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RESEARCH ARTICLE

Adapting to Amendments: Analyzing the Impact of the Malaysia's 2022 Employment Act Revisions

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ABSTRACT

In Malaysia, the Employment Act 1955 (hereinafter referred to as 'EA') primarily regulates employer-employee issues by outlining minimum benefits for workers. It has been revised multiple times, with the latest in 2022. It is crucial to evaluate whether the amendments introduced by the Employment (Amendment) Act 2022 (hereinafter referred to as 'Amendment Act') improve upon existing EA provisions and align with international labour standards set by the International Labour Organisations (hereinafter referred to as 'ILO'). Besides, the emergence of AI in the workplace has raised unresolved issues affecting both employers and employees in Malaysia. This research aims to analyze the impact of the Amendment Act on both parties, assessing its effectiveness in enhancing employee rights and improving the employer-employee relationship. Additionally, it will address the implications of AI in the workplace and suggest amendments to current Malaysian laws.

INTRODUCTION

The Employment (Amendment) Act 2022 has brought about major reform which aimed to better enhance the nation's worker protection and welfare. The changes introduced are related to equitable treatment, minimum wages and working hours. As a result, the First Schedule of EA now provides criteria for a person to be presumed as an employee, particularly in the absence of written contract of service. Moreover, the Amendment Act has also addressed concerns related to foreign workers, forced labour, and workplace discrimination. These issues will be thoroughly examined in subsequent discussions. Besides, the impending rise of Artificial Intelligence (AI) is poised to revolutionise Malaysia's labour sector Malaysia's labour sector. Therefore, this article will also delve into the Amendment Act's relevance and its role in regulating the integration of AI in the following discussion. *All in all, it is crucial to assess whether the amendments introduced align adequately with the international labour standards set by the ILO and the significance of the Amendment Act in regulating the integration of AI.*

2. LITERATURE REVIEW

A. Protection of Gig Workers

Luis Pinedo Caro, Niall O'Higgins and Janine Berg (2021) have defined gig workers as someone who is engaged in "work at least once a week". In other words, gig workers are someone who spent at least an hour in economic activity during the reference week.

Mohd Shahril Nizam and others (2022) have discussed the limited protection of gig workers compared to ordinary full-time employees under the EA. As far as Malaysia's employment laws are concerned, the **EA** and the Industrial Relations Act 1967 (hereinafter referred to as 'IRA') can only be invoked if a person is considered as a 'workman' or 'employee'. The laws have also stipulate that the relationship between an employer and an employee is based on a contract of service. The definitions of "employees" and "workman" stipulate that the connection between an employer and an employee does not extend to gig workers because gig workers often do not have a contract of service. Consequently, gig workers typically do not receive the benefits that regular employees enjoy as most legislations that provide provisions relating to minimum wages, hours of work, entitlement to leave, and the right to bargaining power apply to employees only.

For instance, as far as wages are concerned, gig workers will be paid according to the services or 'gigs' they have fulfilled under their agreement with the service providers. This payment method differs from that of conventional employees who establish a contract of service with their employers. Besides, employers are mandated to contribute to employees' social security fund (SOCSO), unlike self-employed individuals who are protected under the provisions of the Self-Employment Social Security Act 2017, where they have to make self-contribution. As such, gig workers seem to lack employment protections.

Datuk Seri Saravanan a/l Murugan (2022) has discussed the new provision namely, s101C of EA on presumption of employment in Bar Council Malaysia. This new section allows for a presumption of employment in the case where there is no written contract relating to any category of employee under the First Schedule of the EA. This would afford gig workers all the benefits currently enjoyed by an employee and a workman such as entitlement to annual leave, sick leave, the mandatory contributions towards the Employees Provident Fund and the right to not be unfairly dismissed.

1) B. Foreign Workers

In accordance with **s2 of the EA**, the term "foreign employee" pertains to employees who are not citizens. Sharmin Jahan Putul and Md Tuhin Mia (2018) stated that these individuals, often referred to as "migrant workers", possess the legal authorization to engage in employment within the country where they were legally recruited.

Nawai Norhana and Hashim Noreha (2021) discussed that Malaysia's industries are predominantly labour-intensive and heavily dependent on migrant workers, particularly in sectors characterised by 3D conditions (dirty, dangerous, and degrading) as the local workers are generally unwilling to engage in such types of work. Malaysia has grappled with the issue of illegal migrant workers, stemming from various factors such as unauthorised entry, overstaying, or exploitation by unscrupulous agencies as provided by John Trumpbour (2015). A significant portion of illegal foreign workers fall into the category of overstayers. This means that the foreign employees initially held valid legal documents and visas, but either let them expire without renewal or were terminated by their employers. Despite these circumstances, they chose to remain in the country, leading to their current status as undocumented or illegal employees. Therefore, Nawai Norhana and Hashim Noreha (2021) opined that in addressing this concern, employers play a crucial role by adhering to the EA and fulfilling their obligation to pay levies for these foreign workers.

