

THE INDUSTRIAL RELATIONS (AMENDMENT) ACT 2020 –
A SUMMARY OF THE AMENDMENTS

On 20 February 2020, the **Industrial Relations (Amendment) Act 2020 (“IRA 2020”)** was gazetted. The majority of the provisions contained in the IRA 2020 came into effect on 1 January 2021 save for the provisions relating to bargaining rights and essential services which are not in force yet.

The amendments will see significant changes to the employment and industrial relations landscape in Malaysia. The key amendments which have come into force with effect from 1 January 2021 are set out below.

Representation on Unfair Dismissal

Previously, under the **Industrial Relations Act 1967 (“IRA 1967”)**, an employee who considers himself to have been dismissed without just cause or excuse, may make a written representation to the Director General of the Industrial Relations Department to seek reinstatement. The Industrial Relations Department will then hold a conciliation meeting between the employee and the employer to determine whether the matter can be amicably resolved. If the matter cannot be amicably resolved, the Director General will then refer the representation to the Minister of Human Resources. The Minister then had the discretion to refer the representation to the Industrial Court for determination.

Pursuant to the IRA 2020, if the matter cannot be amicably resolved at the conciliation meeting, the Director General shall then refer the representation to the Industrial Court for determination. In essence, a representation would be automatically referred to the Industrial Court for determination unless the employer and employee are able to resolve the matter amicably at the conciliation meeting. This would essentially speed up the dispute resolution process which would benefit an employee who has been unfairly dismissed as the

representation would be referred to the Industrial Court if no resolution is reached with the employer at the conciliation meeting.

An employer or employee may also now be represented by any person of their choice at the conciliation meeting except an advocate and solicitor so long as it is approved in writing by the Director General.

Appeal to the High Court

Previously, under the 1967 Act, an aggrieved party could challenge an Industrial Court Award by filing an application for judicial review in the High Court. A party who is dissatisfied with the decision of the High Court in the judicial review application can pursue an appeal to the Court of Appeal with a final appeal being filed to the Federal Court subject to leave being obtained.

Now, pursuant to the IRA 2020, a party who is aggrieved by an Industrial Court Award, can file an appeal to the High Court within 14 days from the date of receipt of the said Award. The applicable procedures would be similar to that of an appeal to the High Court against the decision of the Sessions Court. This would essentially mean that the final recourse available to an aggrieved party is to the Court of Appeal. The right to bring the matter up to the Federal Court is therefore taken away. This is a significant development as there have been many landmark decisions made by the Federal Court on matters concerning employment and industrial relations.

This amendment will however not have retrospective effect. As such, cases filed before 1 January 2021 will not be affected and an aggrieved party may still challenge an Industrial Court Award by way of a judicial review application in the High Court.

Power to Continue Proceedings After Death

Prior to the IRA 2020, an unfair dismissal claim in the Industrial Court would abate upon the death of the Claimant as the claim was considered to be a personal action. However, following

the coming into force of the IRA 2020, the Industrial Court is now empowered to continue hearing the unfair dismissal claim even after the death of the Claimant.

This amendment could however pose problems from a practical standpoint as the Claimant would be the main witness in any unfair dismissal claim and in the absence of the Claimant, the Industrial Court would be deprived of hearing the evidence of the Claimant either entirely or in part.

Compensation to the Next-of-Kin

The IRA 2020 also empowers the Industrial Court to award backwages or compensation in lieu of reinstatement or both to the next-of-kin of the Claimant who has passed away.

This is a significant development as the next-of-kin of a Claimant can stand to benefit from an Industrial Court Award in the event the Claimant passes away before the handing down of the said Award.

Appointment of Guardian Ad Litem

The IRA 1967 does not contain any provision for the appointment of a guardian *ad litem*. However, under the IRA 1967, the next-of-kin of a mentally disable employee may apply to the High Court to appoint a guardian *ad litem* for the employee.

Unfair Dismissal Claims by Employees of Statutory Bodies

Pursuant to the IRA 1967, employee of statutory bodies did not have the right to file a representation for unfair dismissal. However, with the coming into force of the IRA 2020, employees of statutory bodies have right to file such a representation in certain situations which is prescribed by the Minister of Human Resources.

Power to Impose Interest

Previously, under the IRA 1967, there was no provision entitling the Industrial Court to award interest. However, under the IRA 2020, power is conferred on the Industrial Court to impose interest of up to 8% per annum to an Award commencing from the 31st day of the said Award. This is also a significant development as a successful Claimant in the Industrial Court could now be awarded interest on the awarded sum and the interest could be up to 8% per annum which is higher than the interest rate prescribed by the Malaysian civil courts (5% per annum).

Increase of Penalty for Non-Compliance with Award

Previously, under the IRA 1967, a person who fails to comply with an Industrial Court Award could be liable to a fine not exceeding RM1,000.00. This penalty has now been increased to a fine not exceeding RM50,000.00 under the IRA 2020. Imprisonment has also been abolished under the IRA 2020.

Punishment for Illegal Picketing, Strikes and Lock-Outs

Previously, under the IRA 1967, a person could be liable to a fine not exceeding RM2,000.00 by reason of illegal picketing, strikes and lock-outs. This penalty has now been increased to a fine not exceeding RM5,000.00 under the IRA 2020.

No Question of Law to the High Court

The IRA 1967 empowered the Industrial Court to refer questions of law to the High Court. The IRA 2020 has however now abolished this power.

The Power of Trade Unions

The IRA 2020 empowers trade unions to raise questions of a general character relating to the transfer, recruitment, termination of services due to redundancy, dismissal, reinstatement and distribution of tasks.

Deputy President of the Industrial Court

The IRA 2020 has created a new position in the form of a Deputy President of the Industrial Court.

Qualifications of an Industrial Court Chairman

Previously, under the IRA 1967, an Industrial Court Chairman must have been a practicing lawyer of at least 7 years standing. This requirement has now been expanded to include a legally qualified person with at least 15 years' experience in labour and industrial relations in the Ministry of Human Resources.

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