

Mastering The Art Of

AVOIDING COMMON PITFALLS:

Employment Act Compliance and Dispute Resolution

A Deep Dive into Employment
Act 1955 and Effective
Resolution Strategies



Presented By:

Name : Rajkumar Balan

Date : 3rd December 2024

Venue : MyWave HQ



Overview

Session Agenda :-

- Introduction to the Employment Act 1955
- Common Compliance Pitfalls
- Dispute Resolution Mechanisms
- Real-life Scenarios and Case Studies
- Practical Tips for Employers
- Q&A Session



Why Compliance Matters?



Business Impacts

- Reduced risk of legal penalties.
- Improved employee satisfaction and retention.
- Enhanced reputation as an employer of choice.



Legal Consequences:

- Fines up to RM50,000 for serious violations.
- Potential lawsuits and financial losses.

Employment Act 1955 Applicability

- Who is Covered?
 - Employees earning RM4,000 or less/month.
 - Manual laborers regardless of salary.
 - Includes probationers and fixed-term contract workers.

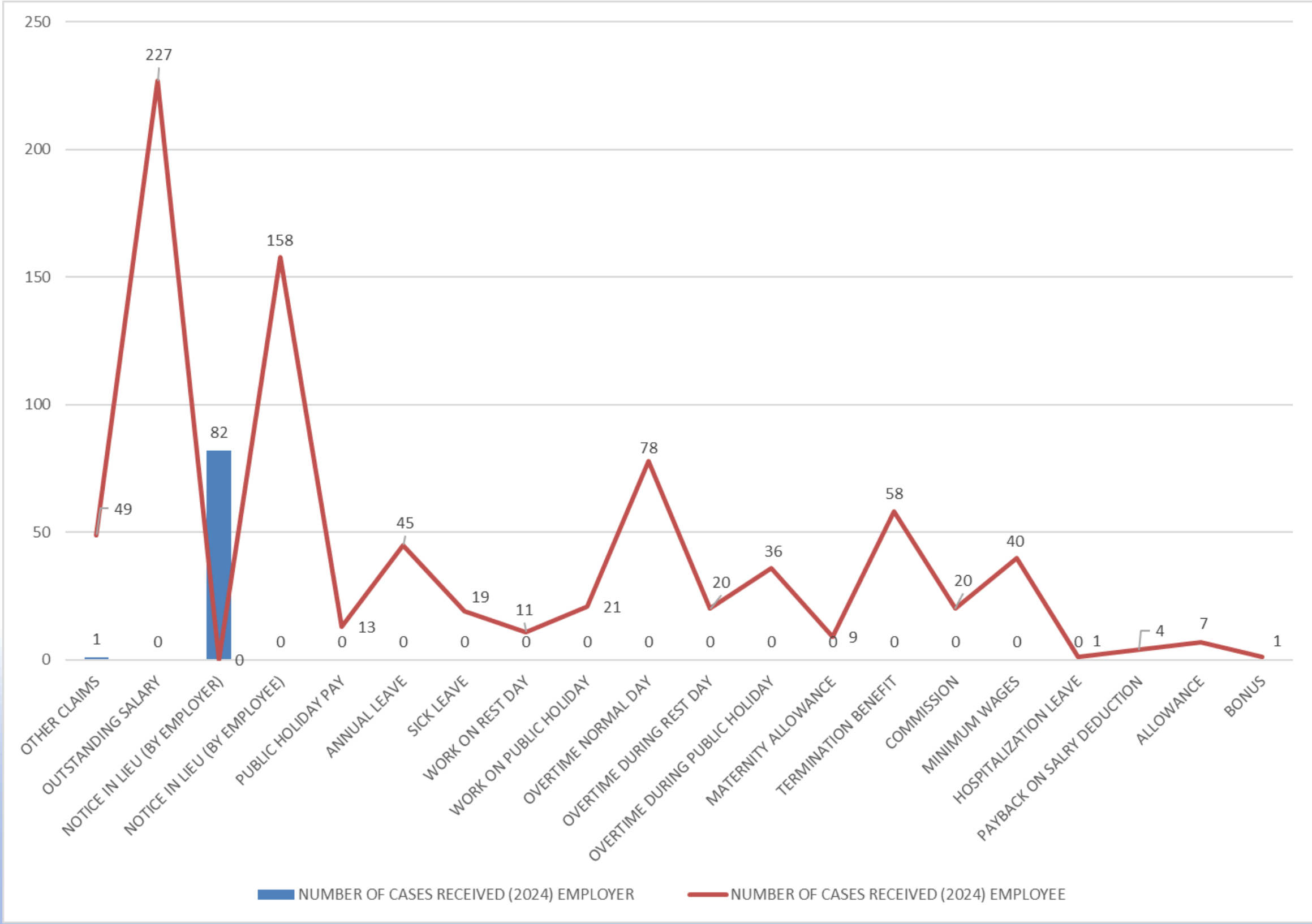
Recent Trends in Employment Disputes

- Statistics:
 - A rise in unfair dismissal claims by 15% in recent years.
 - Common disputes include unpaid wages and overtime.
- Emerging Themes:
 - Growing emphasis on flexible work arrangements.
 - Focus on employee well-being and mental health.

Statistics

TYPES OF CLAIM	NUMBER OF CASES RECEIVED (2023)	
	EMPLOYER	EMPLOYEE
OTHER CLAIMS	1	49
OUTSTANDING SALARY	0	227
NOTICE IN LIEU (BY EMPLOYER)	82	0
NOTICE IN LIEU (BY EMPLOYEE)	0	158
PUBLIC HOLIDAY PAY	0	13
ANNUAL LEAVE	0	45
SICK LEAVE	0	19
WORK ON REST DAY	0	11
WORK ON PUBLIC HOLIDAY	0	21
OVERTIME NORMAL DAY	0	78
OVERTIME DURING REST DAY	0	20
OVERTIME DURING PUBLIC HOLIDAY	0	36
MATERNITY ALLOWANCE	0	9
TERMINATION BENEFIT	0	58
COMMISSION	0	20
MINIMUM WAGES	0	40
HOSPITALIZATION LEAVE	0	1
PAYBACK ON SALRY DEDUCTION	0	4
ALLOWANCE	0	7
BONUS	0	1
TOTAL	83	817

Statistics



Key Provisions of the Employment Act 1955



Key amendments to the Employment Act 1955, which came into effect on 1 January 2023

Reduction in Maximum Weekly Working Hours

- Before: 48 hours per week.
- Now: Reduced to 45 hours per week.
- Aims to promote better work-life balance and align with international labor standards.

Increased Maternity Leave

- Before: 60 days.
- Now: Increased to 98 days.
- This amendment ensures better protection and recovery time for working mothers.