Prior to the amendment, Malaysian employers could hire foreign employees by just providing their details to the Director General. However, post-amendment, employers are required to seek prior approval from

the Director General before employing foreign workers.[1] Upon receiving approval from the Director General for the employment, the employer must provide the details of the foreign employee to the Director General within 14 days of the commencement of the employment. If the employer fails to obtain prior approval from the Director General before hiring a foreign employee, they may face penalties, including a fine of up to RM100,000, or imprisonment for a maximum period of five years, or both.

Next, the s25 of the Amendment Act introduces a new section incorporated into s60KA of EA, which seems to be able to control the continued presence of illegal workers in Malaysia. This section outlines three scenarios in which the employer is obligated to notify the Director General within 30 days of the foreign employee's termination. Firstly, when the employer terminates the service of a foreign employee. Secondly, when the employment concludes due to the expiration of the employment pass issued by the Immigration Department of Malaysia for the foreign employee. Thirdly, when the employment ends due to the repatriation or deportation of the foreign employee.

2) C. Forced Labour

The ILO defines forced labour under Forced Labour Convention No.29 as "any work or service extracted from an individual under the threat of penalty, and the individual has not volunteered for such work" according to Lee Hwok Aun and Adrian Pereira (2023). ILO has listed out 11 indicators of forced labour which are, inter alia, restriction of movement, physical and sexual violence, intimidation and threats, retention of identity documents, abusive working and living conditions, and excessive overtime.

The situation prior to the amendment was discussed by Sharmin Jahan Putul and Md Tuhin Mia (2018). The Federal Constitution (hereinafter referred to as 'FC') prohibited all forms of forced labour under Article 6 according to both international and national laws, considering any abusive practices as criminal offences. Despite these legal provisions, the reality reflects numerous instances where employers coerce workers into working additional hours, often without rest and without receiving proper compensation.

Mahmood Bhutta and others (2021) highlighted a surge in labour demand during the Covid-19 pandemic, particularly in the rubber glove industry. Workers, especially migrant workers, endured extended hours without the legally mandated rest day, facing exploitation and abuse.

As a result, the proposed amendment has been introduced and is outlined in s41 of the Amendment Act, amending s90B of the EA. The provision specifies that any employer who coerces, deceives, or threatens an employee into performing any task, service, or work, and restricts the employee from leaving the location where such activity occurs, is deemed to commit an offence. Upon conviction, the employer may face penalties, including a fine of up to RM100,000, imprisonment for a maximum period of two years, or both.

3) D. Enhancement of Maternity Protection

Furthermore, maternity leave is a policy initiated by the ILO at the International Labour Conference of 1919 as a fundamental safeguard for pregnant female employees, provided by Viola D. Oceanio (2022). The primary objectives of paid maternity leave is to ensure protection and income security during the period of maternity leave. The availability of maternity leave is a good way to promote gender equality in the workplace by providing opportunities for women, especially pregnant women, to remain economically involved after childbirth.

Prior amendment of the EA, Dr Jashpal Kaur Bhatt (2015) discussed that s37 of the EA deals with the right to maternity leave, maternity allowance, and the eligibility period for the entitlement to maternity leave. The section provides that every female employee is entitled to paid maternity leave of not fewer than 60 consecutive days for each confinement and to receive a maternity allowance from her employer during the eligible period of maternity leave.

The Amendment Act has extended paid maternity leave allocations from 60 days to 98 days in line with recommendations made by the ILO Convention. Rafizah Abu Hassan and others (2022) opined that this is an improvement given that the international labour standards have finally been complied with by Malaysia. As such, the Amendment Act has widened the protection of female employees who are pregnant.

4) E. Paternity Leave

Tanusha Sharma (2019) Before recent amendments, paternity leave in Malaysia's private sector was not legally mandated but rather determined by company policies. Typically, private sector businesses offered one to three days of paid leave or, in some cases, extended unpaid time off. In contrast, government sector paternity leave was regulated by Pekeliling Perkhidmatan Bilangan 9 Tahun 2002, providing for up to seven days of leave.

