

Client Alert

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For further information, please contact:

Brian Chia
Partner
+603 2298 7999
brian.chia@wongpartners.com

Kherk Ying Chew
Partner
+603 2298 7933
kherkying.chew@wongpartners.com

Eddie Chuah
Partner
+603 2298 7939
eddie.chuah@wongpartners.com

Sujintana Mongkolthanit
Senior Associate
+603 2298 7912
sujintana.mongkolthanit@wongpartners.com

Shameen Mohd. Haaziq Pillay
Senior Associate
+603 2298 7943
shameen.mohd.haaziqpillay@wongpartners.com

Roze Nn Phang
Associate
+603 2299 6536
rozenn.phang@wongpartners.com

The Industrial Relations (Amendment) Bill 2019

The Industrial Relations (Amendment) Bill 2019 ("**Amendment Bill**") was recently passed by the Dewan Rakyat on 9 October 2019. The contents of the Amendment Bill are mostly similar to the amendments proposed by the Minister of Human Resources ("**Minister**") in December 2018. The main difference is that the proposed amendments by the Minister had provisions in relation to managing employment discrimination complaints but these provisions have been omitted from the Amendment Bill. It is anticipated that the anti-discrimination provisions will be included in the amendments to the Employment Act, which has yet to be tabled at this juncture.

We have summarised below the key amendments introduced under the Amendment Bill:

Removal of Minister's discretion

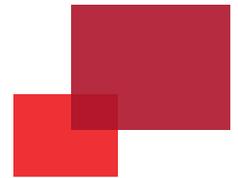
i. Recognition and Scope of Trade Union Representation

The powers of the Minister in relation to the Recognition and Scope of Representation of Trade Unions (Part III of the Industrial Relations Act 1967) will be taken over by the Director General of Industrial Relations ("**DGIR**") under the Amendment Bill. For example, the Minister will no longer have the power to decide on whether a workman is employed in a managerial, executive, confidential or security capacity; this will instead be determined by the DGIR.

ii. Referral of Unfair Dismissal Claims

Under existing provisions, the Minister has a discretion to filter out frivolous unfair dismissal complaints and only refer claims which are deemed fit for the Industrial Court's adjudication. Pursuant to the Amendment Bill, the Minister's discretion has been removed.

Under the Amendment Bill, where the DGIR is satisfied that there is no likelihood of representations being settled at the Industrial Relations Department, the DGIR shall refer the matter to the Industrial Court for an award. The DGIR does not have the discretion to decide on which cases to refer to the Industrial Court. Since there is no longer an element of discretion accorded to the DGIR, such referrals will no longer be subject to judicial review by the civil courts. This raises concerns as the automatic referral of complaints would likely encourage the filing of frivolous and vexatious claims which would result in unnecessary backlog of cases at the Industrial Court.



Conciliation meetings at the Industrial Relations Department

Parties now have an additional option as it relates to representation during conciliation meetings at the Industrial Relations Department. Aside from being represented by a member of trade union of employers or workmen or an official of an organisation of employers or workmen, both employers and employees now have the option to also appoint any person other than the categories of individuals aforementioned, to represent them ("**Individual**"). The conditions are as follows:

- a) the Individual cannot be an advocate and solicitor;
- b) the appointment of the Individual must be authorised by the employer or employee, as the case may be; and
- c) the appointment of the Individual must be with the permission of the DGIR.

Further, where a workman has a mental disability without having a guardian *ad litem*, the next-of-kin of such workman would be able to apply to the High Court for an order to appoint a guardian *ad-litem* to represent the workman during the conciliation meeting.

Sole bargaining rights

The Amendment Bill has inserted new provisions in relation to sole bargaining rights. Where there is more than one trade union that have been accorded recognition by the employer to represent a particular class of employees, this new provision puts in place a procedure for the employees to decide amongst themselves which trade union shall have the sole bargaining rights to represent them or where there is no agreement amongst the employees, an application can be made in writing to the DGIR to determine which of the trade unions will have the sole bargaining right to represent the employees.

