

# The Do's and Don'ts in Employment Contracts in Malaysia.

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# DISCLAIMER

Please take note that this slides have been prepared for ease of reference during which the talk is conducted and any sections referred to herein are based on the Employment Law Act 1955 and Contracts Act 1960, which subject to paraphrase. Kindly advised to refer to the actual wording of the Acts for a complete appreciation of its legal implication.

# The Do's in Employment Contract

Speaker:

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# Define The Key Terms in your Employment Contracts

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# Define the Key Terms in the Employment Contract

\*Start strong by clearly defining key employment terms

- Key terms which would be important for the contract must be clearly defined.
- Employment contracts that are vague could cause a lot of problems and be the reason for unwanted disputes with Employees later on.
- Clarity is everything in Employment Contract and/or any contract. A vague or incomplete contract creates room for misinterpretation, which in turn leads to misunderstandings or even legal disputes between the Employer and Employee.

# The Key Terms

## Define the Position or Job Title

- Avoid vague or inconsistent labels/ Terms
- For example, “Marketing Manager” vs. “Senior Marketing Manager” (one word can mean a different role.)
- Titles impact pay grade, responsibilities, and entitlements

## Scope of Work

- Detail the scope of work clearly
- Avoid phrases like: “any other duties as assigned”
- If used, provide boundaries or examples to limit ambiguity
- Prevent workload disputes or claims of unfair treatment

# Cont...

## Start Date

- Specify exact date

## Probation

- How long will it last?

**Clearly state**

## Confirmation Process

- Will there be a formal review?
- Are KPIs involved?

# Cont...

The Key Terms include the duration of the Employment Contract as follows:-

## Fixed-Term vs. Permanent Roles

- Always specify the duration:
  - Fixed-term = clear end date
  - Permanent = no specific end date

## The Law

- Repeated renewals or permanent nature of work = may be considered permanent employment
- Avoid misusing fixed-term contracts to deny employee rights

# Case Law:

## **Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd[2020] 1 LNS 494 (Federal Court)**

- FC held that **repeated renewals of fixed-term contracts**, especially without the employee's application and with no break in service, **indicate that the employment is permanent**, not genuinely fixed-term.
- Relevant factors include:
  - The intention of the parties
  - The employer's conduct (e.g., automatic renewals)
  - The nature and continuity of the work
  - The total length of service.
- The court found that the **claimant, whose contract was renewed multiple times over several years, was in fact a permanent employee** and not on a genuine fixed-term contract

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# Specify Salary & Benefits

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# Why is it important?

It's the first thing employees look for.

Salary and benefits are often the first concern for employees.

Lack of clarity = confusion, dissatisfaction, or disputes.

Transparency builds trust and sets clear expectations.

# State the Base Salary Clearly

Specify the amount: Monthly or annual.

Salary Breakdown: Be Precise.

Indicate gross or net salary.

Mention if it includes allowances (e.g., optical, mobile usage).

**\*Transparency helps avoid future disputes.**

# State the Payment Frequency & Method clearly

State payment frequency: Monthly, bi-weekly, etc.

Monthly payments are standard in Malaysia, but certain industries may differ.

Specify payment date (e.g., 28th of each month).

Mention payment method: Bank transfer, cheque, etc.

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# State the Allowances & Bonuses clearly

Spell Out the Details.

Itemize fixed allowances (e.g., meal, transport).

*Bonuses:*

- *Contractual = Guaranteed based on terms*
- *Discretionary = At employer's discretion*

Avoid misleading language on non-guaranteed bonuses.

# Overtime

## Eligibility

- Employees earning RM4,000 or less per month are entitled to overtime pay under the Employment Act 1955.
- This protection extends to manual workers, regardless of their monthly salary.

## Legislation

- **Section 60A(3) of the Employment Act 1955** governs overtime pay.
- Regulation 11 of the Employment (Limitation of Overtime) Regulations 1980 limits overtime to a maximum of 104 hours per month.

# Overtime

## Overtime Rates

- For work exceeding normal hours: 1.5 times the hourly rate.
- For work on rest days:
  - If work does not exceed half the normal working hours: Half the ordinary daily rate.
  - If work exceeds half the normal working hours but does not exceed normal working hours: One day's salary.
  - If work exceeds normal working hours: Two times the hourly rate.
- For work on public holidays: Two days' wages for work during normal hours and three times the hourly rate for work exceeding normal hours.