Hence, the Minister of Human Resources has proposed the introduction of a seven-day paternity leave for the private sector and was introduces in s60FA of the EA. Under this provision, a married male employee is eligible for paid paternity leave at his regular rate of pay for a continuous seven-day period for each childbirth. Nevertheless, there are specific limitations, such as a maximum of five confinements regardless of the number of spouses. Additionally, certain criteria must be met for a male employee to qualify for paternity leave. Firstly, he must have been employed for at least 12 months by the employer. Secondly, he must have informed his employer of his spouse's pregnancy at least 30 days before the expected confinement or as soon as possible after the birth. Failure to meet any of these requirements would result in the employee not being entitled to paternity leave.

This amendment aligns with ILO standards, aiming to enable male employees to fulfill family responsibilities after childbirth and ensure equal treatment for all workers.

5) F. Discrimination in Workplace

Employment discrimination refers to the unjust treatment of individuals, manifesting as unfavourable actions, provided by Harlida Abdul Wahab (2023). The author also discussed that this occurs when considerations unrelated to employment and job proficiency become focal points, restricting an individual's ability to secure desired employment. This can negatively impact job opportunities by hindering the development of skills and talents based on merit.

According to Krishna Moorthy (2022), workplace discrimination is subtly prevalent, with one form of discrimination centering on gender issues in Malaysia. Women frequently face discrimination based on stereotypes and perceptions that cast doubt on their suitability for certain positions compared to men. This stereotyping creates obstacles for women and contributes to gender segregation.

While Art 8 of the FC explicitly prohibits discrimination against citizens on grounds of gender in laws and appointments to public offices or employment, there exists a legal gap as this protection does not extend to gender discrimination in the private business sector. This is evident in *Beatrice Fernandez v Sistem Pernebangan Malaysia & Anor* the Federal Court ruled that Art 8 does not apply to individuals covered by collective agreements such as the plaintiff, because such cases fall under private law governance.

Furthermore, another instance of discrimination involves bias against People with Disabilities (PWDs) arises from communication difficulties and coexisting psychiatric and medical conditions which might limit their job prospects based on Mizanur Rahman and others (2022). The employers may appear to have a stereotypical view of the types of jobs suitable for the PWDs. Additionally, Khayatzadeh-Mahani A (2020) discussed that individuals with disabilities may experience workplace discrimination such as receiving lower pay, facing unjust dismissal, and encountering barriers to career advancement and human capital development.

Hence, to address employment discrimination, s69F to the EA was introduced which empowers the Director General to investigate and resolve disputes between an employee and employer concerning any issues related to employment discrimination. Employers who do not comply with the Director General's order may

face fines, with a maximum penalty of RM50,000. In cases of ongoing offences, a daily fine not exceeding RM1,000 may be imposed for each day the offence persists after conviction.

3. METHODOLOGY

This report adopts a qualitative methodology, using content analysis to examine the EA, related regulations, and other relevant labour laws. We sourced information from reputable online platforms to ensure accuracy and relied on factual data and statistics. The literature review was conducted to explore existing research on the EA and Malaysian labour law. Our research focuses on key areas affected by amendments, including combating forced labour, improvements to maternity leave, introduction of paternity leave, and provisions against workplace discrimination. We also research on how AI had affected the employment in workplace.

We relied on online research as the method to entail gathering information from the Internet such as Social Science Research Network, online journals and research papers. Besides, we also referred to the articles published on ILO that focused on labour context. Moreover, News articles from reputable sources like the New Straits Times, Malay Mail, and CNN were also referenced, particularly those reporting on parliamentary proceedings, including statements from Minister Datuk Seri M. Saravanan.

In addition, we also referred to case laws and legislations, These cases helped us understand the court's perspective and legal interpretations on the subject. Legal authorities, including provisions from the Employment Act and other legislation, underscored the significance of Malaysian employment law in our research.

In summary, our group has gathered and organized online materials, utilizing technology for efficient data collection. Our suggestions and discussions stem from this research, aiding in the development of our findings and analysis. This approach not only meets the requirements of our research but has also greatly enhanced our understanding of the subject.

4. FINDINGS AND ANALYSIS

6) A. Protection of Gig Workers

S101C allows a gig worker to invoke the presumption of employment. As of 2023, approximately four million people, representing more than 25% of Malaysia's workforce, are engaged in the gig economy. Viewing from a social security standpoint, before the amendment, gig workers were protected under the Self-Employment Social Security Act 2017 (SESSA) where they could contribute either to Employees' Social Security Act 1969 (SOCSO) or any self-employment social security agent. Although the gig economy is expected to represent 50% of the workforce by 2030, only approximately 550,000 gig workers in Malaysia have contributed to SOCSO out of a total of 4.6 million workers.

Now recognised as employees, they are mandatorily covered under the SOCSO which mandates contributions from both the employee and employer, eliminating the need for optional self-contributions under SESSA.

However, gig workers will lose their competitive edge as they incur costs to the companies hiring them. The survey revealed that on a global scale, 43% of organisations involving gig workers achieve a labour cost reduction of at least 20%. This was no longer the case as Uber's regional manager estimated that job opportunities might decrease by 50 to 70% if Uber is compelled to reclassify its drivers and couriers across the European Union as employees. In nations with elevated employee benefit standards, certain gig platform companies have opted to discontinue operations in those countries, as observed in Germany and Spain.

7) B. Forced Labour and Foreign Workers

In examining the impact of eradication of forced labour, it was discovered that though not all instances of forced labour arise from human trafficking, nearly every case of human trafficking leads to forced labour. Foreign employees form a majority of victims in human trafficking. In 2023, the Malaysian government

identified 144 victims of forced labour out of 180 verified cases of trafficking. This represents 80% of those in forced labour who are victims of human trafficking. An interview with 1,201 domestic workers in Malaysia, Singapore, and Thailand between July and September 2022 revealed that 29% of surveyed migrant domestic workers in Malaysia were found to be in conditions that meet the statistical definition of forced labour set out by the ILO. Thus, obligating employers to abide by the law in an effort to eradicate exploitative labour practices in their operations has a significant effect in combating human trafficking.

With worldwide attention on labour standard, the U.S. Customs and Border Protection (CBP) has imposed a ban on eight of Malaysia's leading glove makers and palm oil producers for allegations of forced labour. Amongst the companies, Top Gloves suffered a fall on its revenue and net profit for 22% and 29%, respectively to 4.16 billion ringgit ($1 billion) and 2.06 billion ringgit in the financial third quarter. Although Sime Darby Plantation did not reveal the cost of suspension, it was reflected in its annual report where the profit tripled in the third quarter of 2023 to RM1.2bn compared to RM396M in the same period of the previous year after the ban was lifted. Thus, the amendment has compelled employers to strive towards adopting good labour practices.

8) C. Enhancement of Maternity Protection

The expanded maternity leave is an initiative that helps keep women in the workforce. Prior to the amendment, 23% of working women who have children do not feel they were given adequate paid maternity leave. They have to return to work as soon as their 60 days of paid leave ceases. They need to face the double burden of work and family, but employers empathise poorly, with 23% of women who resume work after their leave encountering negative comments for getting off on time to be with their child.

Extending maternity leave will encourage women participation in the workforce, ending the choice between career and motherhood. An estimation made conservatively found that an increase in the number of women in the workplace by 2.08 percentage points for each log point increase in the number of paid maternity leave. In practical terms, transitioning from the minimum to maximum value of paid maternity leave (0 to 410 days) leads to a notable 12.5 percentage point rise in the proportion of female workers. The data revealed that there is a strong, positive, and statistically significant correlation between maternity leave and female employment.

The employers however are adversely affected as the extension of paid maternity leave added the cost of running the business. Employers alone have to bear the cost for the benefit of maternity leave without any government policy or funding that ease their burden. This in turn led to employers preferring to hire men as revealed by a survey conducted by the Associated Chinese Chambers of Commerce (ACCCIM). The employer respondents have indicated a shift to a higher male-to-female ratio in their employment (41.3%) as a strategy to counter the effects of increased maternity leave. This development is not conducive to fostering women's engagement in the workforce and advancing gender equality.

Hence, the correlation between the rate of employment of female workers and maternity leave is significantly stronger when maternity leave is entirely funded by the government.

9) D. Paternity Leave

The paternity leave that was introduced can counter the inequalities both at work and in domestic responsibilities between working men and women. 2,563,800 women in Malaysia who were not working cited "housework or family responsibilities" as the reason, while only 69,800 men reported the same. The numbers reflected the traditional view that mothers are to care for children, imposing unfair burdens on females. This policy has the effect of eradicating such a view where legislators agree that men are to share the domestic burden.

The mandate of paternity leave benefits women in terms of career development outcomes, including a decrease in the household gender wage gap and an increased likelihood of women being employed. The

statement was supported by the data showing an increase of 6.8 percentage points in the share of women workers for a typical firm following the implementation of mandatory paternity leave.

10) E. Discrimination in Workplace

One good illustration for gender-based discrimination is that Malaysia's female labour force participation is only at 55.7%, compared to 80.9% for that of men. This indicates that employers prefer to hire men over women. Even after securing employment, the Women's Aid Organisation (WAO) revealed that 56% of Malaysian women have encountered at least one instance of gender discrimination in their workplace. Through the amendment, the employer has to adopt gender diversity.