Upon receiving such application, the DGIR shall provide employees with the opportunity to vote, by way of secret ballot, to indicate their preference on which trade union should have the sole bargaining rights to represent them.

Furthermore, where a trade union has obtained the sole bargaining rights, no other trade unions shall have the same rights for a period of three years, unless the trade union which obtained the sole bargaining rights has ceased to exist.

Scope of collective bargaining

Currently, during collective bargaining, trade unions can only raise matters pertaining to the procedures of promotion of employees. However, pursuant to the Amendment Bill, trade unions can now raise questions of a general character relating to the following matters:

- a) the promotion of any employee from a lower to a higher grade or category;
- b) the transfer of an employee within the organisation, provided that such transfer does not entail a change to the detriment of the employee's terms of employment;

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- c) the employment of any person that the employer may appoint in the event of vacancies in the organisation;
 - d) termination of an employee due to redundancy or reorganisation;
 - e) the dismissal and reinstatement of an employee; and
 - f) the assignment or allocation of duties to an employee that are consistent or compatible with the employee's terms of employment.

Trade disputes arising from refusal to collectively bargain or deadlock

The Amendment Bill provides that any disputes arising from the refusal to collectively bargain or a deadlock in collective bargaining can only be referred to Industrial Court with the consent of the parties, unless:

- a) the trade dispute relates to the first collective agreement;
- b) the trade dispute refers to any essential services specified in the First Schedule;
- c) the trade dispute would result in acute crisis if not resolved expeditiously; or
- d) the parties to the trade dispute are not acting in good faith to resolve the trade dispute expeditiously.

Strike or lock-out

An additional provision has been included in the Amendment Bill to enable the Minister to stop a strike or lock-out in the event the strike or lock-out lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.

Additional powers granted to the Industrial Court

Under the Amendment Bill, additional powers are given to the Industrial Court (this list is not exhaustive), as follows:

- a) continue with proceedings of a case notwithstanding the death of the workman who made the representations;
- b) impose interest of up to 8% per annum on monetary awards made by the Industrial Court, calculated from the 31st day from the date of the making of the award until the day the award is satisfied unless otherwise directed;
- c) to award back wages or compensation in lieu of reinstatement or both to the next-of-kin of the deceased workman.

Appeal of an Industrial Court award to the High Court

Any person dissatisfied with an award of the Industrial Court can appeal to the High Court within 14 days from the date of receipt of the award. The procedure of the appeal would be subject to the Rules of Court 2012 and the High Court shall have powers as if the appeal is from a Sessions Court.



Under the existing regime, the only redress against Industrial Court awards is to file an application for judicial review at the High Court, which is limited to the review of the decision-making process and not the actual merits of the decision. The inclusion of an appeal process will allow for scrutiny by the High Court on the merits of the awards.

Increase of penalties

The Amendment Bill has increased the penalties for contravention of the Industrial Relations Act 1967. For example:

- the penalty for giving financial aid to illegal strikes and lock-outs has been increased from RM 500 to RM 5,000.
- the penalty for non-compliance with an Industrial Court award or collective agreement has been increased from RM 2,000 to RM 50,000.
- the general penalty for any contravention of the Industrial Relations Act 1967 and / or any summons, order or direction given or made under the Act has been increased from RM 5,000 to RM 50,000.

Conclusion

As evident from the above, the Amendment Bill brings about significant impact on employers. Although it seems that Parliament's intention is to expedite the dispute resolution process, the removal of the Minister's discretion as it relates to the referral of unfair dismissal claims will likely result in a floodgate of cases at the Industrial Court. There is nothing preventing the referral of a frivolous case which will result in increased costs for parties. It is also unclear at the moment, how the Industrial Court will manage the likely increase in volume of cases and whether this will result in a delay of cases being heard before the Industrial Court.

In view of the changes above, employers should implement an even stringent process to ensure that any dismissal is with "just cause or excuse" prior to terminating an employee.

www.wongpartners.com

Wong & Partners
Level 21
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur

