

MINIMUM RETIREMENT AGE BILL 2012

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A BILL

i n t i t u l e d

An Act to provide for the minimum retirement age and for any related matters thereto.

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ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Minimum Retirement Age Act 2012.

(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.

Non-application

2. (1) This Act does not apply to the person specified in the Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Schedule.

Interpretation

3. In this Act, unless the context otherwise requires—

“prescribe” means prescribed by regulations;

“Director General” means—

- (a) in respect of Peninsular Malaysia, the Director General of Labour appointed under subsection 3(1) of the Employment Act 1955 [*Act 265*];
- (b) in respect of Sabah, the Director of Labour appointed under subsection 3(1) of the Sabah Labour Ordinance [*Sabah Cap 67*]; and
- (c) in respect of Sarawak, the Director of Labour appointed under subsection 3(1) of the Sarawak Labour Ordinance [*Sarawak Cap 76*];

“contract of service” means any agreement, whether oral or in writing, and whether express or implied, whereby one person agrees to employ another person as an employee and that person agrees to serve his employer as an employee;

“employer” means any person who has entered into a contract of service to employ another person as an employee and includes an agent, a manager or factor of the first-mentioned person;

“Minister” means the Minister charged with the responsibility for human resources;

“labour officer” means the officer appointed under subsection 3(2) of the Employment Act 1955, subsection 3(1A) of the Sabah Labour Ordinance or subsection 3(1A) of the Sarawak Labour Ordinance;

“employee” means any person who has entered into, and works under, a contract of service with an employer irrespective of his wages but does not include the person specified in the Schedule;

“collective agreement” has the same meaning assigned to it in section 2 of the Industrial Relations Act 1967 [*Act 177*];

“retirement” means termination of a contract of service of an employee on the ground of age;

“premature retirement” means a retirement not in accordance with section 5;

“minimum retirement age” means the minimum retirement age provided under subsection 4(1) and where the Minister prescribes a higher minimum retirement age under subsection 4(2), such higher minimum retirement age.

PART II

MINIMUM RETIREMENT AGE

Minimum retirement age

4. (1) Notwithstanding any other written law, the minimum retirement age of an employee shall be upon the employee attaining the age of sixty years.

(2) The Minister may, by notification in the *Gazette*, prescribe a minimum retirement age higher than the minimum retirement age provided under subsection (1).

(3) When the Minister prescribes a higher minimum retirement age under subsection (2), the prescribed minimum retirement age shall supersede the minimum retirement age provided under subsection (1).

Premature retirement

5. (1) An employer shall not prematurely retire an employee before the employee attains the minimum retirement age.

(2) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) A premature retirement shall not include an optional retirement under section 6 and a termination of a contract of service for any reason other than on the ground of age.

Optional retirement

6. Notwithstanding the minimum retirement age, an employee may retire upon attaining the age of optional retirement as agreed in the contract of service or collective agreement.

Invalidity of term of contract of service and collective agreement

7. (1) Any retirement age in a contract of service or collective agreement made before, on or after the date of coming into operation of this Act which is less than the minimum retirement age provided under this Act shall be deemed to be void and substituted with the minimum retirement age provided under this Act.

(2) Any term in a contract of service or collective agreement relating to retirement age shall be void if it excludes or limits the operation of any provision of this Act.

PART III**COMPLAINTS AND INQUIRIES****Director General's power to inquire into complaints**

8. (1) An employee who has been prematurely retired by his employer has, within sixty days from the date of the retirement, the option to complain in writing to the Director General.

(2) If an employee opts to make a complaint to the Director General under subsection (1), the employee shall not make a representation under section 20 of the Industrial Relations Act 1967 until his complaint to the Director General under this section has been resolved.

(3) If an employee has made a representation under section 20 of the Industrial Relations Act 1967 and also made a complaint under subsection (1), the Director General shall not conduct an inquiry on the complaint made by the employee.

(4) Subject to subsection (3), the Director General may conduct an inquiry, in the manner prescribed by the Minister, to determine whether there is *prima facie* evidence that an employee has been prematurely retired by his employer.

(5) Upon an inquiry under subsection (4), if the Director General—

(a) is satisfied that the complaint by an employee is not substantiated, the Director General shall dismiss the complaint; or

(b) is satisfied that the employee has been prematurely retired by his employer, the Director General may direct the employer—

(i) to reinstate the employee in his former employment and to pay the employee any arrears of wages calculated from the date the employee has been prematurely retired to the date of the reinstatement; or

(ii) to pay the employee a compensation in lieu of reinstatement, not exceeding the amount of total wages of the employee calculated from the date the employee has been prematurely retired to the date the employee attains the minimum retirement age.