Table 1: Gender diversity 2002 predicting employee productivity 2007

	Gender diversity 2002 predicting employee productivity 2007			
	Hypothesis 1a/1b		*Hypothesis 1c*	*Hypothesis 2*
Variable	*β (Model 1)*	*β (Model 2)*	*β (Model 3)*	*β (Model 4)*
Controls				
Organization size 2002	0.05	0.04	0.05	−0.03
Organization age	0.01	−0.01	−0.02	−0.02
Organization type	−0.03	−0.03	−0.05	−0.04
Employee productivity 2001	0.44***	0.43***	0.43***	
Control/moderator				
Industry type	0.06	0.11	0.10	0.01
Predictor				
Gender diversity 2002		0.17*	0.03	0.18
Squared term				
Gender diversity 2002^2			−0.22*	−0.47**
Interaction terms				
Gender diversity 2002 × industry type				−0.21
Gender diversity 2002^2 × industry type				0.33*
R^2	0.21	0.23	0.26	0.32
F	7.40***	7.14***	7.08***	7.31***
ΔR^2	0.21	0.02	0.03	0.06
F for ΔR^2	7.40***	4.82*	5.43*	6.25**

Notes: $n = 150$. Standardized coefficients are reported. $*p < 0.05$, $**p < 0.01$, $***p < 0.001$.

According to Table 1, gender diversity was found to have a significant positive effect on employee productivity. For every five-point increase in workforce gender diversity (e.g. from 0.05 to 0.10 on Blau's index), there was an average increase of US$38,824 in annual operating revenue per employee, with all other variables studied remained at their mean values. This implies that there is an interrelation between the diversity of gender with the performance of employees in driving business growth.

5. DISCUSSION

11) A. Protection of Gig Workers

The amendment of **s101C**, presuming employment, categorises gig workers as "employees" under the EA and "workmen" under the IRA. As a result, gig workers meeting the criteria of **s101C** now have access to the same benefits as employees and workmen.

Nevertheless, from the perspective of employers, the introduction of s101C may present numerous difficulties. Including gig workers in the legal definition of "employees" under the EA to grant them equal benefits and legal protections could unjustly and excessively burden companies that engage in the services of gig workers. In the long run, this could trigger a chain reaction where companies are compelled to restrict the number of gig workers they engage to manage costs. Consequently, this limitation would ultimately lead to an increase in the unemployment rate in the gig economy and cause hardships for the public at large.

In light of these issues, it is recommended that gig workers establish an association dedicated to safeguarding their rights and welfare within the gig economy. Such an association could serve as a mechanism for the collective bargaining of their rights with service providers. To further illustrate, in the

United Kingdom, the Independent Workers Union of Great Britain (IWGB) achieved a significant legal victory, securing worker status for UK Uber drivers. This recognition granted them employee rights, including entitlement to a minimum wage and paid vacation time. The success of this case has set a precedent for further efforts to unionise workers in the gig economy, highlighting the feasibility of collective action to protect the rights of gig workers.

In Malaysia, although the Art 10(1)(c) of the FC guarantees the freedom of association, this right is subject to several constraints. The Trade Unions Act 1959 and the IRA impose lengthy and intricate procedures for the recognition of trade unions. Additionally, the strict interpretation of the definition of "workmen" under s2 of TUA 1959 limits employees' participation in trade unions and collective bargaining. The hindrance is further exacerbated by employers' recognition processes outlined in s9 of the IRA, impeding the formation of trade unions by gig economy workers. Consequently, there is a pressing need to reform the provisions within the Trade Unions Act 1959 and s9 of the IRA to allow gig economy workers to form unions to better protect their welfare.

12) B. Foreign Workers

Following the amendment, it is now mandatory for the employer to seek approval from the Director General before hiring a foreign employee. The approval of this application is contingent upon various conditions, including but not limited to the absence of any pending matters or cases related to convictions for offences under the EA, Employees' Social Security Act 1969, and the Employees' Minimum Standards of Housing, Accommodations, and Amenities Act 1990.

Although this amendment seems to better protect foreign workers from exploitation, fundamental protections are still limited. To illustrate, s15(1) of the Immigration Act 1959/63 specifies that foreigners can stay in Malaysia only if they possess a valid permit. According to recruitment regulations, employers are responsible for securing approvals and immigration documents for migrant workers to enter and remain in Malaysia. Since the termination of employment results in the cessation of their visas/permits, migrant workers find their legal presence in Malaysia terminated. Consequently, it is legally impossible for a migrant worker to change employers in Malaysia and still maintain a documented status.

