Immigration Act 1959/63*⁴⁸.

An individual (i.e., employee) who lives in Malaysia without a valid passport/pass/permit, on conviction, is liable for a fine not exceeding RM 10,000 or imprisonment for a term not exceeding 5 years or both, and shall also be liable to whipping of not more than 6 strokes.

Further, an individual (i.e., employee) that fails to produce a passport, travel document or entry permit upon demand, is liable for a fine not exceeding RM 10,000 and/or imprisonment for a term not exceeding 5 years.

Typically, employers provide lockers for foreign employees to keep their passports.

b. Documents are held by employers without express consent

This is a breach of law. Such conduct by an employer is potentially an offence for obtaining property by deception under the Malaysian *Penal Code*⁴⁹.

Pursuant to the Penal Code, an individual (i.e., employer) that deceptively obtains property is liable to imprisonment for a term not less than one year and not more than 10 years, with whipping, and a fine (to be determined by the court on a case by case basis).

Further, having a passport or internal travel document without lawful authority which is issued for the use of a person other than the individual in possession of the document is an offence under the *Passport Act 1966*⁵⁰, and it is punishable with a fine less than RM 10,000 and/or an imprisonment term less than 5 years upon conviction.

46 See *Passport Act 1966*, section 12(1)(f).

47 See *Immigration Act*, sections 6(1)(c) and 6(3).

48 See *Immigration Act 1959/63*, section 56(4)(a).

49 See *Penal Code*, sections 415, 417 and 420.

50 See *Passport Act 1966*, section 12(1)(f).

8. Deprivation of Liberty

a. Workers are not permitted to leave the workplace (outside of normal working practices)

This is a breach of law. Such conduct amounts to wrongful confinement and an offence under the Malaysian *Penal Code*,⁵¹ which is punishable with imprisonment of up to 1 year and/or a maximum fine of RM 2,000, for each count of the offence. False imprisonment is also a common law offence.

b. Workers are not permitted to leave their accommodation except to attend work

This is a breach of law. See 8(a) above.

c. Workers are not permitted to leave the country without permission from their employer (e.g. Kafala system)

This is a breach of law. See 8(a) above.

d. Workers require permission to change employer or leave their job (outside of the contractual notice period)

Employees do not require the permission of their employer to leave their employment or to switch employers. Refusing an employee's right to leave their employment or to switch employers may be a breach of the law, triggering the legal issues and penalties mentioned in 8 (a) above.

However, to the extent that it involves a foreign employee, the work permit of a non-Malaysian is tied to only one employer. If the non-Malaysian intends to work for another Malaysian employer, the work permit with the existing employer will have to be terminated and the new employer will have to apply for a new work permit issued by the Malaysian Immigration Department. Failure to do so (i.e., unlawfully carrying out work in Malaysia without a valid work permit) is an offence under the Malaysian *Immigration Act 1959/63*.

e. Workers are assigned a minder if they wish to leave their accommodation/workplace outside of normal working hours

No breach of local laws.

f. Workers are physically locked into the workplace

This is a breach of law. See 8(a) above.

g. Military/government security guards are used to guard the workplace

No breach of local laws.

51 See [Penal Code](#), sections 340 and 342.

9. Intimidations/Threats/Violence

This relates to abuse either at work or in company accommodation (by their employer or peers/management etc.)

a. Workers experience, or are threatened with, physical abuse

This is a breach of law. Specifically, there is potential liability for the following offences under the Malaysian *Penal Code*.

- Extortion (which is punishable with a maximum imprisonment term of 10 years, or an unlimited fine, or whipping, or any two of such punishments)⁵².
- Voluntary causing hurt⁵³ (which is punishable with a maximum imprisonment term of 1 year and/or a maximum fine of RM 2,000).
- Voluntary causing grievous hurt⁵⁴ (which is punishable with a maximum imprisonment term of 7 years, **and** an unlimited fine).
- Assault⁵⁵ (which is punishable with a maximum imprisonment term of 3 months and/or a maximum fine of RM 1,000)
- Criminal intimidation⁵⁶ (which is punishable with a maximum imprisonment term of 2 years and/or an unlimited fine; if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment, or with imprisonment for a term that may extend to 7 years, or to impute unchastity to a woman, that form of criminal intimidation shall be punishable with a maximum imprisonment term of 7 years and/or an unlimited fine).

b. Workers experience, or are threatened with, psychological abuse

This is a breach of law. Specifically, there may be potential liability for offences under the Malaysian *Penal Code*. See 9(a) for further details.

c. Workers are threatened with deportation if they do not comply with demands

This is a breach of law. Specifically, there may be potential liability for offences under the Malaysian *Penal Code*. See 9(a) for further details.

