

LAWS OF MALAYSIA

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Act 265

EMPLOYMENT ACT 1955

As at 30 April 2012

PART XVA
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) 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.

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