Paternity Leave Introduced

- Fathers are now entitled to 7 consecutive days of paid paternity leave for up to 5 surviving children.
- Applicable to employees who have worked for the same employer for at least 12 months.

Flexible Working Arrangements (FWA)

- Employees can apply in writing for flexible working arrangements regarding:
 - Hours of work.
 - Workdays.
 - Work location.
- Employers must respond within 60 days, stating approval or rejection with reasons.

Key amendments to the Employment Act 1955, which came into effect on 1 January 2023

Employment Act 1955, which came into effect on 1 January 2023, the Act now applies to all employees, regardless of their monthly salary.

Key Details of the Change

- **Universal Coverage:**
 - All employees in Malaysia, irrespective of their salary levels, are now entitled to the minimum protections provided by the Employment Act.
- **Additional Protections:**
 - Managers and Professionals: Previously excluded from certain provisions, they are now covered for core benefits like maternity leave, paternity leave, protection against forced labor, and termination benefits.
 - Non-Manual Workers with Higher Salaries: No longer exempt based on salary thresholds.
- **Customizable Terms for High-Salary Employees:**
 - Employers and employees earning above RM4,000/month can still negotiate specific terms beyond the statutory requirements (e.g., overtime rates).

Key Provisions of the Employment Act 1955

Working Hours and Rest Days

- **Working Hours:**
 - Max 45 hours per week (2023 amendment).
 - 8 hours/day; up to 12 hours/day with mutual agreement.
- **Rest Days:**
 - At least 1 rest day per week (Section 59).
- **Example:**
 - Employees working on rest days are entitled to 2x their daily rate.

Wages and Deductions

- **Payment Rules:**
 - Salaries must be paid no later than 7 days after the month ends.
- **Deductions:**
 - Permissible deductions include EPF, SOCSO, and overpayment recovery.
 - Total deductions cannot exceed 50% of the monthly wages.

Key Provisions of the Employment Act 1955

Leave Entitlements

- **Annual Leave:**
 - Minimum entitlement increases with service years:
 - 8 days (less than 2 years of service).
 - 12 days (2–5 years).
 - 16 days (over 5 years).
- **Sick Leave:**
 - With hospitalization: Up to 60 days/year.
 - Without hospitalization: 14–22 days based on service years.

