

CCS Insights: Additional Paid Public
Holidays for Private Sector Employees
in the Federal Territories of Kuala
Lumpur in this CNY?

在这个春节里，吉隆坡的私人界雇员是否享有额外带薪公共假期呢

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1. The Star 在昨天的一则新闻 “Private sector employees in FT must be given additional paid public holiday, says Labour Dept”，引起不少吉隆坡的雇主及员工们的关注。
2. 相信大家都知道，每年的联邦直辖区日是落在 2 月 1 日，而这么巧，今年的华人农历新年大年初一也落在 2 月 1 日。
3. 两个公共假期落在同一天，身为雇主，要如何处理呢？到底要不要补多一天的假期？如果要的话，隔天 2 月 2 日又是公共假期，那又如何是好呢？补假是不是要安排在 2 月 3 日呢？
4. 如果你熟悉 1955 年劳工法令的话，那么即使不读这则新闻，你也知道该怎样处理。又或者是，即使你不懂该如何处理，在读了这则报导后，你就会有些头绪。
5. 不过，由于有些雇主日理万机，无暇细读有关的报导，因此，我就在这里向大家梳理一下。
6. 马来西亚公共假期是根据《1951 年假期法令》、《沙巴假期法令》和《砂拉越公共假期法令》而制定，适用于马来西亚半岛、沙巴及砂拉越。
7. 众所周知，我们马来西亚是最多公共假期的国家，仔细去数，根据《1951 年假期法令》颁布的公共假期应该有整 17 天。
8. 不过，究竟员工可以享有多少天的带薪假期，我们是参照 1955 年劳工法令或雇佣合约的。

9. 大家要知道的一件事是，1955 年劳工法令只适用于以下两类型的员工：

- a) 月收入少于 RM2,000；
- b) 体力劳动者 (不看薪水)。

10. 因此，也就是说，如果你不是上述两类型的员工的话，1955 年劳工法令内所阐明的各种福利，包括带薪公共假期，你有没有资格享有，就必须参照回你和雇主所签署的雇佣合约了。

11. 接下来，我们先说第一种情况：1955 年劳工法令范围内的员工

11.1.1. 1955 年劳工法令第 60D(1)(a) 条文阐明，员工享有 11 天的带薪公共假期。

11.1.2. 在这 11 天带薪公共假期中，其中 5 天是被指定的，这包括了 2 月 1 日的联邦直辖区日 (Federal Territory Day)，但是不包括华人农历假期。

11.1.3. 也就是说，1951 年假期法令把华人农历新年认列为公共假期，然而，有关公共假期是否带薪，就要看公司有没有把华人农历新年列为公司的带薪假期了。

11.1.4. 根据上述字面上的解释，也就是说，2 月 1 日，肯定是一个带薪公共假期。但是如果你的公司没有把华人农历新年认列为公司的带薪公共假期的话，就非常抱歉了。2 月 2 日，你就得上班了。

11.1.5. 假设华人农历新年(即：2月1日及2月2日)被你公司列为带薪公共假期，那么就出现带薪公共假期重叠的现象，即2月1日同一天内，其实有着两个带薪公共假期，分别是联邦直辖区日以及华人新年。

11.1.5.1. 此时，按照1955年劳工法令第60D(1)条文，重叠的带薪假期需要在隔天补回。

11.1.5.2. 但是巧的是，隔天2月2日刚好也是华人新年，也是带薪公共假期，因此又出现重叠。怎么办？

11.1.5.3. 只好在隔天，也就是2月3日补回。

12. 现在说第二种情况，那就是你不在1955年劳工法令涵盖范围内的员工群，也就是说，你的月收入超过RM2,000，而你也不是体力劳动者。

12.1.1. 你可以别天真的以为，你就一定会有假期

12.1.2. 究竟你有没有假期，还是要参照雇佣合约

12.1.3. 如果你的公司的带薪公共假期的条款是完全100%参考1955年劳工法令的话，那处理方式就按照上述第11


12.1.4. 万一你的公司的带薪公共假期的条款并没有按照1955年劳工法令，而是有着本身独立的一套制度，此时你就需要遵循公司的制度

12.1.5. 如果公司的制度没有规定碰到重叠的公共假期需要补假的话，那就非常抱歉了，2月3日，你需要准时去上班，然不然就是请假。

13. 我总结一下，会出现的几种可能性：

- 13.1.1. 2月3日会是补假，这是在一般的情况下
- 13.1.2. 如果公司没有把华人新年列为公司的带薪公共假期，那么大家就只有2月1日这一天享有带薪假期
- 13.1.3. 如果公司有把华人新年列为带薪公共假期，但是没有补假的制度，员工的带薪假期就只是2月1日及2月2日这2天

14. 最后，祝贺大家新年快乐，身体健康。

 **TheStar** Private sector employees in FT must be given additional paid public holiday, says Labour Dept

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PUTRAJAYA: Private sector employees in the Federal Territories of Kuala Lumpur, Putrajaya and Labuan should given an additional day of paid public holiday on Feb 3 due to the overlap between the public holiday for Chinese New Year and Federal Territories

- 1) There was news in The Star yesterday, "Private sector employees in FT must be given additional paid public holiday, says Labour Dept," has caught the attention of many employers and employees in Kuala Lumpur.
- 2) I believe we all know that the Federal Territory Day falls on February 1 every year, and coincidentally, the first day of the Chinese Lunar New Year this year also falls on February 1.
- 3) What should an employer do if two paid public holidays fall on the same day? Is it appropriate for your employer to provide you with an additional paid public holiday? If such is the case, what do you do if the following day, February 2, is another paid public holiday? Should your employer add a paid public holiday to February 3?
- 4) Without reading the news, if you are familiar with the Employment Act 1955, you will know how to deal with it. Or, if you're unfamiliar with the Act, you'll at least have a general concept after reading this news.
- 5) However, just because a few employers are too busy to read the news, I will provide a brief overview here.
- 6) Public holidays are non-working days that Malaysia's government officially gives to its citizens. Various state and federal laws govern Malaysia's allocation and dates of public holidays. Such as:
 - a. Act 369 – Holidays Act 1951
 - b. Sarawak Holidays Ordinance
 - c. State of Sabah Holidays Ordinance

- 7) As we all know, Malaysia is the country with the most public holidays, with a total of 17 under the Holidays Act 1951.
- 8) As an employee, however, our entitlement to paid public holidays is governed by the Employment Act 1955 or the terms of our employment contract.
- 9) You should know that the Employment Act 1955 only applies to the following two types of employees.
 - a. those earning less than RM2,000 per month;
 - b. manual workers (regardless of salary).
- 10) Therefore, if you do not fall into one of these two categories of employees, your right to benefits under the Employment Act 1955, including paid public holidays, must be established following the employment contract you have signed with your employer.
- 11) Next, let's start with the first category: employees covered by the Employment Act 1955
 - 11.1. Section 60D(1)(a) of the Employment Act 1955 states that employees are entitled to 11 days of paid public holidays.
 - 11.2. Of these 11 paid public holidays, five are designated, including Federal Territory Day on February 1, not the Chinese New Year.
 - 11.3. In other words, while the Holidays Act 1951 acknowledges the Chinese Lunar New Year as a public holiday, whether it is a paid public holiday is subject to whether the company has observed it as a paid holiday.

11.4. February 1 is a paid public holiday if the preceding literal understanding is correct. On the other hand, if your employer does not observe Chinese New Year as a paid public holiday, you will be required to work on February 2.

11.5. If your company observes Chinese New Year (February 1 and February 2) as a paid public holiday, there will be a clash of paid public holidays, i.e., two paid public holidays on the same day, i.e., February 1, which is Federal Territory Day and Chinese New Year.

1.5.1. When a paid public holiday overlaps with another, under section 60D(1) of the Employment Act 1955, the working day immediately following the paid public holiday is treated as a paid holiday in place of the first-mentioned paid public holiday.

1.5.2. But coincidentally, the next day, February 2, also happens to be Chinese New Year, a paid public holiday, so there is another overlap. What can we do?

1.5.3. On the next day, February 3, it will be treated as a paid public holiday

12) Now, for the second scenario, you are not in the group of employees covered by the Employment Act 1955, i.e., you earn more than RM2,000 per month, or you are not a manual worker.

12.1. Please don't be so naive as to think that you will always get paid holidays

12.2. It is crucial to refer to your employment contract to determine whether you are entitled to paid public holiday or not

- 12.3. If your company's paid public holidays are entirely based on the Employment Act 1955, you will be treated per paragraph 11 above.
- 12.4. If your company's terms and conditions for paid public holidays differ from those outlined in the Employment Act 1955 and are governed by a separate policy, you must adhere to the company's policy.
- 12.5. If your company's policy does not provide for a substitute paid public holiday in the event of overlapping paid public holidays, I apologize, but you will be required to report to work on February 3 or take leave.

13) I would like to summarise the possibilities that may arise.

- 13.1. As is customary, February 3 will be an additional paid public holiday.
- 13.1. If the employer has not declared Chinese New Year a paid public holiday, everyone will receive a paid holiday on February 1 but must report to work on February 2 and 3.
- 13.1. If a company declares Chinese New Year a paid public holiday but does not implement a substitution leave policy, the employee is only entitled to two days of paid leave on 1 and 2 February.

14) Lastly, "Wishing you a happy, healthy New Year." "May the New Year bless you with health, wealth, and happiness."

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