

FAQs on Employment Laws in Sarawak

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Q1 What are the employment laws in Sarawak?

The main employment law related legislation in Sarawak is the Sarawak Labour Ordinance (“SLO”). The SLO sets out certain minimum employment conditions applicable to the categories of employees that the SLO covers.

Other applicable employment laws in Sarawak include:

- Trade Unions Act 1959
- Industrial Relations Act 1967
- Employees’ Provident Fund Act 1991
- Employees’ Social Security Act 1969

The above laws apply both in Sarawak and Peninsular Malaysia. The Employment Act 1955, which applies in Peninsular Malaysia, does not apply in Sarawak.

Q2 Who are the applicable employees covered under the SLO?
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The SLO does not cover all employees. It only covers the categories of employees defined in the Schedule to the Ordinance (“SLO Employees”). These are:

- Employees whose monthly wages does not exceed RM2,500.00. The payments of overtime payments, commission and subsistence allowances are not included for calculating the wages under the Schedule
- Employees regardless of salary who:
 - o are engaged in manual labour;
 - o are engaged in the operation or maintenance of mechanically propelled vehicles for the purpose of transporting passengers or goods or for reward or commercial purposes;
 - o supervise or oversee other employees engaged in manual labour employed by the same employer;
 - o are engaged in any capacity on a vessel and who fulfil some other criteria;
 - o engaged in recruiting employees; or
 - o domestic servants.

For SLO Employees, any clause in an employment contract that purports to offer less favourable benefits than those set out in the SLO, shall be void and replaced with the minimum benefits in the SLO.

Q3 Do all the provisions of the SLO apply to the SLO Employees?

No. Amongst others, through the Employment Exemption Order 2005, the Minister of Human Resources has exempted the application of some provisions of the SLO, including provisions on paid holidays, hours of work, shift work and rest days, to all non-manual executive and management employees whose wages are between RM2,001 and RM2,500. This FAQs, unless otherwise stated, addresses the minimum benefits and prescribed requirements applicable to SLO Employees.

Q4 What law governs employees who don't fall under the SLO?

These employees ("Non-SLO Employees"), will be governed by the terms of their contract of employment, subject to any other applicable statutory requirements (e.g.: minimum retirement age, SOCSO, EPF etc).

Q5 What are the annual leave entitlements under the SLO?

The minimum requirements for paid annual leave are as follows:

- 8 days for every twelve months of continuous service if he has been employed for a period of less than 2 years;
- 12 days for every twelve months of continuous service if he has been employed for 2 years or more but less than 5 years;
- 16 days for every twelve months of continuous service if he has been in employed for 5 years or more.

Q6 What about sick leave?

Under the SLO, an employee is also entitled to paid sick leave based on the calendar year. Where hospitalisation is not necessary, the entitlement is:

- 14 days in each calendar year if he has been employed for a period of less than 2 years;
- 18 days in each calendar year if he has been in employed for 2 years or more but less than 5 years; and
- 22 days in each calendar year if he has been in employed for 5 years or more

Where hospitalisation is necessary, the entitlement is 60 days in each calendar year, provided the total number

of paid sick leave in a calendar year which the employee is entitled to shall not exceed 60 days in aggregate.

Q7 Should the employee provide notification to the employer in respect of taking sick leave?

Yes. If an employee is on sick leave, he must notify or attempt to notify the employer within 48 hours of such sick leave, otherwise he may be deemed as absent from work without permission and without reasonable excuse.

Q8 How are the overtime entitlements calculated?

For employees paid on a monthly basis, overtime entitlements under the SLO are as follows:

Working in excess of normal hours of work on a normal work day	1.5x hourly rate of pay
Rest day, but working normal hours	Where work does not exceed half his normal hours of work – $\frac{1}{2}$ the ordinary rate of pay ¹ for work done on that day Where work is more than half but does not exceed normal hours of work: 1 full day's wages at the ordinary rate of pay
Rest day, but working in excess of normal working hours	2x hourly rate of pay ²
Public Holiday - working normal working hours or less than normal working hours	2 days wages at ordinary rate of pay (in addition to his wages for that day)
Public Holiday – working excess of normal working hours	3x hourly rate of pay

Q9 Is there a maximum limit on overtime work?

Yes. The maximum limit on overtime work is 104 hours in any one month for overtime work on normal days not including work done on rest days and public holidays.

¹ Ordinary rate of pay means the employee's "daily" wages and is calculated by dividing the employee's monthly salary by 26, for monthly rated employees.

² Hourly rate of pay means the ordinary rate of pay divided by the normal hours of work.

Q10 How are public holidays handled?

An employee is entitled to 16 paid gazetted holidays. 4 of the holidays must be:

- the National Day
- the Birthday of the Yang di-Pertuan Agong
- the Birthday of the Yang di-Pertua Negeri of Sarawak
- the Workers' Day.

The others can be chosen by the employer from the list of gazetted public holidays with regard to the religion and customs of the employees. In addition to the gazetted public holidays, the Government of the State can declare a day as a public holiday. If any of the public holidays fall on a rest day, the next working day will be in substitution of that public holiday.

Q11 Are wages to be paid on public holidays?

Yes. A monthly paid employee shall be deemed to have received his public holiday pay if he receives his monthly wages. Similarly, a daily paid employee must be paid his daily wages even if he did not work on that public holiday.

Q12 What are the hours of work prescribed under the SLO?

