



PARLIMEN MALAYSIA



RANG UNDANG-UNDANG

Kerja (Pindaan) 1971

DR.75/1971

RANG UNDANG²

bernama

Suatu Akta bagi meminda Ordinan Kerja, 1955.

[1]

MAKA INI-LAH DI-PERBUAT UNDANG² oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Ra'ayat yang bersidang dalam Parlimen, dan dengan kuasa daripada-nya, saperti berikut :

- | | |
|--|--|
| 1. Akta ini boleh-lah di-namakan Akta Kerja (Pindaan), 1971. | Tajok ringkas. |
| 2. Ordinan Kerja, 1955 ada-lah dengan ini di-pinda mengikut chara yang di-nyatakan dalam Jadual bersama ini. | Pindaan 38/55. |
| 3. Peratoran ² Perlu (Kerja), 1969 dan Peratoran ² Perlu (Kerja), 1971 ada-lah dengan ini di-mansokhkan. | Peman-sokhan.
P.U. (A) 409/69.
P.U. (A) 35/71. |

JADUAL

(Pindaan² kapada Ordinan Kerja, 1955)

1. Sekshen 2

(a) masokkan sa-lepas sahaja ta'arif "child" ta'arif baharu yang berikut—

“ ‘collective agreement’ has the same meaning assigned thereto in the Industrial Relations Act, 1967;” dan

(b) masokkan sa-lepas sahaja ta'arif “fermented toddy” ta'arif baharu yang berikut—

“ ‘Industrial Court’ has the same meaning assigned thereto in the Industrial Relations Act, 1967;”.

2. Sekshen 7

Masokkan yang berikut sa-lepas sahaja sekshen 7—

“Validity of any term or condition of service which are more favourable.

7A. Nothing in section 7 shall render invalid any term or condition of service under which a labourer is employed or any term or condition of service stipulated in any collective agreement or in any award of the Industrial Court which is more favourable than the provisions of this Ordinance other than sections 60G and 60H.”.

3. Sekshen 12

Gantikan dengan yang berikut—

“Notice of termination of contract.

12. (1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service.

(2) The length of such notice shall be the same for both employer and labourer and shall be determined by any provision made for such notice in the terms of the contract of service, or, in the absence of such provision, shall be in accordance with the provisions of subsection (3).

(3) The notice to terminate the services of a person who is employed under a contract of service shall be not less than—

(a) one weeks' notice if he has been so employed for less than two years;

(b) two weeks' notice if he has been so employed for two years or more but less than five years; and

(c) four weeks' notice if he has been so employed for five years or more:

Provided that the provisions of this section shall not be taken to prevent either party from waiving his right to notice on any occasion.

(4) Such notice shall be written and may be given at any time, and the day on which the notice is given shall be included in the period of the notice.”.

4. Sekshen 13

Gantikan dengan yang berikut—

“Termination of contract without notice.

13. (1) Either party to a contract of service may terminate such contract of service without notice or, if notice has already been given in accordance with section 12, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of wages which would have accrued to the labourer during the term of such notice.

(2) Either party to a contract of service may terminate such contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.”.

5. Sekshen 14

Gantikan dengan yang berikut—

“Termination of contract for special reasons.

14. (1) An employer may after due inquiry—

- (a) dismiss without notice a labourer employed by him on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service; or
- (b) down-grade the labourer; or
- (c) suspend him from work without payment of wages for a period not exceeding one week.

(2) For the purposes of an inquiry under subsection (1), the employer may suspend the labourer from work for a period not exceeding one week but shall pay him not less than half his basic wages for such period:

Provided that if the inquiry does not disclose any misconduct on the part of the labourer the employer shall forthwith restore to the labourer the full amount of wages so withheld.

(3) A labourer may terminate his contract of service with his employer without notice where he or his dependants are immediately threatened by danger to the person by violence or disease such as such labourer did not by his contract of service undertake to run.”.

6. Sekshen 15

Gantikan dengan yang berikut—

“When contract is deemed to be broken by employer and labourer.