Termination and Layoff Benefits

- **Notice Periods:**
 - 4 weeks (<2 years of service).
 - 6 weeks (2–5 years).
 - 8 weeks (5+ years).
- **Layoff Benefits:**
 - Calculated as per the Employment (Termination and Lay-Off Benefits) Regulations.

Key Provisions of the Employment Act 1955

Equal Treatment and Discrimination

- **Employers must provide:**
 - Equal pay for equal work.
 - Non-discriminatory policies for gender, religion, or nationality.

In ***K Kavitha Krishnan v Aetins Sdn Bhd***, the Industrial Court had criticized the actions of refusal of medical certificates due to her pregnancy-related complications, deduction of annual leave and salary, and subsequent dismissal by the employer against the claimant. The court sagaciously described the actions as:

"...had not shown any compassion to a female employee who had faced complications in pregnancies. Instead, it had resorted to unacceptable means to try and get rid of her and to deprive her of her maternity benefits. Its actions had clearly been a blatant disregard of fair labor practices and had amounted to acts of victimization against a female employee."

The court, in this case, had aptly summarized actions which are obviously driven by pregnancy discrimination as the victimization of an employee and denounced them as a non-adherence to fair labor practices. Other than dismissals during pregnancy, the Industrial Court has also decided that demotions during or after the period of maternity leave equate to constructive dismissals.

Common Compliance Pitfalls



Common Compliance Pitfalls

Unlawful Terminations

- Issue: Dismissals without due process (e.g., no warnings or hearings).
- Example: Dismissing employees via WhatsApp for "poor performance."
- Prevention:
 - Follow a clear disciplinary process.
 - Document warnings and evaluations.

IT engineer awarded RM342,900 for wrongful dismissal from Sunshine Bread

By **New Straits Times** - August 23, 2024 @ 9:37am



An information technology engineer was awarded RM342,900 for wrongful dismissal after the Industrial Court ruled his failure to return to work as instructed following a prolonged recovery from Covid-19 was not in breach of contract. - NSTP file pic

Ex-Penang Hill GM's RM417,000 unlawful termination award upheld

V Anbalagan - 29 May 2024, 05:10 PM

Khoo Teng Cheok, now 70, was appointed on a three-year contract in February 2014 but was removed from office in January 2016.

27 SHARES 3 3 21 0

Total Views: 10,154



The Court of Appeal has affirmed a High Court ruling that Khoo Teng Cheok was wrongfully removed before the expiry of his three-year employment contract.

PUTRAJAYA: The Court of Appeal has affirmed an award of RM417,000 in compensation for a former general manager of the Penang Hill Corporation whose three-year employment contract was unlawfully terminated prior to its expiry.

Most Viewed Last 2 Days

- 1 Pensioners fret as govt stays silent over new rates
01 Dec 2024, 07:00 AM
- 2 Bersatu's financial position 'critical', says treasurer Rina
01 Dec 2024, 02:47 PM
- 3 Anwar's asset declaration in 2019 misused to slander him, says his pol sec
01 Dec 2024, 05:13 PM
- 4 PKR decides not to take disciplinary action against Hassan Karim
30 Nov 2024, 06:31 PM
- 5 Ananda's children say tycoon was touched by people he met
30 Nov 2024, 01:29 PM