Generally speaking, SLO Employees shall not be required under their contract of service to work:

- more than 8 hours a day;
- more than 5 consecutive hours without a break of at least 30 minutes;
- in excess of 10 hours in a “spread over” (i.e., 10 consecutive hours from the time the employee commences work for the day, inclusive of any rest periods); or
- more than 48 hours in one week

SLO Employees who work shift can work up to 12 hours in one day provided the average number of hours of work over 3 weeks do not exceed 48 hours a week.

Q13 What is a “rest day” under the SLO?

SLO Employees are entitled to one whole day of rest each week (continuous 24 hours beginning at midnight).

In the case of SLO Employees engaged in shift work, any continuous period of not less than 30 hours shall constitute a rest day.

The SLO allows for an employer to apply to the Director of Labour to permit the employer to grant the rest day for each week on any day of the month in which the rest days fall. This is unique to the SLO and does not appear in the Employment Act 1955 (which applies in Peninsular Malaysia).

Q14 What about maternity protection?
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Any female employee is entitled to 60 consecutive days of maternity leave. An employer is required to additionally pay maternity allowance (i.e., payment of her salary for that 60 consecutive days) to an employee (unless she has five or more surviving children at the time of confinement in which case she will not be entitled to maternity allowance) if she has been employed by that employer for:

- At least 90 days in aggregate during the 9 months before her confinement; and
- She was employed by the employer at any time in the 4 months immediately before her confinement.

Q15 How about paternity leave?
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The SLO does not provide any paternity leave or allowance to new fathers.

Q16 When are wages to be paid to SLO Employees?

The duration of the wage period cannot exceed 1 month. SLO Employees must be paid on or before the 7th day of the expiration of the wage period (for employees paid on monthly basis, wages should be paid before 7th of each month).

Q17 Are there any required statutory deductions to be made from an employee's salary?

Yes. Generally, an employer is required to make the statutory deductions from an employee's salary (irrespective of whether they are SLO Employees or Non-SLO Employees) including the following:

- Employee's contribution to Employees Provident Fund (EPF)
- Employee's contribution to the Social Security Organisation (SOCSO)
- Employee's contribution under the Employment Insurance System
- Monthly income tax deduction

Q18 Can employers deduct other things from an employee's salary?

An employer may only make deductions from SLO Employees' salary in the following circumstances:

- Overpayment of wages due to a mistake by the employer during the immediately preceding 3 months;
- Deductions for payment in lieu of notice, where the employee resigns without serving the full notice under the contract;
- Deductions for recovery of advances of wages (provided no interest is charged on the advances); or
- Deductions authorised by any other written law (e.g., EPF, SOCSO, income tax deductions).

An employer can also deduct the following items from the SLO Employee's salary only if the employee consents:

- Deductions for payments to a trade union or cooperative thrift and loan society; or
- Deductions in respect of payment for shares in the employer offered for sale by the employer and purchased by the employee.

Certain other deductions can be made by an employer with the approval of the Director General of Labour such as:

- payments into any superannuation scheme, provident fund, employer's welfare scheme or insurance scheme;
- payments to a third party on behalf of the employee;
- payments for the purchase of any goods of the employer's business; or
- payment of rental for accommodation and the cost of services, food and meals provided by the employer.

Q19 Is there a prescribed termination notice period under the SLO?

Yes, the termination notice period must be the same for the SLO Employees and the employer and shall not be less than as follows:

- 4 weeks' notice if he has been in employment for less than 2 years
- 6 weeks' notice if he has been in employment for 2 years or more but less than 5 years
- 8 weeks' notice if he has been in employment for 5 years or more

Q20 Can the employer simply terminate SLO Employees by notice or payment in lieu of notice?

No. An employer cannot just terminate an employee by giving them notice or payment in lieu notice – even if this is provided for in their employment contract. Employees cannot be terminated without “just cause and excuse” and this requirement applies to both SLO Employees and Non SLO Employees.

Q21 Does the law require employers to pay any termination benefits?

Generally speaking, any SLO Employees who have served 12 months and are terminated from service are entitled to termination benefits for each year of service based on the length of service as follows:

- 10 days wages for each year of service if he has been employed less than 2 years;
- 15 days wages for each year of service if he has been employed for 2 years or more but less than 5 years; or
- 20 days wages for each year of service if he has been employed for 5 years or more.

Exceptions to when such payments need to be made include when the SLO Employees retired, were terminated for misconduct or resigned.

Q22 Are there any provisions in the SLO pertaining to the employment of a non-resident employee (non-Sarawakian)?

In order to employ a non-resident employee, the employer must first obtain from the Director General of Labour a Licence to Employ Non-Resident Employee.

Q23 What is the law pertaining to repatriation under the SLO?

SLO Employees have the right to be repatriated to his country or State of origin at the expense of the employer in the following cases:

- on the termination by expiry of contract, or by agreement, or termination by notice or otherwise;
- on the termination by reason of the inability of the employer or the employee to fulfil the contract;
- upon cancellation by the Director General of Labour or expiry of the Licence to Employ Non-Resident Employee; or
- if a non-resident employee is ordered to leave Sarawak (including any dependants of the non-resident

employee) under any written law relating to immigration.

The expenses of repatriation include, in brief:

- travelling and subsistence expenses during the journey;
- subsistence expenses from the termination of contract to the date of repatriation; and
- payment of the reasonable expenses of burial in the event of death of a worker pending repatriation.

If the employer fails to fulfil his obligation, the said obligation shall be discharged by the Labour Department and be recovered from the employer by civil suit as a debt.