15. (1) An employer shall be deemed to have broken his contract of service with the labourer if he fails to pay wages in accordance with Part III.

(2) A labourer shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two days—

- (a) without prior leave from his employer or without reasonable excuse; or
- (b) without informing or attempting to inform his employer of the excuse for such absence.”

7. Sekshen 25

(a) masukkan yang berikut di-akhir sekshen-kecil (2)—

“or paid to him by any of the ways under section 25A”; dan

(b) masukkan yang berikut sa-lepas sahaja sekshen 25—

“Payment of wages through bank.

25A. (1) Nothing in section 25 (1) shall operate so as to render unlawful or invalid any payment of wages by the employer to the labourer with the labourer's written consent in any of the following ways—

- (a) payment into an account at a bank in any part of Malaysia being an account in the name

of the labourer or an account in the name of the labourer jointly with one or more other persons;

(b) payment by cheque made payable to or to the order of the labourer.

(2) The consent of the labourer under this section may be withdrawn by him at any time by notice in writing given to the employer. Such notice shall take effect at but not before the end of the period of four weeks beginning with the day on which the notice is given."

Pindaan bagi
Bahagian XII.

8. Bahagian XII

Gantikan kesemua Bahagian XII dengan yang berikut—

"PART XII

REST DAYS, HOURS OF WORK, HOLIDAYS AND OTHER CONDITIONS OF SERVICE

Application
of Part XII.

58. The provisions of this Part shall only apply to labourers who are in receipt of wages not exceeding five hundred dollars a month or such other amount as may be fixed from time to time by the Minister.

Non-applica-
tion of
Part XII.

58A. The provisions of this Part shall not apply to any term or condition of service which is provided for in any collective agreement entered into before the coming into operation of this Part and taken cognizance of by the Industrial Court or in any award made by the Industrial Court while such collective agreement or award remains in force.

Rest Day.

59. (1) Every labourer shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer.

(2) Where the rest day of a labourer is determined by his employer, the employer shall prepare or cause to be prepared a roster before the commencement of the month in which the rest days fall informing the labourer of the days appointed to be his rest days therein.

Work on
rest day.

60. (1) Except as provided in subsection (2) of section 60A, no labourer shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts:

Provided that in the event of any dispute the Commissioner shall have power to decide whether or not a labourer is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts.

(2) Any labourer who at his own request works for an employer on a rest day shall be paid for that day at not less than the ordinary rate of pay for one day's work.

(3) Any labourer who at the request of his employer works on a rest day shall be paid an extra day's wage at the ordinary rate of pay for one day's work in addition to the ordinary rate of pay for that day.

60A. (1) Except as hereinafter provided, a labourer shall not be required under his contract of service to work— Hours of Work.

- (a) more than six consecutive hours without a period of leisure;
- (b) more than eight hours in one day or more than forty-eight hours in one week;

Provided that—

- (i) a labourer who is engaged in work which must be carried on continuously may be required to work for eight consecutive hours inclusive of a period or periods of not less than forty-five minutes in the aggregate during which he shall have the opportunity to have a meal; and
- (ii) where, by agreement under the contract of service between the labourer and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no labourer shall be required to work for more than nine hours in one day or forty-eight hours in one week.

(2) A labourer may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work on a rest day, in the case of—

- (a) accident, actual or threatened, in or with respect to his place of work; or
- (b) work, the performance of which is essential to the life of the community; or
- (c) work essential for the defence or security; or
- (d) urgent work to be done to machinery or plant; or
- (e) an interruption of work which it was impossible to foresee; or
- (f) work to be performed by labourers in any industrial undertaking essential to the economy of Malaysia or any of the public utility services as defined in the Industrial Relations Act, 1967: 35/67.

Provided that the Commissioner shall have the power to enquire into and decide whether or not the employer is justified in calling upon the labourer to work in the circumstances specified in paragraphs (a) to (f) of this subsection.