## Approval

- Although the Employment Act 1955 does not explicitly detail a formal approval process, it is implied that overtime work should be at the employer's request.
- Best practice dictates that employers should obtain prior approval for overtime work to manage and control costs and ensure compliance with overtime limits.

# Statutory Contributions

Make Legal Obligations Clear.

Clarify employee vs. employer contributions.

State obligations for:

- EPF (Employees Provident Fund)
- SOCSO (Social Security Organisation)
- EIS (Employment Insurance System)

Builds transparency and employee trust.

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# Adherence to the Statutory requirements

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# Include the Statutory Minimums

- No matter how detailed, elegant, or strategic a contract may be, it cannot override the law.

**Contracts cannot override statutory requirements**

**Employment Act 1955 governs minimum entitlements**

**Any terms below the legal minimum are void and unenforceable**

**Ensure your contract is legally compliant from the start**

# Statutory Minimums?

**Paid Annual Leave**

**Sick Leave & Hospitalisation Leave**

**Maternity / Paternity Leave**

**Working Hours & Rest Days**

**Overtime Rates (for eligible employees)**

**Termination Notice Period**

# State the Paid Annual Leave Entitlements clearly

- Statutory leave is a legal requirement under the Employment Act 1955
- Helps prevent burnout, maintain well-being, and ensure compliance
- Employment Contract must clearly reflect this Leave Entitlements

## **Annual Leave Entitlements:**

- 8 days per year if employed for 1–2 years
- 12 days per year if employed for 2–5 years
- 16 days per year if employed for more than 5 years
- Ensure the contract updates leave based on tenure

## **Section 60E Employment Act 1955**

# State the Hospitalization and Sick Leave Entitlements clearly

## **Hospitalization Leave:**

- Up to 60 days per year, including the ordinary sick leave entitlement (i.e., the total of sick leave and hospitalisation leave cannot exceed 60 days per year).
- Needs to be certified by a registered medical practitioner.

**Section 60F (1)(bb) Employment Act 1955**

## **Sick Leave:**

- 14 days per year for less than 2 years of service
- 18 days per year for 2–5 years of service
- 22 days per year for more than 5 years of service
- Requires confirmation by a registered medical practitioner

**Section 60F Employment Act 1955**

# State the Maternity and Paternity Leave Entitlements clearly

## **Maternity Leave:**

- 98 days of paid maternity leave (Eligible Mothers)

**Section 37 Employment Act 1955**

## **Paternity Leave:**

- 7 consecutive days of paid paternity leave for legally married male employees (subject to eligibility requirements)

**Section 60FA Employment Act 1955**

# State the Working Hours, Rest Days & Overtime clearly

Since the effectiveness of the Employment (Amendment of First Schedule) Order 22, Employment Act now applies to all employees irrespective of wage except for overtime payment and termination benefits.

## **Working Hours:**

### **Section 60A Employment Act 1955**

Legal Limits Max 45 hours/week (excluding meal time)

- 8 hours per day for 5 or 6 days a week, but total weekly hours should not exceed 45 hours, excluding breaks.
- Breaks and overtime rules apply beyond this 30-min break after 5 hours

## **Rest Day**

- At least 1 rest day per week
- Can be Sunday or any designated day

### **Section 59 Employment Act 1955**

## **Overtime**

- Employees earning above RM4,000 per month are not statutorily entitled to overtime pay unless specified in their employment contract

# State the Termination Notice Periods clearly

**Section 12 of the Employment Act 1955** requires employers to provide a minimum notice period based on the employee's length of service.

- 4 weeks if employed for less than 2 years,
- 6 weeks if employed between 2 to 5 years,
- 8 weeks if employed for more than 5 years.

## **Section 13 Employment Act 1955**

Alternatively, **payment in lieu of notice** is permitted, but again this must be stated clearly in the Employment Contract.

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# Include Termination & Dismissal Procedures

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# State the Termination & Dismissal Procedures clearly

## Why It Matters?

- Clear termination clauses protect both parties.
- Prevents misunderstandings and legal disputes.
- Ensures compliance with fair dismissal standards.

## Importance of Clarity

- Avoids claims of wrongful or unfair dismissal.
- Sets expectations from day one
- A critical part of professional risk management

# State the Notice Periods clearly

- Clearly state notice period for both parties.
- Reflect statutory minimums based on service (e.g., 4, 6, 8 weeks).
- Specify if payment in lieu of notice is acceptable.
- Consistency with earlier contract sections is key.

