

GUIDE TO LABOR RELATIONS/ LABOR DISPUTES (Malaysia)

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Abstract

The Industrial Relations Act 1967 governs the relationship between employers and workmen or employees and their trade unions and generally deals with trade disputes. It emphasizes on direct negotiation between employers and workmen or employees and their trade unions to settle their differences, to regulate their collective relationship and to settle any dispute arising therefrom through their own effort and through mutually agreed procedures with minimal government intervention. This section includes what cases can be referred to industrial relations, how to lodge a complaint, what to do upon unlawful dismissal, need for legal advice and how to appeal.

WHAT IS A DISPUTE ?

A dispute being referred to as trade dispute under the Industrial Relations Act 1967 means any disagreement between the employer and workman or employee which is connected with the employment or non-employment or the terms of employment or the conditions of work of such workman or employee leading to industrial action.

The Industrial Relations Act 1967 governs the relationship between employers and workmen or employees and their trade unions and generally deals with trade disputes.

WHAT DOES THE INDUSTRIAL RELATIONS ACT 1967 PROVIDES ?

The Industrial Relations Act 1967 is applicable throughout Malaysia and provides for the regulation of relations between employers and workmen or employee and their trade union and the prevention and settlement of trade disputes.

This Act emphasizes on direct negotiation between employers and workmen or employees and their trade unions to settle their differences and to regulate their collective relationship and to settle any dispute arising therefrom through their own effort and through mutually agreed procedures with minimal government intervention.

Where the government intervention is necessary, such intervention will be confined mainly to providing a legal framework to which the parties can turn to if they so wished.

Under the Industrial Relations Act 1967, the legitimate rights of employers and workmen or employees and their trade unions are protected.

This Act also provides the procedure relating to submissions of claims for recognition and scope and representation of trade union and collective bargaining.

Under this Act, matters relating to promotion, recruitment, dismissal, transfer, retrenchment, reinstatement and allocation of duties and prohibition of strikes and lockouts over any of these matters are not allowed to be included in the proposal for collective bargaining.

Where direct negotiation between employers, workmen or employees and their trade unions fails, this Act provides for speedy and just settlement of trade disputes by conciliation or arbitration

This Act provides the power to the Ministry of Human Resources to intervene and to refer at any stage any trade dispute to the [Industrial Court](#) for arbitration.

After a trade dispute has been referred to the [Industrial Court](#) and on any matter covered by a collective agreement or by an award of the Industrial Court, employees or workmen are not allowed to declare strike or lockout.

Collective agreement means an agreement in writing concluded between an employer or a trade union of employers on one hand and a trade union of workmen or employees on the other, relating to terms and conditions between the two such parties.

This Act makes it an offence for any person to give financial aid in direct furtherance or support of any illegal strike or lockout. Such offences are seizable in nature and no bail shall be granted.

Peaceful and orderly picketing in furtherance of a trade dispute is permitted under Part IX, section 20 of the Industrial Act 1967 provided that such picketing is carried out at or near the place where a workmen or employee works and where a trade disputes exists. It will be illegal however for one or more persons to attend at or near a place of employment where a workmen works if such attendance is, by nature of its manner or number, calculated to intimidate any person in the place or to obstruct the approach thereto or egress therefrom or to lead to a breach of the peace.

Award means an award made by the Industrial Court in respect of any trade dispute or matter referred to it or any decision or order made by it under the Industrial Relations Act 1967. An award of the tribunal is final and legally binding on the parties to the dispute.

Unless approved by the Ministry of Human Resources, collective agreement cannot contain better terms of employment than those stipulated under the Employment Act 1955.

Part IV, section 15 of the Industrial Relations Act 1967 provides the protection of pioneer industries during the initial years of their establishment for a period of at least 5 years from the date of commencement of operation in Malaysia against any unreasonable demands from a trade union.

WHAT ARE THE CASES THAT I CAN REFER TO INDUSTRIAL RELATIONS ?

You may refer any trade disputes, unfair labour practices or trade union activities to the [Industrial Relations Department](#) such as unlawful and constructive dismissal, retrenchment, transfer, promotion, unilateral change in terms and conditions of service and victimization in connection with trade union activities.

Constructive dismissal refers to a situation where you as an employee being dissatisfied with the manner in which you are being treated by your employer such as where there is an unilateral change in the terms and conditions of service, you tender your letter of resignation and pleads that you has been constructively dismissed.

Part X, section 59 of the Industrial Act 1967 makes it an offense to dismiss a workman or employee or injure or threaten to injure a workman or employee during employment or alter or threaten to alter the position of the workman or employee to prejudice under certain circumstances.

