



UNDANG-UNDANG MALAYSIA

Akta A1419

AKTA KERJA (PINDAAN) 2012

Tarikh Perkenan Diraja 30 Januari 2012

Tarikh penyiaran dalam *Warta* 9 Februari 2012

Hakcipta Pencetak (H)

PERCETAKAN NASIONAL MALAYSIA BERHAD

Semua Hak Terpelihara. Tiada mana-mana bahagian jua daripada penerbitan ini boleh diterbitkan semula atau disimpan di dalam bentuk yang boleh diperolehi semula atau disiarkan dalam sebarang bentuk dengan apa jua cara elektronik, mekanikal, fotokopi, rakaman dan/atau sebaliknya tanpa mendapat izin daripada **Percetakan Nasional Malaysia Berhad (Pencetak kepada Kerajaan Malaysia yang dilantik)**.

UNDANG-UNDANG MALAYSIA**Akta A1419****AKTA KERJA (PINDAAN) 2012**

Suatu Akta untuk meminda Akta Kerja 1955.

[]

DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Kerja (Pindaan) 2012.

(2) Akta ini mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*, dan Menteri boleh menetapkan tarikh yang berlainan bagi permulaan kuat kuasa peruntukan yang berlainan dalam Akta ini.

Pindaan seksyen 2

2. Akta Kerja 1955 [*Akta 265*], yang disebut “Akta ibu” dalam Akta ini, dipinda dalam subseksyen 2(1)—

- (a) dalam takrif “confinement”, dengan menggantikan perkataan “twenty-eight” dengan perkataan “twenty-two”;
- (b) dalam takrif “constructional contractor”, dengan menggantikan perkataan “assigns” dengan perkataan “assignees”;

- (c) dengan memasukkan selepas takrif “contractor” takrif yang berikut:

‘ “contractor for labour” means a person who contracts with a principal, contractor or sub-contractor to supply the labour required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be;’;

- (d) dengan memasukkan selepas takrif “employee” takrif yang berikut:

‘ “foreign domestic servant” means a domestic servant who is not a citizen or a permanent resident;’;

- (e) dengan memasukkan selepas takrif “medical officer” takrif yang berikut:

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

- (f) dengan menggantikan takrif “part-time employee” dengan takrif yang berikut:

‘ “part-time employee” means a person included in the First Schedule whose average hours of work per week as agreed between him and his employer are more than thirty per centum but do not exceed seventy per centum of the normal hours of work per week of a full-time employee employed in a similar capacity in the same enterprise;’;

- (g) dengan memasukkan selepas takrif “registered medical practitioner” takrif yang berikut:

‘ “sexual harassment” means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment;’;
dan

- (h) dengan memotong takrif “sub-contractor for labour”.

Pindaan seksyen 4

3. Seksyen 4 Akta ibu dipinda dengan menggantikan perkataan “under section 69 or section 73” dengan perkataan “or decision under section 69, 69B, 69C,73 or subsection 81D(4)”.

Penggantian seksyen 19

4. Akta ibu dipinda dengan menggantikan seksyen 19 dengan seksyen yang berikut:

“Time of payment of wages

19. (1) Subject to subsection (2), every employer shall pay to each of his employees not later than the seventh day after the last day of any wage period the wages, less lawful deductions earned by such employee during such wage period.

(2) Wages for work done on a rest day, gazetted public holiday referred to in paragraphs 60D(1)(a) and (b) and overtime referred to in section 60A shall be paid not later than the last day of the next wage period.

(3) Notwithstanding subsections (1) and (2), if the Director General is satisfied that payment within such time is not reasonably practicable, he may, on the application of the employer, extend the time of payment by such number of days as he thinks fit.”.

Pindaan seksyen 22

5. Seksyen 22 Akta ibu dipinda—

(a) dengan menomborkan seksyen sedia ada sebagai subseksyen (1);

(b) dengan memotong perenggan (c);

(c) dengan memasukkan selepas perenggan (da) perenggan yang berikut:

“(db) to enable him to purchase a computer;

(dc) to enable him to pay for medical expenses for himself or his immediate family members;

(*dd*) to enable him to pay for daily expenses pending receipt of any periodical payments for temporary disablement under the Employees' Social Security Act 1969 [*Act 4*];

(*de*) to enable him to pay for educational expenses for himself or his immediate family members;";
dan

(*d*) dengan memasukkan selepas perenggan (*f*) subseksyen yang berikut:

“(2) For the purposes of this section, “immediate family members” means the employees’ parents, children, siblings or any other person under the employee’s guardianship.”.