(6) Notwithstanding subsection (2) and any limitation period provided under subsection 20(1A) of the Industrial Relations Act 1967, an employee may make a representation under section 20 of the Industrial Relations Act 1967 if the Director General has dismissed his complaint under paragraph (5)(a), and such representation shall be made within thirty days after the dismissal of the complaint under paragraph (5)(a) is communicated to the employee.

(7) If an employee has made a representation under section 20 of the Industrial Relations Act 1967 after his complaint has been dismissed under paragraph (5)(a), the employee is not entitled to appeal under section 9 of this Act, against the dismissal of his complaint by the Director General.

(8) If the Director General has made a direction under paragraph (5)(b), the employee is not entitled to any other remedy for a dismissal without just cause and excuse under the Industrial Relations Act 1967.

(9) For the purpose of this section, “wages”—

(a) for the employee specified in the First Schedule to the Employment Act 1955, in the Schedule to the Sabah Labour Ordinance or in the Schedule to the Sarawak Labour Ordinance, has the meaning assigned to it respectively in section 2 of the Employment Act 1955, section 2 of the Sabah Labour Ordinance or section 2 of the Sarawak Labour Ordinance; and

(b) for the employee not specified in the First Schedule to the Employment Act 1955, in the Schedule to the Sabah Labour Ordinance or in the Schedule to the Sarawak Labour Ordinance, means the rates of wages agreed upon in his contract of service.

Reference to High Court on question of law

9. (1) In any inquiry under subsection 8(4), the Director General may, if he thinks fit, refer any question of law for the decision of a Judge of the High Court and if the Director General does so he shall make his decision in the inquiry in conformity with the decision of the Judge of the High Court.

(2) An appeal on any decision of a Judge of the High Court under subsection (1) shall lie to the Court of Appeal.

Appeal

10. (1) A person who is dissatisfied with the decision of the Director General under subsection 8(5) may appeal to the High Court.

(2) Subject to any rules made under section 4 of the Subordinate Court Rules Act 1955 [*Act 55*], the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

Non-compliance with direction of Director General

11. (1) An employer who fails to comply with the direction of the Director General under paragraph 8(5)(b) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(2) If an employer has been convicted of an offence under subsection (1), the court before which the employer has been convicted may order the employer to pay to the employee the amount directed by the Director General to be paid under paragraph 8(5)(b).

(3) If an employer fails to comply with an order made under subsection (2), the court may, on the application of an employee, issue a warrant to levy the employer's property for the amount ordered to be paid under subsection (2) in the following manner:

- (a) by way of distress and sale of the employer's property in accordance with the same procedure of execution under the Subordinate Courts Rules 1980 [*P.U. (A) 328/1980*] and this execution shall apply *mutatis mutandis* notwithstanding the amount ordered to be paid; or
- (b) in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [*Act 593*].

PART IV

INVESTIGATION AND ENFORCEMENT

Powers of Director General

12. The Director General shall have all the powers to—

- (a) investigate into any offence under this Act; and
- (b) to enforce any provision of this Act.

Power to require attendance of persons acquainted with case

13. (1) The Director General in making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any person refuses or fails to attend as so required, the Director General may report such refusal or failure to a Magistrate who shall issue a summons to secure the attendance of such person as may be required by the order made under subsection (1).

(3) The Director General may examine orally a person supposed to be acquainted with the facts and circumstances of the case under his investigation.

(4) A person shall be bound to answer all questions put to him relating to the case under investigation by the Director General but the person may refuse to answer any question which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(5) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(6) The Director General examining a person under subsection (3) shall first inform the person of the provisions of subsections (4) and (5).

(7) A statement made by any person under this section shall be reduced into writing and signed by the person making the statement or affixed with his thumbprint after the statement has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

Power to require production of document

14. (1) The Director General who is making an investigation under this Act may—

- (a) require any person acquainted with the facts and circumstances of the case to produce any contract of service or other document relating to the employment of an employee who makes a complaint under subsection 8(1);
- (b) make copies of any contract of service or other document relating to employment produced under paragraph (a); and
- (c) take or remove any relevant document.

(2) If the Director General is satisfied that the retaining of any document is no longer necessary, the Director General may return the document to the person who has provided the document as soon as practicable.

PART V

GENERAL

Exercise of Director General's powers by labour officer

15. (1) Subject to subsection (2) and any limitation as may be prescribed by the Minister, a labour officer may exercise all the powers conferred upon the Director General by this Act, and every power so exercised shall be deemed to have been exercised for the purposes of this Act.

(2) A labour officer shall not exercise any of the powers of the Director General under this Act unless he is in possession of an authority card signed by the Director General authorizing him to exercise such powers.