(3) (a) If a labourer works overtime at the request of his employer or is required to work overtime in any of the circumstances specified in (a) to (f) of subsection (2), he shall be paid at the rate of not less than one and a half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.

(b) In this section 'overtime' means the number of hours worked in any one day or in any one week in excess of the limits specified in paragraph (b) of subsection (1) of this section or in the case specified in paragraph (ii) of the proviso to subsection (1), the number of hours worked in excess of nine hours in any one day:

Provided that work performed on any rest day or any of the five gazetted public holidays under subsection (1) of section 60D shall not be construed as overtime work.

Maximum
overtime a
month.

(4) (a) A labourer shall not be permitted to work overtime for more than thirty-two hours a month:

Provided that the Minister may by notification in the *Gazette* declare that the provisions of this subsection shall not apply to labourers in any particular industry or undertaking.

(b) For the purposes of the restriction on overtime under this subsection 'overtime' shall have the meaning assigned thereto in paragraph (b) of subsection (3) of this section, provided that overtime work performed under the circumstances in (a) to (e) of subsection (2) of this section and work performed in excess of the normal working hours specified in any contract of service, collective agreement, or award made by the Industrial Court but within the limits specified in paragraph (b) of subsection (1) of this section shall not be construed as overtime.

(5) For the purposes of calculating the payment due for overtime to a labourer, such labourer's hourly rate of pay shall be taken to be—

(a) in the case of a person employed on a monthly rate of pay, twelve times his monthly rate of pay divided by fifty-two times forty-eight hours; and

(b) in the case of a person employed on piece rates, the total weekly pay received divided by the total number of hours worked in the week.

(6) The Minister may make regulations for the purpose of calculating the payment due for overtime to a labourer employed on piece rates.

(7) Except in the circumstances described in paragraphs (a), (b), (c), (d) and (e) of subsection (2) of this section, no labourer shall under any circumstances work for more than twelve hours in any one day.

(8) The provisions of this section shall not apply to labourers engaged in work which by its nature involves long hours of inactive or stand-by employment.

(9) For the purposes of this Part 'hours of work' means the time during which a labourer is at the disposal of the employer and is not free to dispose of his own time and movements.

Task work.

60B. Nothing contained in this Part shall prevent any employer from agreeing with any labourer that the wages of such labourer shall be paid at an agreed rate in accordance with the task, that is, the specific amount of work to be performed, and not by the day or by the piece.

60C. (1) Notwithstanding the provisions of subsection (1) of section 60A, a labourer who is engaged under his contract of service in regular shift work may be required by his employer to work more than six consecutive hours, more than eight hours in any one day or more than forty-eight hours in any one week but the average number of hours worked over any period of three weeks shall not exceed forty-eight per week. Shift work.

(2) No labourer who is engaged under his contract of service in regular shift work shall under any circumstances work for more than twelve hours in any one day.

(3) The provisions of subsection (3) of section 60A shall not apply to any labourer who is engaged under his contract of service in regular shift work, but any such labourer who works for and at the request of his employer for more than an average of forty-eight hours per week over any period of three weeks shall be paid for such extra work as overtime in accordance with subsection (3) of that section.

60D. (1) Every labourer shall be entitled to a paid holiday at his ordinary rate of pay on five gazetted Public Holidays in any one calendar year three of which shall be national or State holidays: Holidays.

Provided that by agreement between the employer and the labourer any other day or days may be substituted for any one or more of the days as stated above:

And provided further that if any of the days specified above should fall on a rest day the working day following immediately thereafter shall be a paid holiday in substitution therefor.

(2) A labourer who absents himself from work on the working day immediately preceding or immediately succeeding a holiday or any day substituted therefor under subsection (1) without the prior consent of his employer or without reasonable excuse shall not be entitled to any holiday pay for that holiday.