Pindaan Bahagian V

6. Bahagian V Akta ibu dipinda dengan menggantikan tajuk “RELATING TO THE TRUCK SYSTEM” dengan tajuk “SYSTEM OF PAYMENT OF WAGES”.

Penggantian seksyen 25

7. Akta ibu dipinda dengan menggantikan seksyen 25 dengan seksyen yang berikut:

“Wages to be paid through bank

25. (1) The entire amount of wages earned by, or payable to, any employee in respect of any work done by him less any lawful deductions, shall be actually paid to him through payment into an account at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [*Act 372*] or any other written law, in any part of Malaysia being an account in the name of the employee or an account in the name of the employee jointly with one or more other persons as stipulated by the employee.

(2) Every employee shall be entitled to recover in the courts so much of his wages, exclusive of sums lawfully deducted under Part IV, as shall not have been actually paid to him in accordance with subsection (1).”.

Pindaan seksyen 25A

8. Akta ibu dipinda dengan menggantikan seksyen 25A dengan seksyen yang berikut:

“Payment of wages other than through bank

25A. (1) Notwithstanding subsection 25(1), an employer may, upon a written request of the employee, other than a domestic servant, make payment of his employee’s wages—

(a) in legal tender; or

(b) by cheque made payable to or to the order of the employee.

(2) In the case of a domestic servant, the employer shall, upon the request of his domestic servant, obtain approval from the Director General for the payment of wages of the domestic servant to be paid in legal tender or by cheque.

(3) The request by the employee under subsections (1) and (2) may be withdrawn by the employee at any time, by notice in writing, to the employer.

(4) The notice referred to in subsection (3) shall take effect at, but not before, the end of the period of four weeks beginning with the day on which the notice is given.

(5) The request of the employee to the mode of payment of wages under subsections (1) and (2) shall not be unreasonably withheld by the employer.

(6) Any dispute arising out of the request by the employee under subsections (1) and (2) shall be referred to the Director General whose decision on the matter shall be final.

(7) Section 69 shall not apply in respect of any dispute under subsection (6).”.

Pindaan seksyen 31

9. Seksyen 31 Akta ibu dipinda dengan menggantikan perkataan “sub-contractor for labour”, di mana-mana jua terdapat, dengan perkataan “contractor for labour”.

Pindaan Bahagian VII

10. Bahagian VII Akta ibu dipinda dengan menggantikan tajuk “CONTRACTORS AND PRINCIPALS” dengan tajuk “CONTRACTORS, PRINCIPALS AND CONTRACTORS FOR LABOUR”.

Seksyen baru 33A

11. Akta ibu dipinda dengan memasukkan selepas seksyen 33 seksyen yang berikut:

“Information relating to supply of employees

33A. (1) A contractor for labour who intends to supply or undertakes to supply any employee shall register with the Director General in the prescribed form within fourteen days before supplying the employee.

(2) If a contractor for labour referred to in subsection (1) supplies any employee, he shall keep or maintain one or more registers containing information regarding each employee supplied by him and shall make such registers available for inspection.

(3) A contractor for labour who—

- (a) supplies his employee without registering with the Director General as required under subsection (1); or
- (b) fails to keep or maintain any register, or make available any register for inspection as required under subsection (2),

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.”.

Pindaan seksyen 37

12. Seksyen 37 Akta ibu dipinda—

(a) dengan menggantikan perenggan (1)(a) dengan perenggan yang berikut:

“(1)(a) Every female employee shall be entitled—

(i) to maternity leave for an eligible period in respect of each confinement; and

(ii) subject to this Part, to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.”;

(b) dalam perenggan (1)(aa), dengan menggantikan perkataan “paragraph (a)” dengan perkataan “subparagraph (a)(i)”;

(c) dalam perenggan (1)(c), dengan menggantikan perkataan “paragraph (a)” dengan perkataan “subparagraph (a)(ii)”;

(d) dengan menggantikan perenggan (1)(d) dengan perenggan yang berikut:

“(d) For the purposes of this Part—

(i) “children” means all natural children, irrespective of age; and

(ii) “eligible period” means a period of maternity leave of not less than sixty consecutive days.”;

(e) dengan menggantikan perenggan (2)(a) dengan perenggan yang berikut:

“(2)(a) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if—

(i) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement; and

(ii) she has been employed by the employer at any time in the four months immediately before her confinement;” dan

(f) dengan memasukkan selepas subseksyen (3) subseksyen yang berikut:

“(4) Any employer who terminates the service of a female employee during the period in which she is entitled to maternity leave commits an offence:

Provided that for the purpose of this section, such termination shall not include termination on the ground of closure of the employer’s business.”.

