



LAWS OF MALAYSIA

Act A1615

**INDUSTRIAL RELATIONS (AMENDMENT)
ACT 2020**

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LAWS OF MALAYSIA

Act A1615

INDUSTRIAL RELATIONS (AMENDMENT) ACT 2020

An Act to amend the Industrial Relations Act 1967.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Industrial Relations (Amendment) Act 2020.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Industrial Relations Act 1967 [*Act 177*], which is referred to as the “principal Act” in this Act, is amended in section 2, by substituting for the definition of “President” the following definition:

“President” means the President of the Court appointed under paragraph 21(1)(a) and includes the Deputy President of the Court appointed under paragraph 21(1)(aa);’.

Amendment of section 8

3. Section 8 of the principal Act is amended—

- (a) in subsection (2), by substituting for the words “shall notify the Minister” the words “may, if he thinks fit, refer the complaint to the Court for hearing”; and
- (b) by deleting subsection (2A).

Amendment of heading of Part III

4. The heading of Part III of the principal Act is amended by inserting after the words “**TRADE UNIONS**” the words “**AND SOLE BARGAINING RIGHTS**”.

Amendment of section 9

5. Section 9 of the principal Act is amended—

- (a) by deleting subsection (1c);
- (b) in subsection (1D), by substituting for the words “Upon receipt of the notification under subsection (1c), the Minister” the words “Where the matter is not resolved under subsection (1B), the Director General”;
- (c) in paragraph (3)(a), by inserting after the words “accord recognition” the words “subject to the scope of membership of the trade union of workmen concerned as on the date of claim and in accordance with the constitution of the trade union of workmen making the claim”;
- (d) in paragraph (4A)(a), by substituting for the words “the competence of the trade union of workmen concerned” the words “the scope of membership of the trade union of workmen concerned as on the date of claim, whether it is in accordance with the constitution of the trade union of workmen making the claim”;
- (e) in paragraph (4A)(b), by substituting for the words “who are members of” the words “to indicate support for”;

(f) by deleting paragraph (4B)(b);

(g) by deleting subsection (4c);

(h) by substituting for subsection (5) the following subsection:

“(5) Upon ascertaining the matter under subsection (4A), the Director General shall give his decision. Where the Director General decides that recognition is to be accorded, such recognition shall be deemed to be accorded by the employer or trade union of employers concerned, as the case may be, from such date as the Director General may specify.”; and

(i) by deleting subsection (6).

Amendment of section 10

6. Section 10 of the principal Act is amended—

(a) in subsection (1), by substituting for the word “Minister” the words “Director General”; and

(b) in paragraph (2)(b), by substituting for the word “Minister” the words “Director General”.

Amendment of section 10A

7. Section 10A of the principal Act is amended by substituting for the word “Minister” the words “Director General”.

Amendment of section 11

8. Section 11 of the principal Act is amended—

(a) by substituting for the word “Minister” the words “Director General”; and

(b) by substituting for the words “three years” the words “one year”.

Amendment of section 12

9. Paragraph 12(*b*) of the principal Act is amended by substituting for the word “Minister” the words “Director General”.

New sections 12A and 12B

10. The principal Act is amended by inserting after section 12 the following sections:

“Sole bargaining rights

12A. (1) Where more than one trade unions of workmen have been accorded recognition by the same employer or trade union of employers to represent the same workmen or class of workmen—

- (a) the trade unions of workmen concerned may decide among themselves which trade union of workmen shall have the sole bargaining rights to represent such workmen or class of workmen and shall notify the Director General; or
- (b) if there is no agreement as to which trade union of workmen has the sole bargaining rights to represent such workmen or class of workmen, the employer or trade union of employers or any trade union of workmen concerned, may make an application in writing to the Director General to determine which of the trade union of workmen has the sole bargaining rights to represent such workmen or class of workmen.

(2) Upon receiving an application in writing under paragraph (1)(*b*), the Director General may take such steps to determine the application or to make such enquiries by way of secret ballot, to ascertain the highest number of votes indicating the preference for a trade union of workmen to have the sole bargaining rights to represent such workmen or class of workmen.