Therefore, Malaysia should consider adopting an approach similar to the United Kingdom's in 1998. In the UK, the original Overseas Domestic Worker visa permitted domestic workers to switch to another employer and renew their visa. This visa empowered them to assert their workplace rights, including the option to report complaints to the police and courts, serving as a significant deterrent against abuse.

While the UK's approach may currently be confined to domestic workers, there is a compelling argument for extending the aforementioned laws and recommendations to encompass all migrant workers in Malaysia. It is asserted that adapting these principles to the Malaysian context, including the adoption of open work permits, could be highly beneficial. In conclusion, safeguarding the rights of migrant workers remains an ongoing endeavour, notwithstanding the amendments made to the EA.

13) C. Forced Labour

In July 2021, Malaysia was downgraded to the lowest tier in the U.S. State Department's Trafficking in Persons (TIP) report. The report emphasised that forced labour, particularly in palm oil and agriculture plantations, construction sites, and industries like electronics, garment, and rubber products, is the predominant human trafficking crime in Malaysia. However, the recently released 2023 report reveals that Malaysia has moved from Tier 3 to the Tier 2 Watch List. This transition signifies significant achievements, notably the inclusion of 'forced labour' as a specific offence in the Amendment Act.

However, the definition of forced labour provided under **s90B** appears to be limited to formal employment relationships. The EA defines an 'employee' as someone who has entered into a 'contract of service,' whether oral or written, with implied or express conditions. Consequently, this definition excludes individuals trafficked and trapped in the informal sector of the economy, where work is untaxed and labour

inspections are challenging to conduct. Moreover, the definition lacks comprehensiveness, applying only when the employer 'threatens,' 'deceives,' or 'forces' an employee to engage in any activity, service, or work, and "prevents that employee from proceeding beyond the place or area where such activity, service, or work is done." It fails to incorporate the eleven indicators of forced labour specified by the ILO, such as overtime or on-call work not previously agreed upon with the employer or work in hazardous conditions that the worker has not consented to.

Therefore, it is recommended to revise the definition of 'forced labour' to align with the ILO Convention, ensuring a clear and comprehensive interpretation. Additionally, strengthening **s374 of the Penal Code** is advised, involving an increase in both the penalty and jail term for individuals found guilty of engaging in unlawful compulsory labour.

Although the Malaysian government has introduced its inaugural National Action Plan on Forced Labour (NAPFL) 2021-2025, there is a need for concrete actions and measurable outcomes to effectively eliminate forced labour in Malaysia by 2030, aiming to eradicate labour malpractice.

14) D. Enhancement of Maternity Protection

The amendment to **s37 (1)(d)(ii) of the EA** extended the maternity leave period for employees in the private sector to 90 consecutive days. This obligatory adjustment was purportedly enacted to align Malaysian maternity benefits more closely with the ILO's standard period of 98 days, with the overarching goal of providing enhanced support for both the mother and the newborn.

Despite that, such an extension had received much criticism prior to the amendment. For instance, the Malaysian Employers Federation (MEF), in response to the Budget 2020 announcement, stated that "Extending maternity leave from 60 days to 90 days beginning 2021 would also add further burden on employers who are already paying 100% for the 60 days maternity leave." Undeniably, the employer liability provisions in the EA that mandate employers to directly bear the economic costs of maternity have led to significant repercussions for female workers.

To tackle these issues, it is recommended that the government implement a practical co-sharing payment system for maternity benefits to alleviate the cost burden on employers. For example, the Singapore government has introduced a government-paid maternity leave program, enabling employers to be reimbursed for up to 38 days of maternity leave provided to their employees. Therefore, the Malaysian government could consider reimbursing employers for the augmented maternity allowance through PERKESO or the Employment Insurance System and permit a double tax deduction for an additional 38 days of maternity benefits to relieve the employers' financial burdens.

The absence of maternity protection may force a growing portion of the workforce, particularly women, to withdraw from employment to manage increased care responsibilities. This could potentially hinder the country's economic growth by forgoing the contributions of this group of workers. Therefore, it is imperative to undertake further amendments to the Employment Act provisions, ensuring that women receive sufficient levels of pregnancy and maternity protection in line with legislated entitlements.

15) E. Paternity Leave

Under the Amendment Act, married male employees are now entitled to seven days of paid paternity leave. Such an amendment is a commendable one as the shared parental leave system has an indirect positive effect on women and their careers: when fathers are incentivized to share responsibility for child rearing, mothers can spend less time out of the workplace. Besides, a study by the Centre for Progressive Policy, campaign group Pregnant Then Screwed and Women in Data found that increasing the statutory entitlement to paternity leave and pay could help increase UK economic output by £23 billion and help to close the gender pay gap. In other words, better paternity leave benefits for fathers will close the gender wage gap since it could facilitate a quicker return to the workplace for mothers.