Pindaan seksyen 40

13. Seksyen 40 Akta ibu dipinda dengan memotong subseksyen (3).

Pindaan seksyen 42

14. Subseksyen 42(2) Akta ibu dipinda dengan menggantikan perkataan “a female employee is dismissed from her employment” dengan perkataan “the service of a female employee is terminated”.

Seksyen baru 44A

15. Akta ibu dipinda dengan memasukkan selepas seksyen 44 seksyen yang berikut:

“Application of this Part irrespective of wages of female employee

44A. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every female employee who is employed under a contract of service irrespective of her wages.”.

Seksyen baru 57A dan 57B

16. Akta ibu dipinda dengan memasukkan selepas seksyen 57 seksyen yang berikut:

“Employment of foreign domestic servant

57A. (1) An employer who employs a foreign domestic servant shall, within thirty days of the employment, inform the Director General of such employment in a manner as may be determined by the Director General.

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

Duty to inform Director General of termination of service of foreign domestic servant

57B. (1) If the service of a foreign domestic servant is terminated—

(a) by the employer;

(b) by the foreign domestic servant;

(c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign domestic servant; or

(d) by the repatriation or deportation of the foreign domestic servant,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

(2) For the purpose of paragraph (1)(b), the termination of service by a foreign domestic servant includes the act of the foreign domestic servant absconding from his place of employment.

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

Pindaan seksyen 59

17. Subseksyen 59(1) Akta ibu dipinda dalam proviso dengan menggantikan perkataan “Employees Social Security Act 1969 [Act 4]” dengan perkataan “Employees’ Social Security Act 1969”.

Pindaan seksyen 60

18. Perenggan 60(3)(b) Akta ibu dipinda dengan memasukkan selepas perkataan “monthly” perkataan “or weekly”.

Pindaan seksyen 60D

19. Seksyen 60D Akta ibu dipinda—

(a) dalam subseksyen (1)—

(i) dengan menggantikan perkataan “a this” dengan perkataan “at his”;

(ii) dalam perenggan (a)—

(A) dengan menggantikan perkataan “ten” dengan perkataan “eleven”;

(B) dengan menggantikan perkataan “four” dengan perkataan “five”;

(C) dalam subperenggan (iii), dengan memotong perkataan “and” yang terdapat di hujung subperenggan; dan

(D) dengan memasukkan selepas subperenggan (iv) subperenggan yang berikut:

“(v) Malaysia Day; and”;

(iii) dengan menggantikan perenggan (b) dengan perenggan yang berikut:

“(b) on any day appointed as a public holiday for that particular year under section 8 of the Holidays Act 1951 [Act 369]”; dan

- (iv) dengan menggantikan proviso kepada subseksyen (1) dengan proviso yang berikut:

“Provided that if any of the public holidays referred to in paragraphs (a) and (b) falls on—

- (i) a rest day; or
- (ii) any other public holiday referred to in paragraphs (a) and (b),

the working day following immediately the rest day or the other public holiday shall be a paid holiday in substitution of the first mentioned public holiday.”; dan

- (b) dalam perenggan (3)(aaa), dengan memotong perkataan “in” yang terdapat selepas perkataan “referred”.

Pindaan seksyen 60i

20. Seksyen 60i Akta ibu dipinda—

- (a) dalam subseksyen (1c), dengan memasukkan selepas perkataan “on a daily” perkataan “or an hourly”; dan
- (b) dalam subseksyen (1D), dengan memasukkan selepas perkataan “on a daily” perkataan “or an hourly”.