(3) Where the result of the secret ballot shows a tie, a further secret ballot shall be carried out by the Director General until the highest number of votes indicating the preference for a trade union of workmen to have the sole bargaining rights to represent such workmen or class of workmen is ascertained.

(4) Upon ascertaining the matter under subsection (1), (2) or (3), the Director General shall decide that the trade union of workmen which obtained the highest number of votes shall have the sole bargaining rights to represent such workmen or class of workmen.

(5) For the purposes of carrying out his functions under subsection (1), (2) or (3), the Director General—

(a) shall have the power to require the trade union of workmen, the employer or the trade union of employers concerned to furnish such information as he may consider necessary or relevant within the period specified in the requirement; and

(b) may enter any place where any workman is being employed to examine any record or document, or to conduct a secret ballot.

(6) Where the Director General has made a decision under subsection (4), the trade union of workmen which the Director General has decided to have obtained the highest number of votes shall have the sole bargaining rights to represent such workmen or class of workmen.

(7) Subject to section 12B, the sole bargaining rights to represent such workmen or class of workmen granted pursuant to this section shall cease to exist in the event another trade union of workmen has obtained the sole bargaining rights to represent such workmen or class of workmen.

Trade unions obtained sole bargaining rights

12B. Where a trade union of workmen has obtained the sole bargaining rights to represent any workmen or class of workmen whether by a decision of the Director General or otherwise, no other trade unions of workmen shall have the sole bargaining rights to represent such workmen or class of workmen unless a period of three years has elapsed after the sole bargaining rights to represent such workmen or class of workmen has been obtained or the trade union of workmen which has obtained the sole bargaining rights is no longer in existence.”.

Amendment of section 13

11. Section 13 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the words “Where a” the word “sole”; and

(ii) by inserting after the words “trade union of employers” the words “, or pursuant to a decision of the trade unions of workmen or the Director General, under section 12A”;

(b) in subsection (2), by substituting for the full stop a colon;

(c) by inserting after subsection (2) the following proviso:

“Provided that where there is an existing collective agreement between an employer and a trade union of workmen which represents the same workmen or any class of workmen or between a trade union of employers and a trade union of workmen which represents the same workmen or any class of workmen which is still in force, an invitation to commence collective bargaining shall only be made ninety days or less before the expiry of such collective agreement.”; and

(d) in subsection (3), by substituting for the words “procedures of promotion of workmen” the words “matters specified in paragraphs (a) to (f)”.

Amendment of section 20

12. Section 20 of the principal Act is amended—

(a) in subsection (2), by deleting the words “; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly”;

(b) by substituting for subsection (3) the following subsection:

“(3) Where the Director General is satisfied that there is no likelihood of the representations being settled under subsection (2), the Director General shall refer the representations to the Court for an award.”;

(c) in subparagraph (6)(a)(ii), by deleting the word “or”;

(d) in subparagraph (6)(a)(iii), by substituting for the word “and” the word “or”;

(e) by inserting after subparagraph (6)(a)(iii) the following subparagraph:

“(iv) be represented by any other person except an advocate and solicitor, duly authorized by the employer in writing and subject to the permission of the Director General; and”;

(f) in subparagraph (6)(b)(ii), by deleting the word “or”;

(g) in subparagraph (6)(b)(iii), by substituting for the full stop the words “; or”;

(h) by inserting after subparagraph (6)(b)(iii) the following subparagraph:

“(iv) be represented by any other person except an advocate and solicitor, duly authorized by the workman in writing and subject to the permission of the Director General.”;

(i) by inserting after subsection 20(6) the following subsection:

“(6A) In any proceeding under this section, where a workman being under a mental disability and not having a guardian *ad litem*, a next-of-kin of the workman may apply to the High Court for an order to appoint a guardian *ad litem* for the workman.”; and

(j) in subsection (7), by deleting the words “, adviser, consultant or by any other person whatsoever”.

Amendment of section 21

13. Section 21 of the principal Act is amended—

(a) in paragraph (1)(a), by deleting the word “and”; and

(b) by inserting after paragraph (1)(a) the following paragraph:

“(aa) a Deputy President who shall be appointed by the Yang di-Pertuan Agong; and”.