## To Avoid

- One-sided termination clauses.
- Unclear language around notice or dismissal grounds.
- Missing option for payment in lieu of notice.
- No mention of termination due to misconduct or poor performance.

# State the Grounds for Termination Clearly

It is important to specify Termination Grounds

## Ground #1 – Misconduct - Serious Violations of Workplace Rules

Examples include:

- Theft or fraud
- Sexual harassment
- Chronic absenteeism without valid reason
- Misconduct must be investigated and documented

## Ground #2 – Redundancy - Genuine Business Need

- Due to restructuring, downsizing, or job elimination
- Should follow the Code of Conduct for Industrial Harmony
- Must be non-discriminatory and fairly applied

## Ground #3 – Poor Performance - Performance-Based Termination

- Must be based on objective assessments which requires:
  - ✓ Clear KPIs
  - ✓ Performance improvement plans
  - ✓ Written warnings and time to improve

# State the Disciplinary Procedures clearly

- Even valid grounds can result in unfair dismissal if procedures are not followed.
- The Industrial Court prioritizes procedural fairness.

## Step 1 – Proper Investigation

- Start with the Facts
- Gather evidence objectively
- Interview witnesses if necessary
- Document everything
- Maintain confidentiality during the process

## Step 2 – Show Cause Letter

- Give the Employee a Chance to Respond
- Clearly state the alleged misconduct or issue
- Allow reasonable time to respond
- This step shows transparency and fairness

## Step 3 – Domestic Inquiry

- Fair Hearing Before Final Decision
- Held if the employee's explanation is unsatisfactory
- Panel must be neutral and unbiased
- Allows the employee to present a defense
- Decision must be based on evidence and reason

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# Add Confidentiality & IP Clauses

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# Confidentiality clause

- Employees handle strategic and sensitive information.
- Breaches can lead to loss of competitive advantage.
- A robust clause offers legal protection against misuse.

## Define the Scope Clearly

Includes, but not limited to: Business plans and forecasts, pricing structures, strategies product designs and technical data including customer lists and client communications.

Clauses must apply:

- ✓ While employed
- ✓ After resignation or termination

**\*The key** is to ensure ex-employees are still bound by confidentiality terms even after they've left.

# Intellectual Property (IP) Ownership clause

**\*Important** to clarify ownership of work created during employment.

Legal Position Header: What Malaysian Law Says.

IP created “*in the course of employment*” typically belongs to the employer BUT...Ambiguity still arises if not spelled out in the Employment Contract.

## **Best Practice – Be Explicit.**

- Do not leave room for Doubt.
- Clearly state in the contract that:
  - ✓ All work-related IP is owned by the employer;
  - ✓ Applies to designs, code, content, inventions,; and
  - ✓ Covers full-time, part-time, and freelance employees

IP Clauses Are Essential In: Creative fields, graphic design, writing, advertising, tech & software development, Engineering & product R&D.

# State the Non-Solicitation clause clearly

- Less aggressive—and more enforceable—than a non-compete.
- A well drafted non-solicitation clause, clearly stating the scope of prohibited activity is crucial for its enforceability.

Restricts former employees from:

- ✓ Poaching clients
- ✓ Recruiting current employees
- ✓ Applies after employment ends

# What about the Non-Compete clause?

- The post-employment non-compete clauses are not enforceable in Malaysia.
  - This is governed by **Section 28 of the Contracts Act 1950** in which any agreement in restraint of trade is generally void. This includes non-compete clauses. Courts in Malaysia rarely enforce such restrictions.
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- The inclusion of Non-Compete clause is more of a **psychological barrier for the Employee rather than enforcement.**

\*It is **important** to **distinguish** between the two scenarios for **Confidentiality and Non-solicitation and Non-Compete** clauses:-

1. An employee using their personal skills and knowledge to compete with their former employers, which is permitted by law.