Pindaan seksyen 60k

21. Seksyen 60k Akta ibu dipinda—

- (a) dalam subseksyen (1), dengan menggantikan perkataan “the nearest office of the Director General with the particulars of the foreign employee” dengan perkataan “the Director General with the particulars of the foreign employee by forwarding the particulars to the nearest office of the Director General”; dan
- (b) dengan memasukkan selepas subseksyen (2) subseksyen yang berikut:

“(3) If the service of a foreign employee is terminated—

- (a) by the employer;
- (b) by the foreign employee;
- (c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or
- (d) by the repatriation or deportation of the foreign employee,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

(4) For the purpose of paragraph (3)(b), the termination of service by a foreign employee includes the act of the foreign employee absconding from his place of employment.

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

Pindaan seksyen 69

22. Seksyen 69 Akta ibu dipinda dalam perenggan (2)(ii)—

- (a) dengan menggantikan perkataan “sub-contractor for labour”, di mana-mana jua terdapat, dengan perkataan “contractor for labour”; dan
- (b) dengan menggantikan perkataan “subcontractor” dengan perkataan “sub-contractor”.

Pindaan seksyen 69B

23. Subseksyen 69B(1) Akta ibu dipinda dengan menggantikan perkataan “one thousand five hundred” dengan perkataan “two thousand”.

Pindaan seksyen 73

24. Subseksyen 73(1) Akta ibu dipinda dengan menggantikan perkataan “sub-contractor for labour” dan “subcontractor for labour” dengan perkataan “contractor for labour”.

Pindaan seksyen 77

25. Subseksyen 77(1) Akta ibu dipinda dengan menggantikan perkataan “or 73” dengan perkataan “, 73 or subsection 81D(4)”.

Pindaan seksyen 79

26. Subseksyen 79(1) Akta ibu dipinda dengan menggantikan perkataan “Electricity Act 1949 [*Act 116*]” dengan perkataan “Electricity Supply Act 1990 [*Act 447*]”.

Bahagian baru XV A

27. Akta ibu dipinda dengan memasukkan selepas Bahagian XV Bahagian yang berikut:

“PART XV A

SEXUAL HARASSMENT

Interpretation

81A. For the purposes of this Part, “complaint of sexual harassment” means any complaint relating to sexual harassment made—

- (i) by an employee against another employee;
- (ii) by an employee against any employer; or
- (iii) by an employer against an employee.

Inquiry into complaints of sexual harassment

81B. (1) Upon receipt of a complaint of sexual harassment, an employer or any class of employers shall inquire into the complaint in a manner prescribed by the Minister.

(2) Subject to subsection (3), where an employer refuses to inquire into the complaint of sexual harassment as required under subsection (1), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

(3) Notwithstanding subsection (2), an employer may refuse to inquire into any complaint of sexual harassment as required under subsection (1), if—

- (a) the complaint of sexual harassment has previously been inquired into and no sexual harassment has been proven; or
- (b) the employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.

(4) Any complainant who is dissatisfied with the refusal of the employer to inquire into his complaint of sexual harassment, may refer the matter to the Director General.

(5) The Director General after reviewing the matter referred to him under subsection (4)—

- (a) if he thinks the matter should be inquired into, direct the employer to conduct an inquiry; or
- (b) if he agrees with the decision of the employer not to conduct the inquiry, inform the person who referred the matter to him that no further action will be taken.

Findings of inquiry by employer

81C. Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection

81B(1) and the employer is satisfied that sexual harassment is proven, the employer shall—

(a) in the case where the person against whom the complaint of sexual harassment is made is an employee, take disciplinary action which may include the following:

- (i) dismissing the employee without notice;
- (ii) downgrading the employee; or
- (iii) imposing any other lesser punishment as he deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks; and

(b) in the case where the person against whom the complaint of sexual harassment is made is a person other than an employee, recommend that the person be brought before an appropriate disciplinary authority to which the person is subject to.

Complaints of sexual harassment made to the Director General

81D. (1) If a complaint of sexual harassment is made to the Director General, the Director General shall assess the complaint and may direct an employer to inquire into such complaint.

(2) The employer shall inquire into the complaint of sexual harassment when directed to do so under subsection (1) and submit a report of the inquiry to the Director General within thirty days from the date of such direction.

(3) If a complaint of sexual harassment received by the Director General is made against an employer who is a sole proprietor, the Director General shall inquire into such complaint himself in a manner prescribed by the Minister.

(4) Upon inquiry by the Director General of the complaint of sexual harassment under subsection (3), the Director General shall decide if sexual harassment is proven or not and such decision shall be informed to the complainant as soon as practicable.