(3) Notwithstanding the provisions of subsection (1) any labourer may be required by his employer to work on any holiday to which he would otherwise be entitled under the said subsection and in such event he shall be paid an extra day's wages at the ordinary rate of pay for one day's work in addition to the ordinary rate of pay for that day and to a travelling allowance, if payable to him under the terms of his agreement with his employer, for one day:

Provided that no labourer shall be entitled under the provisions of this subsection to receive double any housing allowance or food allowance.

(4) For the purposes of this section if any such holiday falls on a half working day, the ordinary rate of pay payable shall be that of a full working day.

60E. (1) A labourer shall be entitled to paid leave of—

Annual leave.

(a) seven days for every twelve months continuous service with the same employer if he has been employed by that employer for a period of less than five years; and

(b) fourteen days for every twelve months continuous service with the same employer if he has been employed by that employer for a period of five years or more,

and such leave shall be in addition to the rest days, holidays and sick leave to which such labourer is entitled under sections 59, 60D and 60F respectively:

Provided that a labourer shall forfeit his entitlement to such leave if he absents himself from work without the permission of an employer or without reasonable excuse for more than ten per cent of the working days in the year in which his entitlement to such leave accrues.

(2) The employer shall grant and the labourer shall take such leave not later than twelve months after the end of every twelve months continuous service and any labourer who fails to take such leave at the end of such period shall thereupon cease to be entitled thereto.

(3) The employer shall pay the labourer his ordinary rate of pay for every day of such leave and if a labourer has been dismissed otherwise than for misconduct before he has taken such leave, the employer shall pay the labourer his ordinary rate of pay in respect of every day of such leave.

(4) The Minister may, by notification in the *Gazette*, fix the periods when and prescribe the manner in which annual leave shall be granted to labourers in different types of employment or in different classes of industries.

Sick leave.

60F. (1) Any labourer who has served an employer for a period of not less than twelve months shall, after examination at the expense of the employer by a duly registered medical practitioner appointed by the employer or, if no such medical practitioner is appointed, by a medical officer, be entitled to such paid sick leave not exceeding in the aggregate—

(a) fourteen days in each year if no hospitalisation is necessary; or

(b) sixty days in each year if hospitalisation is necessary, as may be certified by such medical practitioner or medical officer:

Provided that if a labourer is hospitalised for less than forty-six days in any one year, his entitlement to paid sick leave for that year shall not exceed the aggregate of fourteen days plus the number of days on which he is hospitalised:

And provided further that if a labourer is certified by such medical practitioner or medical officer to be ill enough to need to be hospitalised but is not hospitalised for any reason whatsoever, the labourer shall be deemed to be hospitalised for the purposes of this section.

(2) A labourer who absents himself on sick leave—

(a) which is not certified by a medical officer or a duly registered practitioner appointed by the employer; or

(b) which is certified by a medical officer, but without informing or attempting to inform his employer of such sick leave within forty-eight hours of the commencement thereof,

shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.

(3) The employer shall pay the labourer his ordinary rate of pay for every day of such sick leave:

Provided that no labourer shall be entitled to paid sick leave on a rest day or on a holiday to which he is entitled under the provisions of section 59 or 60D on any day of paid annual leave:

And provided further that no labourer shall be entitled to paid sick leave for the period during which he is receiving compensation for temporary disablement under the Workmen's Compensation Ordinance, 1952. 85/52.

60G. No labourer who has been in continuous service with an employer for less than three years shall be entitled to any retrenchment benefit on the termination of his service by the employer on the ground of redundancy or by reason of any reorganisation of the employer's profession, business trade or work. Payment of retrenchment benefit.

60H. No labourer who has been in continuous service with an employer for less than five years shall be entitled to any retirement benefit other than the sums payable under the Employees Provident Fund Ordinance on the cessation of his service with the employer. Retirement benefit.

60I. For the purposes of sections 60, 60D, 60E and 60F the expression "ordinary rate of pay" means the total wages in cash, including cash allowance, but excluding travelling allowances which a labourer is entitled under the terms of his agreement with his employer to receive for one full day's work: Interpretation.