Case: **Ace Capital Growth Sdn Bhd v Kua Kee Koon & Ors [2021] MLJU 2118**

2. An employee stealing trade secrets or confidential information, which is prohibited and actionable under the law.

Case: **Sundai (M) Sdn Bhd v Masato Saito & Ors [2013] 9 MLJ 729**

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# Comply with Anti-Discrimination & Equal Opportunity Standards

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# Comply with Anti-Discrimination & Equal Opportunity Standards

Malaysia's Current Legal Position - No Comprehensive Anti-Discrimination Law

- Malaysia doesn't yet have a comprehensive anti-discrimination statute that governs employment relationships across the board.
- This doesn't mean employers are off the hook.
- The duty to act fairly and without bias still applies and is becoming increasingly important in workplace law.

**\*Article 8** of the Federal Constitution enshrines the principle of equality before the law.

Employers should avoid any terms that reference:

- ✓ Race
- ✓ Religion
- ✓ Gender
- ✓ Marital status
- ✓ Age
- ✓ Disability

Unless there is a bona fide occupational requirement—meaning the characteristic is genuinely essential to the job.

# Practical Tips

## Focus on Merit

- Base Decisions on Skills, Experience, and Performance
- Always ensure that recruitment, promotions, and remuneration are based on merit and objective criteria such as skills, experience, and performance.

## Use Gender-Neutral Language

- Make Job Ads Inclusive
- Use gender-neutral language in job postings.
- For example, use “sales representative” instead of “salesman.”

## Standardize Benefits

- Equal Benefits for All
- Standardize employee benefits regardless of marital status.
- Offer healthcare or leave entitlements equally to single, married, or divorced employees.

## Respect Religious Practices

- Avoid Discrimination Based on Religion
- Avoid any form of adverse action such as termination on the basis of religious practices or attire.
- This includes things like headscarves or scheduled prayer breaks.

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# Customize for Foreign Employees

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# Do Customize for Foreign Employees

## Immigration Compliance

- Under Malaysia's Immigration Act, foreign nationals can only work with a valid work permit or pass.
- Employment contracts should explicitly state that employment is contingent upon the employee holding and maintaining the appropriate visa.
- Hiring someone without a valid permit is a criminal offense.

## Conditions Attached to Work

- Visa Conditions in the Contract
- Some passes prohibit role-switching.
- Some require prior approval from the Ministry of Home Affairs for any job changes.
- These conditions must be reflected clearly in the employment contract.

# Do Customize for Foreign Employees

## Termination

- Special Termination Considerations for Foreign Workers
- Employers may need to notify immigration authorities if a foreign worker's contract is terminated.
- Failing to notify can result in penalties or future hiring restrictions.

## Clear Repatriation Clause

- Include a repatriation clause stating the employer will cover the cost of returning the employee to their home country upon contract end or termination.

## Medical Insurance

- Particularly for lower-skilled foreign workers, coverage under the Foreign Workers Compensation Scheme is mandatory.
- Be sure to reference this in the employment contract.

# The Don'ts in Employment Contract

Speaker:

Ms. Sabreena Binti Mohd Sab.

(Legal Associate)

# The Don'ts checklist :

- 1. Do not forget to update the Employment Contract when there is changes.**
  - ❖ If the company policies or the employees' role and responsibility change over time, the employment contract should change too.
  - ❖ Ensure that the employment contract is also updated in accordance with the amendment of the Employment Act 1955.
  - ❖ Ensure that all the key amendments to the Employment Act 1955 being obeyed and implemented by the employer.

## Cont...

### 2. Do not bury important terms in fine print or vague HR policy.

- ❖ Clear heading on the terms in the Employment Contract.
- ❖ The important terms of employment must be clearly visible and understandable. Important terms such as:-

1. The type of Employment
2. Compensation
3. Scope of Employment
4. Benefits
5. Termination
6. Confidentiality
7. Restrictive Covenants
8. Intellectual Property
9. Transfer
10. Retirement

## Cont...

### 3. Do not use vague terms or ambiguous clauses.

Examples:

- ❖ Reasonable Notice for Termination – "you may give notice within reasonable time" - what count as "reasonable"? It is vague and can lead to dispute.
- ❖ Scope of liability -"Other duties as assigned" – "other duties" could be minor or completely unrelated to the original job description.
- ❖ Competitive Salary - "You will be paid competitive salary based on industry standards" - which industry standards are being used?
- ❖ Be specific on the hospitalization leave entitlement. It has to be separate from sick leave. Be fair to the employee.

## Cont...

### 4. Do not use blanket terms in Employment Contract.

- ❖ Identify who are you hiring. If the Company is hiring an independent contractor for certain type of work, the contract should look nothing like an employment contract. Be specific that the contract is for contractor project, therefore it should not be subjected to the different employment structures and terms.