(5) Notwithstanding subsection (3), the Director General may refuse to inquire into any complaint of sexual harassment received under subsection (3), if—

- (a) the complaint of sexual harassment has previously been inquired into by the Director General and no sexual harassment has been proven; or
- (b) the Director General is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.

(6) Where the Director General refuses to inquire into the complaint of sexual harassment received under subsection (3), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

Effects of decisions of the Director General

81E. (1) Where the Director General decides under subsection 81D(4) that sexual harassment is proven, the complainant may terminate his contract of service without notice.

(2) If the complainant terminates the contract of service under subsection (1), the complainant is entitled to—

- (a) wages as if the complainant has given the notice of the termination of contract of service; and
- (b) termination benefits and indemnity,

as provided for under the Act or the contract of service, as the case may be.

Offence

81F. Any employer who fails—

- (a) to inquire into complaints of sexual harassment under subsection 81B(1);
- (b) to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(2);

(c) to inquire into complaints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or

(d) to submit a report of inquiry into sexual harassment to the Director General under subsection 81D(2);

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Application of this Part irrespective of wages of employee

81G. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every employee employed under a contract of service irrespective of the wages of the employee.”.

Pindaan seksyen 82

28. Subseksyen 82(1) Akta ibu dipinda dalam perenggan (b) proviso dengan memotong perkataan “male”.

Pindaan seksyen 86

29. Seksyen 86 Akta ibu dipinda dengan menggantikan perkataan “section 69” dengan perkataan “section 69, 69B, 69C or subsection 81D(4)”.

Seksyen baru 90A

30. Akta ibu dipinda dengan memasukkan selepas seksyen 90 seksyen yang berikut:

“Protection of officers

90A. No action shall lie or be brought, instituted or maintained in any court against—

(a) the Director General, Deputy Director General or any other officer duly appointed under this Act for

or on account of or in respect of any act ordered or done for the purpose of carrying this Act into effect; and

- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director General, Deputy Director General or any other officer duly appointed under this Act,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.”.

Pindaan seksyen 101A

31. Seksyen 101A Akta ibu dipinda—

- (a) dalam subseksyen (1), dengan menggantikan perkataan “or a Deputy Director General appointed under paragraph 3(2)(a)” dengan perkataan “, Deputy Director General or any officer authorized in writing by the Director General”;
- (b) dalam subseksyen (2), dengan menggantikan perkataan “or the Deputy Director General”, di mana-mana jua terdapat, dengan perkataan “, Deputy Director General or any officer authorized in writing by the Director General”;
- (c) dalam subseksyen (3), dengan menggantikan perkataan “or the Deputy General” dengan perkataan “, Deputy Director General or any officer authorized in writing by the Director General”; dan
- (d) dalam subseksyen (5), dengan menggantikan perkataan “or a Deputy Director General” dengan perkataan “, Deputy Director General or any officer authorized in writing by the Director General”.

Seksyen baru 101B

32. Akta ibu dipinda dengan memasukkan selepas seksyen 101A seksyen yang berikut:

“Offence by body corporate, etc.

101B. Where an offence under this Act has been committed by a body corporate, partnership, society or trade union—

- (a) in the case of a body corporate, any person who is a director, manager, or other similar officer of the body corporate at the time of the commission of the offence;
- (b) in the case of a partnership, every partner in the partnership at the time of the commission of the offence; and
- (c) in the case of a society or trade union, every office-bearer of the society or trade union at the time of the commission of the offence,

shall be deemed to have committed the offence and may be charged jointly or severally in the same proceedings as the body corporate, partnership, society or trade union.”.

Pindaan seksyen 102

33. Subseksyen 102(2) Akta ibu dipinda—

(a) dengan menggantikan perenggan (i) dengan perenggan yang berikut:

“(i) prescribing fees to be paid for filing of claims under section 69, 69B or 69C and for copies of notes of evidence recorded under Parts XV and XVA;”;

(b) dalam perenggan (j), dengan menggantikan noktah dengan koma bernoktah; dan

(c) dengan memasukkan selepas perenggan (j) perenggan yang berikut:

“(k) prescribing the forms of notice and returns of particulars used under section 60K;

(l) prescribing the procedure to inquire into complaints of sexual harassment under Part XVA;

(m) prescribing the terms and conditions of service of a domestic servant.”.