Provided that in the case a labourer employed on piece rates the ordinary rate of pay shall be calculated by dividing the total wages earned by such labourer during the period of fourteen days immediately preceding the holiday, day of leave or period of leave as the case may be by the number of days on which such labourer actually worked during such period of fourteen days:

And provided further that in the case of a labourer on a monthly rate of pay the ordinary rate of pay for one day shall be calculated according to the following formula—

Twelve months multiplied by monthly rate of pay and divided by fifty-two weeks multiplied by forty-eight hours, the result to be multiplied by eight hours, as follows—

$$\frac{12 \times \text{monthly rate of pay}}{52 \times 48} \times \frac{8}{1}$$

60J. (1) Any person who employs a labourer contrary to the provisions of this Part shall be guilty of an offence under this Ordinance and shall be liable on conviction to a fine not exceeding one thousand dollars.

(2) Notwithstanding the provisions of subsection (1) of this section, it shall not be an offence for an employer to employ any labourer on any term or condition of service which provides to the labourer benefits more favourable than in the provisions of this Part other than sections 60G and 60H.”

HURAIAN

Menurut kuasa² dharurat di-bawah sekshen 2 Ordinan No. 1 (Kuasa² Perlu) Dharurat, 1969, Pengarah Gerakan telah membuat peratoran² bernama Peratoran Perlu (Kerja), 1969, dan Peratoran² Perlu (Kerja) 1971, dengan membuat pindaan² tertentu kepada Ordinan Kerja, 1955. Rang Undang² ini ada-lah sa-mata² bertujuan untuk memasukkan ka-dalam Ordinan Kerja peruntokan² yang terkandung dalam Peratoran² Perlu itu sa-bagai peruntokan² kekal dengan ubahsuaian² kechil yang tertentu. Ubahsuaian yang utama ia-lah supaya sekshen 60A (2) (ii) di-ambil perhatian dalam mengira lebehmasa dalam sekshen 60A (3) (b). Jika sa-saorang buroh bekerja kurang daripada 8 jam pada sa-suatu hari dalam sa-minggu, ia boleh di-kehendaki bekerja hingga 9 jam pada hari yang sa-lebeh-nya dalam minggu itu. Dalam hal demikian, lebehmasa erti-nya kerja yang di-buat lebeh daripada 9 jam dan bukan 8 jam.

2. Maksud pindaan² yang di-nyatakan dalam Rang Undang² ini ia-lah untuk membuat peruntokan berkenaan dengan—

- (i) menamatkan kontrek dengan atau tanpa notis; dan hal² keadaan dalam mana sa-suatu kontrek di-sifatkan sa-bagai di-mungkiri;
- (ii) membayar gaji melalū bank;
- (iii) hari rehat mingguan; waktu bekerja; gaji bagi kerja pada hari² rehat mingguan dan pada hari kelepasan am, dan bagi kerja lebehmasa; kelepasan am, chuti tahun dan chuti sakit bergaji; dan membayar faedah² pengurangan pekerja dan persaraan;
- (iv) menghadkan kerja lebehmasa bagi sa-saorang buroh kepada 32 jam sa-bulan, melainkan jika di-tetapkan oleh Menteri sa-bagai tidak di-pakai bagi sa-suatu perusahaan atau usaha tertentu.

3. Peruntokan² ini hendak-lah di-pakai bagi buroh² yang menerima gaji tidak lebeh daripada \$500 sa-bulan atau apa² jumlah lain yang di-tetapkan oleh Menteri dari sa-masa ka-samasa. Peruntokan² ini hendak-lah juga di-pakai bagi kelas pekerja yang bagi-nya di-pakai Ordinan Kerja, 1955 menurut Ketetapan yang di-buat oleh Dewan Ra'ayat pada 22hb Jun, 1967, pada menjalankan kuasa² yang di-beri oleh sekshen 2 (3) Ordinan itu, lihat P.U. 342 dalam *Warta Kerajaan* bertarikh 3hb Ogos, 1967. [P.N. (U²) 203.]