Examples:

- ❖ Retirement clause – in the absence of express retirement clause, employee can argue that they can work forever. Minimum Retirement Age Act 2012 will be applicable in which employer cannot unilaterally retire a person before 60.

## Cont...

- ❖ Sick leave – no clear distinction between sick leave and hospitalization. The employee should be made clear on the number of days for paid sick leave entitled if hospitalized and not being hospitalized (the amendment of the Employment Act 1955 has the effect of entitling the employees to 60 days of paid sick leave if being hospitalized on top of the 14 to 22 days of paid sick leave, depending on length of service.)
- ❖ Confidential Information - "The employee must not disclose confidential information during or after employment". Without a clear definition of what is Confidential, almost anything could be labelled confidential after the fact.

## Cont..

- ❖ Bonuses –do not use language that commits to bonuses, promotions or permanent positions unless the company truly intends to honor them. Explain the type of bonuses offered in the company.

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## Cont...

### 6. Do not change the terms without giving notice to the Employee.

- ❖ Changes to the employment contract usually require mutual agreement between both the employer and employees. Changes in terms of salary, working hours, or job scope and responsibilities need to be documented and agreed upon, and unilateral changes could lead to legal disputes.

# Cont...

## 5. Do not mislabeling certain type of payments

- ❖ Employers cannot assume that they can avoid certain statutory contributions by mislabeling the payments term to the employees.
- ❖ In the event of dispute, the Courts will look at the substance and nature of the payment, not just the labels that are attached to them.

Example:

- ❖ A company being sued for breach of minimum requirement wage. The Company then cannot put it to the Court that due to mislabeling of payment subject, the company should not be liable to such claims they have reached the minimum wage requirement.
- ❖ Travel allowance is exempted from EPF contribution. Company is not advisable to assign a big proportion of an employee's monthly wages as "travel allowance" to circumvent EPF contributions.

# What if the Employment Contract lack of many terms?

- ❖ Employment Act 1955 will apply by default.
- ❖ As much as the Employment Act sounds like a safety net for the employer, it creates uncertainty which the employer will eventually has to resolve.
- ❖ As the party responsible for issuing the contract, the employer bears the greater burden to ensure it is complete and legally compliant.

## Case: *Kandasami v Mohamed Mustafa* [1983] 2 MLJ 85

❖ In this case, the Court states as follows :-

“... there is a principle of construction that if a document inter partes contains an ambiguity which cannot otherwise be satisfactorily resolved, it is to be construed adversely to the party who proffered it for execution.”

# Case: Malaysia Motor Insurance Pool v Tirumeniyar Singara Veloo [2019] 10 CLJ 731

In this case, the Latin phrase of *chartarum forties accipiuntur contra proferentum* (*contra proferentum*), is defined as – the ambiguity in the wording in a policy, or slip, is to be resolved against the party who prepared it and/or the drafter.

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# Key Takeaways for Employer & Employees

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# The Employer

- As for the employer, it is important to study the Dos and Dents in Employment Contract to protect the interest of the company so as not to incur costs in term of monetary and time in case where breach of Employment Contract happens.
- Since by right, the company has the authority to terminate employees if the employees breached any term of the Employment Contract, the ambiguity of the Employment Contract should not be the reason and/or employees' ground of Defence not to be terminated.

## Cont...

### *Example:*

Employees fight between each other within working hour at office. Company supposedly has the liberty to terminate the employee who involved in the fight and does not achieve commercial viability subject to how the company draft the Employment Contract. i.e if the Employment Contract says, termination cannot be done without first giving notice, then the employer must ensure that notice is given as punishment and not immediate termination.

# The Employees

- Important to know the employees' rights and responsibilities as employees.
- Not to cause any issues contradicting the Employment Contract.
- Medium for check and balance to see whether the company is also adhering to the terms offered and agreed in the Employment Contract.

## Conclusion

Ensure to be as clear and straightforward as possible and communicate your company policies and procedures and terms of employment clearly from the start.

We hope this will also be an opportunity for you to reconsider and revise some of the companies' policies and terms in the employment contract which may no longer be relevant or suitable, especially after considering the potential legal liabilities that companies might face for non-compliance with the Employment Act 1955.

# THANK YOU

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