However, the current seven-day paternity leave falls short of meeting the needs of new parents, especially when the wife may still need assistance beyond the first week after childbirth. Extending paid leave for both parents is challenging due to traditional gender roles and childcare perceptions, where men are seen as breadwinners and women as primary caregivers. Additionally, men often fear negative impacts on their career advancement if they take paternity leave.

To address similar concerns, the Japanese government has enhanced its paternity leave system by increasing subsidies for small and midsize companies offering "support allowances" to colleagues covering the work of those on childcare leave. Furthermore, fathers in Japan can take leave in flexible batches within eight weeks after their child's birth, increasing accessibility. It is recommended that Malaysian paternity leave provisions adopt Japan's approach to provide equal opportunities for fathers in childcare.

16) F. Discrimination

The amendment also aims to diminish discrimination by finding an employer guilty of discriminating against its employees. In fact, the elimination of discrimination positively affected employers by enhancing the efficiency of labour markets and boosting business competitiveness. When employees experience equal treatment, it fosters better labour relations, contributing to the overall productivity of organisations.

Discrimination against women is still prevalent in the workplace wherein women often receive lower wages, face more stringent evaluations, or be passed over for promotion due to her gender. On the other hand, employers will benefit from gender diversity within an organisation as it serves as a wellspring of intangible and socially intricate assets.

Nevertheless, the term "discrimination" is not clearly defined by the Act. Another loophole is that the Act does not specify any remedy that the Director General may award in the event of a dispute between an employer and an employee involving employment discrimination.

Despite **Art 8 of the FC** having prohibited any form of discrimination, it was suggested that enacting a standalone legislation may effectively and comprehensively address various forms of workplace discrimination. Making certain forms of discrimination as an offence provides clarity and eases the process of bringing a case. The government, through legislation, can enact policies and appoint a committee of enquiry to combat such discrimination, ensuring fair and equal protection for all employees.

AI'S ASCENDANCE IN THE WORKPLACE AND THE LEGAL LANDSCAPE

A. AI in Recruiting

During recruitment, AI algorithms are used to analyse application forms and resumes, extracting relevant information and categorising candidates based on key criteria such as skills, education, and experience.

However, criticism has been directed at AI for its racial bias since its introduction to the employment sector. This is because AI tools may harbour unconscious biases against non-white applicants, inadvertently favouring particular demographics.

B. AI in Workplace Surveillance

As companies are gradually implementing work-from-home initiatives after the COVID-19 pandemic, employers are increasingly monitoring remote workers at unprecedented levels, utilizing various methods such as keystroke and computer activity monitoring, video surveillance, and even eye-tracking software. This monitoring software is frequently implemented without the employees' knowledge.

With the increasing infiltration of surveillance technologies in the workplace, the privacy concerns of employees are demanding significant attention.

LEGAL CONSIDERATIONS

The rise in revolutionary AI systems in the workplace has led to the emergence of various legal concerns in Malaysia due to the absence of specific laws regulating their usage.

A. Contrasting Common Law: The Implied Duty of Mutual Trust and Confidence

Under common law, there is an implied duty of mutual trust and confidence between employers and employees. This duty requires employers to effectively communicate their decisions to employees, especially regarding termination cases.

However, difficulty arises in comprehending the decision-making process of a trained AI program, unlike the transparency available when questioning humans through cross-examination or interviews. When AI operates as a black box, it generates predictions and decisions akin to human behaviour, but human managers may struggle to grasp the rationale behind these outputs. As such, the introduction of AI complicates matters for employers, who are required to provide explanations and demonstrate that decisions were made in good faith. Without the reason of dismissal, the mutual trust and confidence was breached and potentially leading to claims of unfair dismissal.

B. Algorithmic Bias in Hiring Process

AI systems pose a significant concern as they could worsen discriminatory biases in employment decisions which consistently disadvantage individuals based on factors like race or gender. Depending on their design and training, these algorithms may replicate existing biases or introduce new ones. Amazon attempted to create an algorithm for screening software developer candidates, but found it was not evaluating them in a gender-neutral manner. This was because the data used to train the AI lacked representation from certain demographic groups, leading to less accurate assessments and potential underestimation of their success. In the case, the algorithm was based on resumes predominantly from male applicants over a decade, mirrored the tech industry's male dominance.

This situation conflicts with principles of gender equality outlined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Art 8 of FC. However, the utilization of AI systems has led to the emergence of inequality which remains unresolved.