Amendment of section 22

14. Subsection 22(5) of the principal Act is amended by substituting for the words “or any application for reference to the High Court under subsection 33A(1)” the words “or any complaint of non-compliance of an award for a reference made under subsection 20(3)”.

Amendment of section 23

15. Subsection 23(4) of the principal Act is amended by substituting for the words “or any application for reference to the High Court under subsection 33A(1)” the words “or any complaint of non-compliance of an award for a reference made under subsection 20(3)”.

Amendment of section 23A

16. Section 23A of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1); and
- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Notwithstanding subsection (1), a qualified person as defined in the Legal Profession Act 1976 [*Act 166*] or any laws replacing it, with at least fifteen years of experience in labour and industrial relations in the ministry charged with the responsibility for human resources may be considered for appointment as a Chairman under subsection 23(2).”.

Amendment of section 25

17. Section 25 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) The persons appointed under subsection (1) shall be persons from the Industrial Relations Officers Scheme of Service and such appointments shall be published in the *Gazette*.”.

Amendment to section 26

18. Section 26 of the principal Act is amended in subsection (2)—

- (a) by substituting for the full stop at the end of the proviso a colon; and
- (b) by inserting after the proviso, the following proviso:

“Provided further that where the trade dispute relates to a refusal to commence collective bargaining or a deadlock in collective bargaining, reference to the Court shall not be made without the consent in writing 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.”.

Amendment of section 29

19. Section 29 of the principal Act is amended—

(a) by inserting after paragraph (d) the following paragraph:

“(da) hear and determine the matter before it notwithstanding the fact that the date of dismissal stated in the Director General’s reference under subsection 20(3) is—

(i) disputed by any party to the proceedings;
or

(ii) incorrect,

wherein the Court shall be vested with the power to determine the date of the dismissal when hearing and determining the matter before it;”;

(b) by inserting after paragraph (e) the following paragraph:

“(ea) continue to conduct its proceedings notwithstanding the death of the workman who made the representations under subsection 20(1);”.

Amendment of section 30

20. Section 30 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) An award made under subsection (1) for the payment of money shall carry interest at the rate of eight per centum per annum, or such lesser rate as

the Court may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the award until the day the award is satisfied;

Provided that the Court, on an application made by the aggrieved party within thirty days from the date of the making of the award, is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.”;

(b) in subsection (6A), by substituting for the full stop at the end of the sentence a colon;

(c) by inserting after subsection (6A) the following proviso:

“Provided that this subsection is not applicable to a dismissal that relates to section 4, 5 or 7 of this Act.”;

(d) by inserting after subsection (6A) the following subsection:

“(6B) Notwithstanding subsection (6), the Court, in making an award in relation to a reference under subsection 20(3) in respect of a deceased workman, shall have the power to award backwages or compensation *in lieu* of reinstatement or both to the next-of-kin of the deceased workman.”; and

(e) in subsection (7)—

(i) by substituting for the colon a full stop; and

(ii) by deleting the proviso.

Amendment of section 32

21. Subsection 32(1) of the principal Act is amended—

(a) in paragraph (c), by deleting the word “and” appearing at the end of the paragraph;

(b) in paragraph (d), by substituting for the full stop the words “; and”; and

(c) by inserting after paragraph (d) the following paragraph:

“(e) the next-of-kin of the deceased workman in relation to a reference under subsection 20(3).”.

Amendment of section 33A

22. The principal Act is amended by deleting section 33A.

Amendment of section 33B

23. Section 33B of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

“Stay of proceedings”

(b) by deleting subsection (1); and

(c) in subsection (2), by substituting for the words “Subject to section 33A, no” the word “No”.

New section 33c

24. The principal Act is amended by inserting after section 33B the following section:

“Appeal against an award to the High Court

33c. (1) If any person is dissatisfied with an award of the Court made under section 30 such person may appeal to the High Court within fourteen days from the date of receipt of the award.

(2) The procedure in an appeal to the High Court shall be the procedure in the Rules of Court 2012 [*P.U. (A) 205/2012*] for an appeal from a Sessions Court with such modifications as the circumstances may require.

(3) In dealing with such appeals, the High Court shall have like powers as if the appeal is from the Sessions Court.”.

