



ISSUE ARISING FROM TERMINATION

PRACTICE NOTE

STATUTORY MINIMUM NOTICE OF TERMINATION

This Practice Note considers the various legal issues associated with the statutory minimum period of notice given by an employer or an employee when a contract of employment is brought to an end.

Further, it provides a brief overview on the length of notice to be given, persons who qualify for minimum notice, the requirement of minimum notice to be given, waiver of the minimum notice and the consequences of failing to give sufficient notice in accordance to the statutory minimum notice provision.

Statutory Minimum Notice

With respect to the labour laws in Malaysia, an employer or an employee is required to adhere to the notice requirements set out in the employment contract and/or under the applicable statutory provisions before bringing the employment contract to an end.

Typically, the period of prior notice to be given by an employer or an employee shall be in accordance with the notice period stipulated in the employment contract. However, in the absence of such a term in the employment contract, the statutory minimum period of notice pursuant to **Section 12 of the Employment Act 1955** must be adhered. This will be canvassed below.

Length of statutory minimum notice

Generally, the length of notice for a termination to be given will be dependent on the employee's tenure of employment in the organisation.

Section 12 (2) of the Employment Act 1955 stipulates that if the employee has been employed for a period less than two (2) years on the date of notice, the period of notice to terminate shall be four (4) weeks. For an employee who has been employed for two (2) years or more but less than five (5) years on the date of notice, the notice period shall be six (6) weeks. However, if the employee has been employed for more than five (5) years on the date of notice, the minimum notice period shall be eight (8) weeks.

In view of the above, the employer should calculate the employee's minimum working period in order to provide a reasonable termination notice when the employer decides to terminate the employment contract.

Who qualifies for statutory minimum notice?

The right to statutory minimum notice shall be applicable to employees who are within the purview of the Employment Act 1955.

However, employees who do not fall within the purview of the Employment Act 1955 will be bound by the relevant provisions in the employment contract. In the event the employment contract does not provide for the termination notice period, then the period of notice will either be determined by the custom of the trade or industry or the principle of reasonable notice would apply.

Lord Denning MR in [*Richardson and Another v Koefod \[1969\] 3 All E.R. 1264*](#) stated that *in the absence of express stipulation, the rule is that every contract of service is determinable by reasonable notice.*

What is deemed to constitute a reasonable notice will depend on the facts and circumstances of the case which also takes into account various factors such as the employee's age, nature and character of work, length of service and seniority in employment.

Requirement of statutory minimum notice

Pursuant to the Employment Act, the requirement for the minimum notice period may differ by reason of the grounds for the termination.

Under **Section 12 (3) of the Employment Act 1955**, the employer is required to give notice of termination not less than the period of notice stipulated in **Section 12 (2) of the Employment Act 1955** where the grounds for termination is wholly or mainly attributable to the closure of business, decline in business operations, restructuring or reorganisation of business, change of ownership of business or that the employee refuses to accept a transfer to a different place of employment.

The High Court in [*Kerisna A/L Govindasamy Lwn Highlands & Lowlands, Ladang Bukit Selarong \[2003\] 6 MLJ 739*](#) held as follows:

"The respondent was obliged to give a notice of termination of service pursuant to s 12(3)(a) and (d) of the Employment Act 1955 ('the Act') because the respondent intended to change the nature of its business from rubber plantation to palm oil plantation. The respondent should then issue a letter to offer new employment to the appellant. Since there was no new employment offer letter, the appellant was entitled to regard his employment as having been terminated and that he was entitled to receive termination benefits."

In [*Barat Estates Sdn Bhd & Anor V Parawakan Subramaniam & Ors \[2000\] 4 MLJ 107*](#), the Court of Appeal in its decision in favour of the employee held that *where there is a termination of service because of a change in the ownership of the business in which the employee is employed, the employer must give the employee the appropriate period of notice.*

Waiver of statutory minimum notice

It is imperative to note that by virtue of **Section 12 (2) of the Employment Act 1955**, the employer or the employee cannot prevent either party from waiving their right to a notice for termination of the employment contract.

In the event the length of the notice is waived by mutual consent of both the employer and the employee, then the employer will be subjected to pay an equivalent payment in lieu of notice to the employee.

Consequences of failing to give the statutory minimum notice

In the event an employee considers that he/she was dismissed without a just cause or excuse and where the dismissal was not within the minimum notice period, the employee may bring an action for unfair dismissal against the employer under **Section 20 of the Industrial Relations Act 1967**.

By reason of the employer's failure to provide the statutory minimum notice of termination in accordance to the length of notice stipulated in **Section 12 (2) of Employment Act 1955**, the employer shall be liable to recompense the employee with salary in lieu of notice.

In this context, the employer shall indemnify a sum equivalent to the amount of wages which would have been accrued to the employee during the term of such notice or during the unexpired term of such notice. See: [*Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Petroleum dan Kimia Semenanjung Malaysia v Herbal Science Sdn Bhd \[2011\] 4 ILJ 471*](#).

This was similarly illustrated in [*Bond Electrical \(Kl\) Sdn Bhd V Abu Bakar Bin Chik & Lain - Lain \[2002\] 4 MLJ 139*](#) where the High Court held as follows:

"By giving a four-day notice of resignation, the appellant had breached the provision of s 12(2)(a) of the Act which compels the appellant to give the respondents a four week notice of termination. Therefore, the respondents were entitled to 20 days' salary in lieu of notice of

termination amounting to RM1,600 for each respondent, as claimed for and awarded by the labor officer.”

It is also imperative to note that where the employer has failed to provide the required statutory notice to the employee before dismissing the employee, the employer may be liable under **Section 99A of the Employment Act 1955** to a fine not exceeding RM10,000.00.

Note: This article does not constitute legal advice on any of the issues addressed above. Please contact the following persons should you have any queries:

1. Rohan Arasoo Jeyabalah
Partner
rohan@hlplawyers.com
2. Teoh Yen Yee
Senior Associate
yenyee@hlplawyers.com
3. Esvine Maria Saganathan
Associate
esvine@hlplawyers.com

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