

## Client Alert

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### New compulsory allowances and benefits scheme for terminated employees in Malaysia

#### Introduction

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Under the Employment Act and the Sabah and Sarawak Labour Ordinances, mandatory termination or retrenchment benefits payments need to be made to all eligible employees. For those who are not covered, their entitlement to termination benefits is subject to the terms of their employment contract or collective agreement if any.

Employers who are not contractually bound and are in a financial position to make voluntary benefits payments but fail to do so, are more likely to be regarded by the Industrial Court to have contributed to the unfairness of the dismissals. It is straightforward in practice for former employees to pursue unfair dismissal claims, and the compensatory award can be substantial. In providing other forms of assistance such as outplacement services to impacted employees, unfair dismissal liability exposure can be mitigated.

#### The Employment Insurance System Bill 2017 ("Bill")

The **Bill** was tabled in Parliament on 1 August 2017, and the Bill will supplement the existing legal protections for former private sector employees who have been dismissed through no fault of their own.

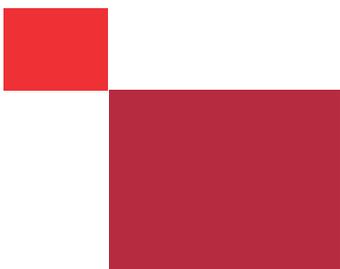
Malaysia has not had any legally-mandated system for assisting former employees prior to the Bill. The Employees Social Security Act administered by the Social Security Organisation ("**SOC**SO"), covers only workplace injuries. The Bill, therefore, represents a very significant development in assisting impacted individuals.

#### Key Implications of the Bill

The Bill seeks to establish the Employment Insurance System ("**EIS**") for post-exit benefits to affected individuals and to assist with re-employment. A sliding scale percentage of wages may be claimed for up to six (6) months of unemployment for job search purposes. Other claimable allowances include for early re-employment, reduced income and career counselling and training purposes.

It is presently anticipated that employers will be required to comply with the EIS requirements from 1 January 2018, with the provisions of benefits to former employees commencing in 2019.

All private sector employers with one or more employees will be required to register under the EIS scheme, and all employees will need to be insured. The EIS will be administered by SOCISO. The EIS contribution total approximately





1.5% of monthly wages, with the employee and employer contributing 50% each. The rate of contribution is subject to a maximum wage cap of RM4,000.

Employers are prohibited from reducing wages and removing or reducing any similar existing benefits in response to their EIS obligations.

Failure to comply is a criminal offence, and will subject the employer to a fine of maximum RM10,000 or 2 years' imprisonment, or both. Relative to other Malaysian employment-related legislation, the definition of employer under the Bill is broader and includes the employer's agent, as well as the legal representative of the employer.

Employees who are terminated for misconduct, voluntarily resign, retire or whose fixed-term employment contract expired, will be excluded from the benefits. Those who exit because of force majeure events, through voluntary separation schemes or constructive dismissal, remain eligible.

Given that some companies lack sufficient financial resources to make payment of termination benefits and claims against them, will if successful, result in compensation being made later. If at all, the introduction of the EIS can be described as a welcomed safety net for those who lost their livelihood due to circumstances beyond their control.

## Conclusion

The Bill clearly provides that benefit claims shall not impede claims in respect of Employment Act/Sabah and Sarawak Labour Ordinances entitlements, for unfair dismissal and for non-compliance with the Minimum Retirement Age Act. Of possible concern to employees however is the requirement that claims pursuant to the Bill will need to be adjourned until such time that those other claims are resolved. This could result in the benefits scheme under the EIS not achieving the objective of expeditious post-cessation assistance. It remains to be seen if this will be revised or be subject to implementation regulations.

From the employer's standpoint, complying with the new requirements will be straightforward principally due to SOCSO administering the scheme. Employers and existing employees would already be registered with SOCSO. The monthly EIS contribution for both parties is not unduly burdensome, and will hopefully assist the individual expeditiously in the unfortunate event that his or her employment cannot continue. Independent of the new obligations pursuant to the Bill however, liability exposure for failing to comply with the various other laws must be properly managed by all employers in effecting any employee dismissals.

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