Amendment of section 40

25. Subsection 40(3) of the principal Act is amended—

(a) by deleting the words “imprisonment for a term not exceeding one year or to”;

(b) by substituting for the word “one” the word “five”; and

(c) by deleting the words “or to both”.

New section 44A

26. The principal Act is amended by inserting after section 44 the following section:

“Power to restrain strikes or lock-outs

44A. The Minister may order a strike or lock-out to stop in the event if 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.”.

Amendment of section 46

27. Section 46 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “imprisonment for a term not exceeding one year or to”;

- (ii) by substituting for the word “one” the word “five”; and
 - (iii) by deleting the words “or to both”; and
- (b) in subsection (2)—
- (i) by deleting the words “imprisonment for a term not exceeding one year or to”;
 - (ii) by substituting for the word “one” the word “five”; and
 - (iii) by deleting the words “or to both”.

Amendment of section 47

28. Section 47 of the principal Act is amended by substituting for the word “one” the word “five”.

Amendment of section 48

29. Section 48 of the principal Act is amended by substituting for the word “hundred” the word “thousand”.

Amendment of section 52

30. Section 52 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) Notwithstanding subsection (1), Part VI shall apply to any service of or to any workman employed by, a statutory authority in which the Minister, after consultation with such statutory authority, by order published in the *Gazette* prescribe the name of the statutory authority.”.

Amendment of section 56

31. Section 56 of the principal Act is amended—

(a) in subsection (3)—

(i) by substituting for the word “two” the word “fifty”; and

(ii) by inserting after the words “further fine of” the words “not exceeding”; and

(b) by inserting after subsection (3) the following subsection:

“(3A) Where any person has been convicted of an offence under subsection (3), the court before which he was convicted may order the person to make any payment due to the workman by virtue of an order made under section 30.”.

Amendment of section 60

32. Subsection 60(1) of the principal Act is amended—

(a) in paragraph (a), by inserting after the word “Act” the words “and any regulations made under this Act”; and

(b) by substituting for the word “five” the word “fifty”.

Amendment of section 62

33. Section 62 of the principal Act is amended—

(a) in paragraph (fa), by deleting the word “and”; and

(b) by inserting after paragraph (fa) the following paragraph:

“(fb) provide for the procedures relating to the process of determining the sole bargaining rights; and”.

Substitution of First Schedule

34. The principal Act is amended by substituting for the First Schedule the following schedule:

“FIRST SCHEDULE

ESSENTIAL SERVICES

[Section 2]

1. Electricity services
2. Fire services
3. Prison services
4. Public health services
5. Public waste management services
6. Telegraph, telephone and telecommunication services
7. Water services
8. Any service provided by any of the following Departments of Government:
 - (a) Chemistry
 - (b) Civil Aviation
 - (c) Customs and Excise
 - (d) Immigration
 - (e) Marine
 - (f) Meteorology
 - (g) Printing
9. Services which are connected with, or related to, or which assist towards, the maintenance and functioning of the armed forces and the Royal Malaysian Police Force
10. Business and industries which are connected with the defence and security of Malaysia
11. Any section of any service, on the working of which the safety of the employees therein or of the establishment relating thereto depends

12. Air traffic control
13. The Minister may declare by notification in the *Gazette* a service to be an essential service if any disruption of the service would endanger the life, personal safety or health of the whole or part of a population”.

Saving and transitional provisions

35. (1) Complaints made under section 8, disputes referred under subsection 9(1A), claims for recognition made under section 9, representations for reinstatement made under section 20 of the principal Act, and all proceedings commenced or awards made before the Industrial Court in relation to a reference under subsection 8(2A), subsection 20(3) and section 26 before the coming into operation of this Act shall proceed and have effect as if the principal Act had not been amended by this Act.

(2) All rules and regulations, forms, directions and letter of authorizations made, issued or granted under the principal Act shall, to the extent that the rules and regulations, forms, directions and letter of authorizations are consistent with the principal Act as amended by this Act, continue to be in force until such rules and regulations, forms, directions and letter of authorizations are revoked or amended.

(3) Any investigation, trial or proceedings done, taken or commenced under the principal Act immediately before the coming into operation of this Act, shall be dealt with as if the principal Act had not been amended by this Act.