Prosecution

16. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Compounding of offences

17. (1) The Director General may, with the consent in writing of the Public Prosecutor, compound any offence committed by any employer under this Act which is prescribed to be a compoundable offence by making a written offer to the employer suspected to have committed the offence to compound the offence upon payment to the Director General of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director General may grant, the prosecution for the offence may be instituted at any time after that against the employer to whom the offer was made.

(3) If an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the employer to whom the offer to compound was made.

Exemption

18. The Minister may, by order published in the *Gazette*, exempt with or without conditions any employer or class of employers from all or any of the provisions of this Act.

Power to make regulations

19. The Minister may make such regulations as may be necessary and expedient for the purpose of carrying into effect the provisions of this Act.

SCHEDULE

(Section 2)

1. This Act does not apply to—
 - (a) a person who is employed on a permanent, temporary or contractual basis and is paid emoluments by the Federal Government, the Government of any State, any statutory body or any local authorities;
 - (b) a person who works on a probationary term;
 - (c) an apprentice who is employed under an apprenticeship contract;
 - (d) a non-citizen employee;
 - (e) a domestic servant;
 - (f) a person who is employed in any employment with average hours of work not exceeding seventy percent of the normal hours of work of a full-time employee;
 - (g) a student who is employed under any contract for a temporary term of employment but does not include an employee on study leave and an employee who studies on part-time basis;
 - (h) a person who is employed on a fixed term contract of service, inclusive of any extension, of not more than twenty four months; and

- (i) a person who, before the date of coming into operation of this Act, has retired at the age of fifty five years or above and subsequently is re-employed after he has retired.
2. For the purpose of this Schedule “domestic servant” and “apprenticeship contract” have the meaning assigned to them in section 2 of the Employment Act 1955, the Sabah Labour Ordinance and the Sarawak Labour Ordinance.

EXPLANATORY STATEMENT

This Bill seeks to provide for the minimum retirement age of an employee and to provide for matters related thereto.

PART I

2. Part I deals with preliminary matters.
3. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.
4. *Clause 2* provides for non-application of the proposed Act to a certain type of employment and class of persons specified in the Schedule. The Minister is empowered to amend the Schedule.
5. *Clause 3* contains the definitions of certain expressions used in the proposed Act.

PART II

6. Part II of the proposed Act which contains *clauses 4* to *7* deals with the minimum retirement age, premature retirement, optional retirement and implication of the implementation of the minimum retirement age under the proposed Act to the terms and conditions relating to retirement age in a contract of service and a collective agreement.
7. *Clause 4* seeks to prescribe the minimum retirement age of an employee is at the age of sixty years and the Minister is empowered to prescribe a higher minimum retirement age.
8. *Clause 5* seeks to provide a penalty not exceeding ten thousand ringgit for an employer who prematurely retires his employee.
9. *Clause 6* seeks to allow an employee to retire at the optional retirement age as agreed by the employee and his employer in the contract of service or collective agreement.

10. *Clause 7* seeks to provide that any retirement age in a contract of service or a collective agreement made before, on or after the coming into operation of the proposed Act which is less than the minimum retirement age provided under the proposed Act, will be deemed to be void and substituted with the minimum retirement age provided under the proposed Act.

PART III

11. Part III of the proposed Act which contains *clauses 8 to 11* deals with the complaints and inquiries.

12. *Clause 8* provides procedure for the Director General to conduct an inquiry to a complaint made by an employee who has been prematurely retired by an employer.

13. *Clause 9* enables the Director General who conducts an inquiry under the proposed Act to refer any question of law to the High Court.

14. *Clause 10* seeks to allow any person who is dissatisfied with the decision of the Director General to dismiss his complaint to appeal to the High Court.

15. *Clause 11* provides the penalty for an employer who fails to comply with the direction of the Director General and empowers the court to make an order for the purpose of executing the direction of the Director General.

PART IV

16. Part IV of the proposed Act which contains *clauses 12 to 14* deals with the investigation and enforcement.

17. *Clause 12* seeks to provide for the powers of investigation and enforcement to the Director General.

18. *Clause 13* empowers the Director General to require the attendance of any person acquainted with the case under his investigation to appear before him and the Director General may examine the person.

19. *Clause 14* enables the Director General to require the production of any document related to his investigation.

PART V

20. Part V of the proposed Act which contains *clauses 15 to 19* deals with general provisions.

21. *Clause 15* provides for the exercise of the powers of the Director General under the proposed Act by a labour officer.

22. *Clause 16* provides that the prosecution of an offence under the proposed Act shall be instituted only with the consent in writing of the Public Prosecutor.
23. *Clause 17* provides for the compounding of offences under the proposed Act.
24. *Clause 18* seeks to empower the Minister to exempt any employers from the provision of the proposed Act.
25. *Clause 19* provides power to the Minister to make regulations for the purpose of carrying into effect the provisions of the proposed Act.

FINANCIAL IMPLICATION

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2823]