52 See [Penal Code](#), section 383 and 384.

53 See [Penal Code](#), sections 321 and 323.

54 See [Penal Code](#), sections 322 and 325.

55 See [Penal Code](#), section 351 and 352.

56 See [Penal Code](#), sections 503 and 506.

10. Isolation

a. Confiscation of the worker's mobile device

No breach of local law.

b. Workers are required to ask permission to contact friends/family

No breach of local law.

11. Sexual Harassment

For each of the following circumstances, please indicate:

- i. Whether it involves a potential breach of local law;
- ii. If so, what the local law says in relation to the potential violation; and
- iii. Any other notable considerations.

a. Workers experience, or are threatened with, sexual abuse

This is a breach of law. Specifically, there may be potential liability for the following offences under the Malaysian Penal Code.

- Voluntary causing hurt⁵⁷(which is punishable with a maximum imprisonment term of 1 year and/or a maximum fine of RM 2,000).
- Voluntary causing grievous hurt⁵⁸(which is punishable with a maximum imprisonment term of 7 years, and an unlimited fine).
- Assault⁵⁹(which is punishable with a maximum imprisonment term of 3 months and/or a maximum fine of RM 1,000).
- Rape⁶⁰(which is punishable with a maximum imprisonment term of 20 years and whipping).
- Sexual connection through use of objects⁶¹(which is punishable with imprisonment ranging from 5 to 30 years and whipping).
- Outrages on decency⁶²(which is punishable with maximum imprisonment term of 2 years).

57 See [Penal Code](#), sections 321 and 323.

58 See [Penal Code](#), sections 322 and 325.

59 See [Penal Code](#), section 351 and 352.

60 See [Penal Code](#), section 375 and 376.

61 See [Penal Code](#), section 377CA.

62 See [Penal Code](#), section 377D.

b. Workers are required to take pregnancy/sexual health tests

No breach of law. There are no legal restrictions with respect to tests to be carried out on employees. However, there is no way of compelling the individual to take such tests. Requests and any negative consequences will have to be justified and proportionate (taking into account the individual employment circumstances) to avoid unfair dismissal liability.

c. Workers are required to take contraception

No breach of law, unless it involves permanent contraception, which may be prohibited under the employee's religion (especially for Muslims)⁶³.

The lawfulness of any request to take temporary contraception will depend on the reasonableness of the request, with reference to the type of work. We are currently not aware of any occupation that would justify such a requirement. Such request will also have to be justified and proportionate (taking into account the individual employment circumstances) to avoid unfair dismissal liability.

12. Bonded Labour

a. Workers have debts (that are unofficial, not in writing etc.) related to their employment

No breach of law. However, for EA Employees there are certain restrictions for advances of wages and salary deductions for recovery of such advances⁶⁴.

The EA sets out limitations on advances to employees, such that employers shall not (with certain exceptions) make advancements of wages (not already earned by the employee), which exceed in the aggregate the amount of wages which the employee earned in the preceding month.

For EA Employees, wage deductions can be effected, without restriction, to:

- a. Recover overpayment of wages made, by virtue of the employer's mistake, in the 3 months immediately preceding the month in which deductions are to be made;
- b. Recover payment in-lieu of notice which is payable by the EA Employees;
- c. Recover interest-free advances made to the EA Employees in the past; and
- d. Make any other statutory deductions (e.g., payroll contributions).

Other types of deductions from an EA Employee's wages can only be effected by obtaining prior approval from the Director-General of Labour.

Further, an employer is not permitted to make any deduction or receive any payment from any EA employee by way of discount, interest or any similar charge on account of any advancement of wages made.

⁶³ See [Federal Constitution](#), Art.11 on 'freedom of religion'.

⁶⁴ See [Employment Act](#), sections 23 and 24.

b. Workers have debt that is unethical (such as excessive or illegally high interest rates) related to their employment

No breach of law. However, for EA Employees there are certain restrictions for advances of wages and salary deductions for recovery of such advances (with or without interest)⁶⁵. See 12(a) above.

Interest cannot be imposed for advances that are in the aggregate less than 1 month's salary⁶⁶.

c. Workers are in debt to their employer or recruiter

No breach of law. However, for EA Employees there are certain restrictions for advances of wages and salary deductions for recovery of such advances⁶⁷. See 12(a) above.

d. Workers are in debt due to paying recruitment fees

No breach of law. However, for EA Employees there are certain restrictions for advances of wages and salary deductions for recovery of such advances (with or without interest)⁶⁸. See 12(a) above.

⁶⁵ Ibid.

⁶⁶ See [Employment Act](#), section 27.

⁶⁷ See [Employment Act](#), sections 23 and 24.

⁶⁸ Ibid.



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