An employer contravening to the above section is liable on conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding RM2,000 or to both.

Any complaint of contravention of any of the above may be lodged in writing to the Director General of [Industrial Relations Department](#).

HOW DO I LODGE A COMPLAINT TO THE INDUSTRIAL RELATIONS ?

Before you make a formal complaint to the [Industrial Relations Department](#), you should try to resolve the dispute by direct negotiation.

In the event of a unresolved conflict, either party - employer or employee - may then report the dispute to the nearest [Industrial Relations Department](#) at your area upon which conciliation proceedings may be initiated. You do not have to pay any fees.

Conciliation has always been the most effective method of resolving disputes.

The process of conciliation involves a number of meetings conducted either separately or jointly.

Where the matter is not resolved through conciliation the dispute is then referred to the Minister of Human Resources who will exercise his discretionary powers to refer the dispute to the [Industrial Court](#) or otherwise.

When a reference is made to Industrial Court, the court will hear, decide and hand down awards relating to trade disputes referred to it. An award can be in lieu awards proper compensation or reinstatement of the employee to his former position.

WHAT SHOULD I DO IF I HAVE BEEN UNLAWFULLY DISMISSED ?

If you feels that you have been dismissed without just cause or excuse by your employer, firstly you must write in to the Director General [Industrial Relations Department](#) at your nearest former place of employment to make a representation within 60 days of your dismissal.

Among others, your letter must have the following information :

- states that the remedy you are seeking is reinstatement
- your name, identity card number and address and telephone contact if any

- name, address and telephone number of your former company

- occupation

- date of appointment

- date of dismissal

- reasons for your dismissal

- whether you are a member of a union or otherwise

You may also attach copies of other supporting documents such as letter of appointment and termination letter.

The Director General Industrial Relations will try to resolve the case through conciliation by inviting both the employer and you for a meeting. You do not have to pay any fees.

The conciliation officer will explain the principles and practices law that are applicable including judgment of the courts, both the Industrial Court and civil courts, so that both parties are aware of their rights and liabilities.

If there is a failure to resolve the case through conciliation, the Director General Industrial Relations will then refer your case to the Minister of Human Resources, who will refer the matter to the [Industrial Court](#) for adjudication and for an award if he thinks fit.

Unlawful dismissal case cannot be brought directly to the Industrial Court. This type of case must be referred to the Industrial Court by the Minister of Human Resources.

The Industrial Court upon the matter being referred to by the Minister of Human Resources, then goes to consider whether the your termination of employment is unlawful or whether it is justified.

Where the Industrial Court rules that the termination is unlawful, the Court then makes an "Award" to reinstate you to your former position or in lieu awards proper compensation.

The normal remedies in a cases of dismissal is the reinstatement into your former employment and award of back waged from dismissal date to the final date of hearing subject to maximum period of 24 months.

The Industrial Court may also order compensation in lieu of reinstatement based on the formula of 1 month salary for every year of service.

DO I NEED A LAWYER OR DO I REPRESENT MYSELF IN A DISPUTE CASE ?

During conciliation proceedings, you cannot be represented by an advocate, adviser or consultant pursuant to section 19(B)(2) of the Industrial Relations Act 1967.

You have to represent yourself.

If you are a member of a trade union, your trade union officers or an employee of your trade union can represent you.

You can also be represented by an official of an organization of workmen or employee not being a trade union such as the MTUC.

However, section 27(1) of the Industrial Relations Act 1967 states that in any proceedings before the Court a party may

- be represented by an officer or employee of the trade union, where the party is a trade union.
- appear himself personally or be represented by his duly authorized, employee or an officer or employee of the trade of employers of which he is a member, where the party is an employer.
- be represented by an officer or employee of the trade union, where the party is a workman or employer appear himself personally or where he is a member of a trade union of workman or employee.
- be represented with the permission of the President or the Chairmen, by an advocate or notwithstanding anything to the contrary contained in any written law relating to the registration of trade unions, by any official of an organization (not being a trade union) of employers or workmen, as the case may be registered in Malaysia, where the party is a trade union or an employer or a workman or employee.

In Industrial Court proceedings, you can get a qualified lawyer to represent you in court. It will be more helpful in your case.

CAN I APPEAL AGAINST INDUSTRIAL COURT DECISION ?

A decision, order or award of the Industrial Court is conclusive and final and cannot be challenged, appealed against, reviewed, quashed or called in question in any court.

However, by way of certiorari on grounds of error of law or excess of jurisdiction, the decision or award made by the Industrial Court can be challenged in the High Court.