

Memorandum

From

LLRC Sabah & MTUC Sabah Division

To

Federal Minister of Human Resources

Datuk Seri YB Saravanan Murugan

Concerning

Amendments to Sabah Labour Ordinance

On 15 July 2022

Background

In 2018, the Malaysian federal government kicked off the labour law reform exercise. It engaged Malaysian Trades Union Congress and Malaysian Employers' Federation in discussion on reforming Employment Act 1955, Trade Union Act 1959 and Industrial Relations Act 1967.

In 2019, the Ministry of Human Resources website published the ministerial proposals on labour law reform for public engagement, including the proposals on Employment Act, Sarawak Labour Ordinance and Sabah Labour Ordinance.

Together with the Labour Law Reform Coalition (LLRC), Sabah unions had submitted the coalition's proposed amendments to Employment Act to the federal Ministry of Human Resources (MOHR) in January 2019.

The federal government further revised the proposals, tabled and passed the Employment Act (Amendments) Bill in the House of Representatives in March 2022.

After the bill received the approval of Yang di-Pertuan Agong and published in the federal gazette, the Minister of Human Resources announced that the amendments will come into force on 1 September 2022.

The Gap between Employment Act Amendments (EAA) and Sabah Labour Ordinance (SLO)

However, when the workers of Peninsular Malaysia will begin to enjoy the benefits in the EAA on 1 September 2022, there is no signal when the SLO will be tabled in the parliament for debate and approval. If the parliament is dissolved before the approval of SLO, the reform exercise could be further delay for one more year.

During the consultation meeting on Sabah Labour Ordinance organized by LLRC on 12 June 2022 in Kota Kinabalu, Sabah unions had thoroughly examined the gap between the EAA, SLO and the MOHR proposals in 2019, as follows :

No	EAA	SLO	MOHR 2019 proposals
1	Wage ceiling in schedule one will be abolished	Wage ceiling is capped at RM2,500	MOHR proposed to abolish the wage ceiling
2	[Existing] contractor for labour chapter	Existing subcontractor for labour chapter	Same as EA1955. A new chapter on contractor for labour will be inserted
3	Presumption of who is an employee	N/A	Same as EAA. Presumption of who is an employee
4	Maternity leave increased from 60 to 98 days	Maternity leave 60 days	Same as EAA. Maternity leave to increase from 60 to 98 days
5	Paternity leave 7 days	N/A	N/A
6	Weekly hour of work reduced from 48 to 45	Weekly 48 hour of work	Reduce to 44 hours
7	[Existing] Paid holidays : 11	Paid holidays : 14	Paid holidays : 15
8	Discrimination in employment provision has been watered down	N/A	Stronger discrimination in employment provision. Same as the MOHR's EAA proposals in 2019
9	Forced labour	N/A	Same as EAA. Forced labour

10	N/A	N/A	Similar to Employees Minimum Standards of Housing, Accommodations and Amenities Act 1990
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Poor Working Conditions in Sabah Must be Remedied

During the consultation meeting, Sabah union leaders expressed dissatisfaction over the difference between the EAA and the SLO. They called on the federal MOHR and Sabah state government to accelerate the amendments of SLO in order to protect the rights and benefits of workers in Sabah.

Workers in Sabah have been working under extremely poor conditions. Many of them are forced to work 48 hours a week plus additional overtime.

The AIA Vitality Study 2017 shows Malaysian workers work average 15 hours overtime a week. The research discovered 53 percent of workers were at risk of mental health issues, and 12 percent suffered depression.

We are glad that the ministry has proposed to reduce the weekly hour of work from 48 to 44 hours, the first step towards the ILO Forty-Hour Week Convention. We hope that the governments maintain the proposal until it is presented to the parliament.

The federal government reversed its initial proposal of 44 hours in the EAA and changed it to 45 hours, this should not happen in the upcoming SLO amendments.

We agree with the increase of maternity leave to 98 days since it is in line with the ILO Convention 183 on Maternity Protection. Nevertheless, we are disappointed that the proposed amendments to SLO do not include the 7-day paternity leave, a good initiative in EAA that provides male workers day-offs to accompany their wife and new born babies.

In addition, we welcome re-introduction of the chapter on minimum standards of housing, accommodations and amenities in the SLO. The chapter is essential to protect local and migrant workers working in plantations and other sectors.

However, most of the sections are only applicable to estate workers. We hope the chapter can be applied to all workers, just as the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990.

We support modernization of SLO

Furthermore, we support the governments' effort to modernize the SLO and on par with international standards.

We commend the government's initiative to introduce the new provisions on forced labour and discrimination in employment to eliminate modern slavery and discriminatory employment practice. But the provisions should be further strengthened in consultation with trade unions and employers.

The introduction of the “presumption of who is an employee” is crucial to protect workers who do not have a written contract with the pay master. This is particularly important for platform workers in the digital era.

We are glad that finally the anti-sexual harassment provisions are included in the SLO. It is the first step towards the correct direction to protect the rights of female and male workers from sexual harassments at workplaces.

We disagree with the insertion of the contractor for labour chapter, which will encourage more outsourcing and subcontracting activities. Workers in Sabah will be losers if they are put under precarious working conditions, because the outsourced workers cannot enjoy social protection benefits and face a lot of challenge to join trade unions.

Our Demands

LLRC Sabah calls on the Federal Minister of Human Resources and the Ketua Menteri Sabah to table the SLO Amendment Bill to the parliament in the upcoming parliament session in July 2022. So the SLO Amendment Bill can come into force on 1st September 2022, same date with the effective date of EAA.

We urge the governments to accept our following demands :

1. The weekly hour of work should be maintained at 44 hours.
2. We support the maternity leave to be increased to 98 days. But we urge the government to introduce 7-day paternity leave in the SLO amendments.
3. The contractor for labour provision should be abolished to stop outsourcing activities
4. The anti-sexual harassment provision should be further strengthened by requiring employers to produce a written code on anti-sexual harassment.
5. The forced labour provision should be strengthened by introducing the 11 indicators recommended by the ILO
6. The criteria of discrimination in employment such as gender, race, religion, language should be mentioned. The pre-employment discrimination provision should be added.
7. The chapter on minimum standards of housing, accommodations and amenities should be approved as soon as possible to protect the rights of local and migrant workers in all sectors.

Conclusion

The explanatory statement of the EAA bill said the purpose of the bill is to comply with ILO standards. We hope that the governments to amend SLO in accordance to ILO standards such as 40 hour week (as a long term objective), non-discrimination

principle, abolition of forced labour, elimination of violence and harassment (Convention 190).

We again emphasize that the amendment bill should be tabled and approved in the upcoming parliament sitting in July 2022, it must be done before dissolution of the federal parliament.

Contact us

Margaret Chin

LLRC Sabah Representative

MTUC Sabah Division Vice Chair

Tel No : 013-8851633

Email : margarethin69@hotmail.com