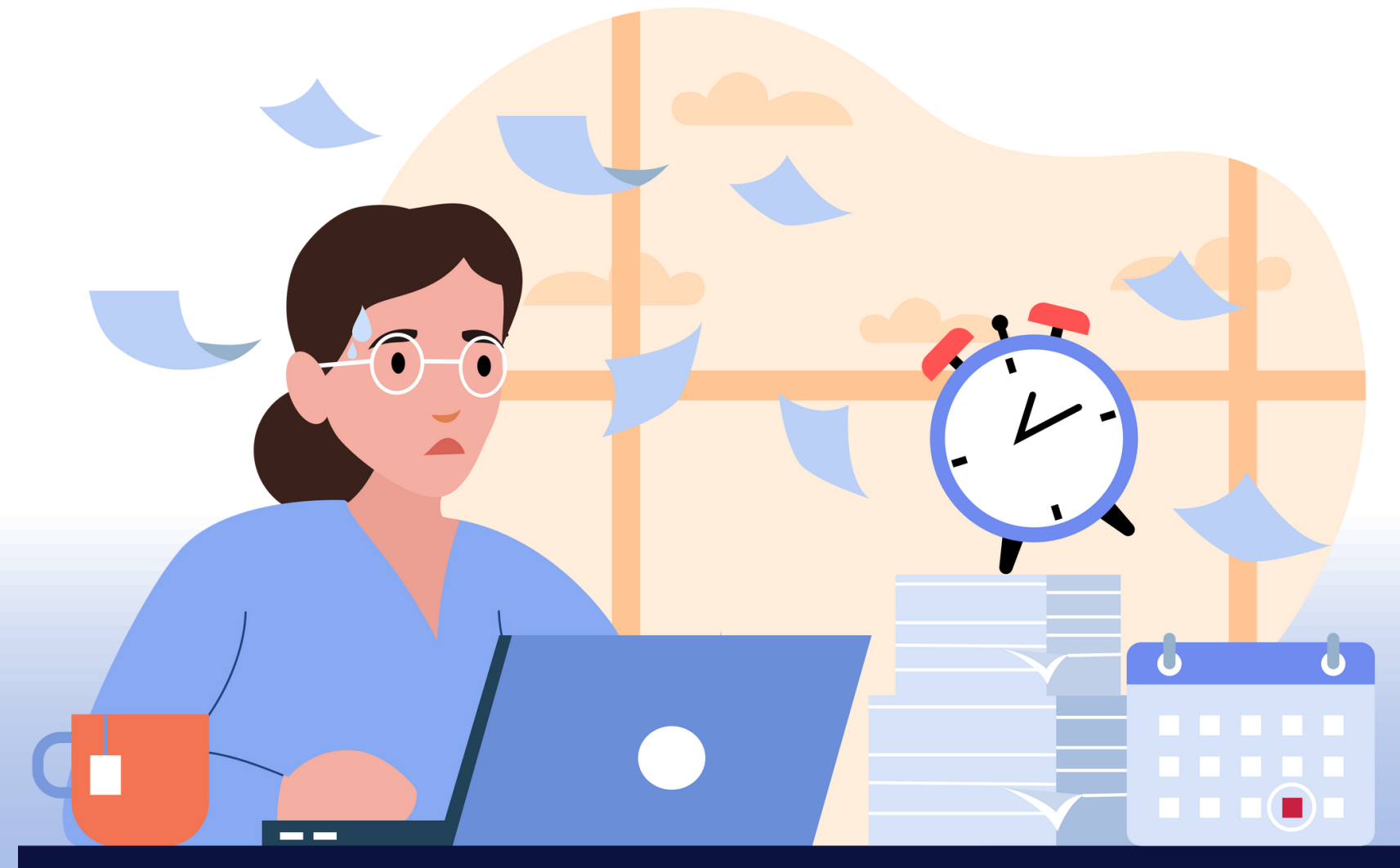
Special Features



Common Compliance Pitfalls

Improper Handling of Overtime

- Requirement: Employees must be paid for hours exceeding 45 hours/week.
- Common Errors: Misclassifying staff as "non-eligible" for overtime.
- Best Practice: Conduct regular job scope audits to determine eligibility.



Common Compliance Pitfalls

Misclassification of Employees

- Scenario: Employers misclassify laborers as "contractors" to avoid benefits.
- Outcome: Courts may reclassify them as employees and award compensation.
- Prevention: Adhere to Section 2 on employee definitions.



Common Compliance Pitfalls

Incomplete Documentation

- Examples:
 - Lack of signed employment contracts.
 - No records of disciplinary actions.
- Impact: Weak legal standing in disputes.
- Solution: Maintain comprehensive and up-to-date records.



Dispute Resolution Mechanisms



Dispute Resolution Mechanisms

Internal Mechanisms

- Grievance Procedures: Encourage employees to voice concerns early.
- Role of HR: Mediation and facilitating open communication.



Dispute Resolution Mechanisms

Official Channels

- Labor Department: Handles wage disputes and complaints on working conditions.
- Industrial Relations Department: Addresses unfair dismissal claims.



Dispute Resolution Mechanisms

Industrial Court Process

- Steps:
 - Filing a claim.
 - Mediation efforts.
 - Hearing at the Industrial Court.
- Outcomes: Reinstatement or monetary compensation.



Dispute Resolution Mechanisms

Case Study: Unfair Dismissal

Airod ex-manager awarded RM1.1mil for unfair dismissal

V Anbalagan - 19 Jun 2024, 09:00 AM

Fawaid Daud had a legitimate expectation to remain in employment until the mandatory minimum retirement age of 60 years, says the Industrial Court.