C. Legal Vacuum of Workplace Surveillance Regulations

With the increasing trend of remote and fragmented work, there is a rising category of AI and surveillance methods that are discreet, the evident outcome of employee monitoring is the erosion of privacy within their personal work environments.

Privacy laws encompass more than just data protection; while personal data protection focuses solely on stored personal information, privacy law extends to any possible intrusions on an individual's privacy. Despite this broader scope, FC does not explicitly acknowledge privacy as a fundamental right, and the Personal Data Protection Act (PDPA) 2010 only safeguards the usage of personal data in commercial dealings. Consequently, the legal status of software surveillance tools remains considerably ambiguous under Malaysian law.

To make it worse, employees will also be most likely to fail in claiming their rights for unreasonable workplace surveillance as the tort of invasion of privacy is not actionable as decided in the case of ***Ultra Dimension Sdn Bhd v Kook Wei Kuan***. Hence, the law to regulate workplace surveillance is insufficient in the context of Malaysia.

D. Inadequacy of PDPA

AI algorithms necessitate extensive datasets for training, sparking concerns about personal data handling, both as inputs and outputs. This is particularly critical for HR data, often containing sensitive information like health records and performance evaluation.

However, the effectiveness of the current PDPA is often criticised due to its limited scope, excluding governmental entities and non-commercial transactions. This falls short of international standards for data protection, notably Europe's General Data Protection Regulation (GDPR). This misalignment poses

challenges and uncertainties in protecting employees' interests, highlighting the need for urgent action to develop comprehensive laws.

PATH FORWARD: REGULATING AI USAGE IN THE WORKPLACE

A. Employment Act 1950

Integrating AI into workplaces fundamentally transforms conventional concepts of employment relationships. As AI assumes more responsibilities, the lines blur between who is performing the work.

Hence, an amendment to the Employment Act is needed to clearly define who is considered an 'employee', distinguishing between non-human workers (dwarfs, industrial robots, etc.) and human workers. These regulations will ensure that the contributions of human employees, such as organising and selecting data input, are recognised. Establishing clear boundaries will promote the harmonious coexistence of humans and AI in the workplace without jeopardising the welfare of human workers.

Some takeaways from the AI Act recently enacted by the European Parliament could shed light on how to regulate the deployment of AI in workplace. The legislation adopts a risk-based approach, imposing obligations on both providers and deployers of AI systems according to the level of risk involved. As the level of risk escalates, the regulatory requirements become more stringent.

By assessing the risks associated with different AI systems, lawmakers can tailor rules and regulations to address specific concerns without imposing unnecessary burdens on low-risk systems.

B. Personal Data Protection Act 2010

PDPA should fully comply with the EU's GDPR, which is a new benchmark for data privacy regulations, to meet the present digital economy.

For instance, the principle of the right to be forgotten under Article 17 of the GDPR has not been adopted in Malaysia. This principle grants data subjects the right to request the erasure of their data without undue delay. In the context of employment, employees would have the right to request the deletion of their data if it is no longer necessary for the purposes for which it was collected or processed.

While it is a promising enhance privacy protection, the implementation of this principle could present a significant challenge for AI systems. These systems heavily depend on vast datasets for training algorithms and decision-making. The solution to this challenge could be a more technical part, where researchers have proposed machine unlearning algorithms as a solution for erasing specific data from trained models to support the principle.

Other than that, there is a need for new legislation for regulating video and audio surveillance devices in the country to regulate workplace surveillance. A model can be drawn from the Workplace Surveillance Act in the state of New South Wales. Under the Act, it could only be deemed reasonable and essential for employers to monitor employees to safeguard workplace safety, prevent unlawful activities, and protect employer property and interests. The Act also requires employers to provide 14 days' notice to employees before implementing any form of surveillance. There are special additional requirements for different types of surveillance.

To conclude, legal reforms in relation to privacy rights and surveillance laws are urgently needed to minimise the negative effects and risks of the application of AI in the workplace.

CONCLUSION

The year 2022 marked a positive transformation for the EA, reflecting a significant overhaul and reform. While some proposed changes align Malaysia's labour law with contemporary international ILO standards, some are criticized for addressing issues only superficially or undermining the employers' interests.

AI's widespread integration in workplaces, spanning hiring algorithms to automated decision-making and surveillance, raises significant legal considerations. The absence of explicit laws governing AI in employment underscores the urgent need for tailored regulatory frameworks.

As such, a thorough analysis of the potential consequences of these amendments is essential for the success of the laws. Therefore, the Malaysian government should make a more serious and consistent effort to understand trends and regulations in the employment landscape, ensuring that Malaysia remains competitive in attracting investors while adequately protecting the rights of employees.

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