149 SHARES  16  13  120  0

Total Views: 23,916



The Industrial Court awarded Fawaid Daud back wages of RM487,368 and another RM649,824 as compensation in lieu of reinstatement following his unjust dismissal by Airod Sdn Bhd after 32 years of service. (Airod pic)



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Dispute Resolution Mechanisms

Case Study: Unfair Dismissal

Court chairman Augustine Anthony said Fawaid Daud was a permanent employee of Airod Sdn Bhd despite being issued with annual fixed-term contracts of employment covering a period of 20 years from Jan 1, 2000 to Dec 31, 2020. “There is no dispute that the claimant was a permanent employee of the company, having first been employed on Aug 1, 1988.

“The claimant was, however, offered a fixed term contract of employment only on Jan 1, 2000,” Anthony said in a 58-page award released last week. He said it was manifestly clear that the company intended to keep Fawaid as a permanent employee and, therefore, the claimant had a legitimate expectation to remain employed until he reached the mandatory minimum retirement age of 60 as prescribed by law. Anthony said the claimant had served the company for 32 years with an unblemished record and was prepared to be shifted from one department to another regularly.

“Certainly the claimant’s loyalty and outstanding performance must account for something special in the eyes of a fair and just employer, but sadly this was not the case here,” he said. Anthony said corporations and business entities are perfectly entitled to be profit driven but they must never lose sight of the welfare of their workforce. “This court finds that the company has failed to prove on the balance of probabilities that the dismissal of the claimant was with just cause or excuse,” he said. Although the claimant had not as at the date of the award turned 60 years old, the mandatory minimum retirement age under the Minimum Retirement Age Act 2012, Anthony declined to reinstate him to his employment.

“At the time of giving evidence in Court, the Claimant was 58 years old. “Having considered all the evidence in this case, including the age of the claimant at the time of handing down this award, this court is of the view that reinstatement of the claimant to his former position in the company was not a suitable remedy in the circumstances of this case,” he said. Fawaid’s last drawn monthly salary was RM20,307.

Anthony awarded Fawaid a total of RM1,137,192, comprising back wages of RM487,368 and RM649,824 as compensation in lieu of reinstatement. The facts of the case revealed that Fawaid began his employment with the company in 1988 as an engineer with a monthly salary of RM1,300.00. Due to his good job performance, he was promoted to deputy manager on July 1, 1993.

On Jan 1, 2000 the company appointed Fawaid to the post of general manager and put him on a fixed term contract for one year. The claimant enjoyed an automatic renewal of his employment from then on. After 32 years of service, the company on Dec 21, 2020 issued a letter to the claimant captioned “expiry of contract of service” by which he was informed that his employment would end on Dec 31, 2020.

Fawaid stated that the dismissal was malicious, unlawful, an act of victimisation and unfair labour practice. The company took the position that effective Jan 1, 2000, the claimant was categorised as being at managerial level with a lucrative salary scheme and additional perks not enjoyed by the company’s permanent employees. It said the company’s policy was that all employees at the managerial level will only be offered annual fixed-term contracts.

However, Anthony said the evidence did not support the company’s contentions. “The contract of employment dated Aug 1, 1988 clearly states that the claimant was already employed (at the) managerial level even in 1988. Anthony also said a review of the evidence showed that the claimant’s remuneration when appointed general manager “was nothing different from a permanent employee of the company.”

Dispute Resolution Mechanisms

Alternative Dispute Resolution

- Options: Mediation and arbitration.
- Benefits: Faster, less formal, and cost-effective.



Scenarios and Practical Tips



Scenarios and Practical Tips

Scenario 1: Overtime Dispute

- Situation: A clerk salaried RM 3,500 worked 50 hours last week but received no overtime.
- Question: Is the employer compliant with the law?
- Discussion: Analyze Section 60A and applicable rates.

Scenario 2: Unlawful Termination

- Situation: Employee fired after 1 verbal warning.
- Discussion: Discuss proper procedures for disciplinary action.



Scenarios and Practical Tips

- **Practical Steps to Avoid Non-Compliance**

- Conduct compliance audits annually.
- Ensure contracts are clear and aligned with the Employment Act.
- Provide regular training for HR and managers.

- **Best Practices for Dispute Prevention**

- Maintain open communication channels.
- Educate employees on their rights and responsibilities.
- Document all decisions related to employment disputes.

- **Employer Compliance Checklist**

- Pay salaries within 7 days of the month-end.
- Adhere to the 45-hour weekly limit.
- Avoid discriminatory practices in hiring and promotion.

Q & A



Thank You
For Your Attention

