

LABOUR ORDINANCE OF SARAWAK

LABOUR (TERMINATION AND LAY-OFF BENEFITS)
(SARAWAK) RULES 2008ARRANGEMENT OF RULES

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IN exercise of the powers conferred by paragraph 130o(2)(k) of the Labour Ordinance of Sarawak [*Sarawak Cap. 76*], the Minister after consultation with the State Authority makes the following rules:

Citation

1. These rules may be cited as the **Labour (Termination and Lay-Off Benefits) (Sarawak) Rules 2008**.

Interpretation

2. In these Rules, unless the context otherwise requires—

“business” includes a trade, industry, profession, undertaking and any activity carried on by a person or body of persons, whether corporate or unincorporate;

“continuous contract of service” means uninterrupted service with an employer, including service which may be interrupted on account of sickness, authorized leave, an accident, a strike which is not illegal, a lock-out or a cessation of work which is not due to any fault of the employee;

“lock-out” has the same meaning assigned to it by the Industrial Relations Act 1967 [*Act 177*];

“out-worker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;

“relevant date” means—

(a) in relation to termination, the date the contract of service of an employee is terminated; or

(b) in relation to a lay-off, the date on which the period of four consecutive weeks referred to in subrule 5(1) has expired;

“renewal” includes extension and any reference to renewing a contract of service shall be construed accordingly;

“strike” has the same meaning assigned to it by Industrial Relations Act 1967;

“termination or lay-off benefits payment” means the amount payable by an employer to an employee under rule 3.

General provisions for the entitlement of employees to termination or lay-off benefits payment

3. (1) Subject to these Rules, an employer shall be liable to pay termination or lay-off benefits payment calculated in accordance with rule 6 to an employee who has been employed under a continuous contract of service for a period of not less than twelve months ending with the relevant date if—

- (a) the contract of service of the employee is terminated; or
- (b) the employee is laid-off within the meaning of rule 5.

(2) For the purpose of this rule a continuous contract of service for a period of not less than twelve months shall include two or more periods of employment which are not less than twelve months in the aggregate if the intervening period or periods between one period of employment and another does not in the aggregate exceed thirty days.

Termination

4. (1) Subject to subrules (2), (3) and (4), an employee shall be entitled to termination benefits payment where his contract of service is terminated for any reason whatsoever otherwise than—

- (a) by the employer, upon the employee attaining the age of retirement;
- (b) by the employer, on the grounds of misconduct inconsistent with the fulfillment of the express or implied conditions of his service, after due inquiry;
- (c) voluntarily by the employee, other than under subsection 13(2) or the reasons specified in subsection 14(3) of the Ordinance; or
- (d) upon expiry of the period of his contract of service.

(2) An employee shall not be entitled to any termination benefits payment if—

- (a) his contract of service is renewed, or he is re-employed by the same employer under a new contract of service on terms and conditions which are not less favourable; and
- (b) the renewal of the contract of service or re-employment takes effect immediately on the ending of his employment under the previous contract.

Provided that the period of employment immediately prior to such renewal or re-employment shall be taken into account for the purpose of determining the amount of termination or lay-off benefits payment payable to an employee.

(3) An employee shall not be entitled to any termination benefits payment if, not less than seven days before the date his services are to be terminated, the employer has offered to renew his contract of service or to re-employ him under a new contract, so that—

- (a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not be less favourable than the corresponding provisions of the contract as in force immediately before the termination of his services; and
- (b) the renewal or re-employment would take effect on or before the date with effect from which his services are to be terminated, and the employee has unreasonably refused that offer.

(4) An employee shall not be entitled to any termination benefits payment where he leaves the service of his employer before the expiration of any notice given to him by his employer in accordance with section 12 of the Ordinance—

- (a) without the prior consent of the employer, which the consent shall not be unreasonably withheld; or
- (b) without having made payment to the employer in accordance with section 13.

Lay-Off

5. (1) Where an employee is employed under a contract on such terms and conditions that his remuneration under the contract depends on his being provided by the employer with work of the kind he is employed to do, he shall, for the purposes of paragraph 3(1)(b), be deemed to be laid-off if—

- (a) the employer does not provide such work for him on at least a total of twelve normal working days within any period of four consecutive weeks; and
- (b) the employee is not paid with any remuneration under the contract for the period or periods (within such period of four consecutive weeks) in which he is not provided with work:

Provided that any period during which an employee is not provided with work as a result of a rest day, a public holiday, sick leave, maternity leave, annual leave, any other leave authorized under any written law, or any leave applied for by the employee and granted by the employer shall not be taken into account in determining whether or not an employee has been laid-off.

(2) The continuity of a contract of service of an employee shall not be treated as broken by any lay-off as a result of which no lay-off benefits payment has been made.

Amount of termination or lay-off benefits payment

6. (1) Subject to the provisions of these Rules, the amount of termination or lay-off benefits payment to which an employee is entitled in any case shall not be less than—

- (a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than two years; or
- (b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for two years or more but less than five years; or
- (c) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five years or more,

and prorata in respect of an incomplete year, calculated to the nearest month.

(2) For the purpose of this rule "a day's wages" shall be computed as follows:

- (a) in respect of monthly rated employees, the wages earned over the period of twelve completed months' service immediately preceding the relevant date divided by 365 days;
- (b) in respect of daily, piece, weekly or hourly rated employees, the wages earned over the period of twelve completed months service immediately preceding the relevant date divided by the number of days actually worked.

(3) For purposes of this rule, the period of employment under a continuous contract of service shall include any such employment prior to the date on which these Rules come into force.

(4) The termination or lay-off benefits payment to which an employee is entitled under this rule shall be in addition to any payment to which he may be entitled under section 13 of the Ordinance.

Excluded classes of employees

7. The provisions of these Rules shall not apply to any out-worker.

Change of ownership of business

8. (1) Where a change occurs (whether by a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which an employee is employed or of part of such business, the employee shall not be entitled to any termination benefits payable under these Rules, if—

- (a) within seven days of the change of ownership, the person by whom the business is to be taken over, immediately after the change

occurs, offers to continue to employ the employee under terms and conditions of employment not less favourable than those under which the employee was employed before the change occurs; and

(b) the employee unreasonably refuses the offer.

(2) If the person by whom the business is to be taken over immediately after the change occurs does not offer to continue to employ the employee in accordance with subrule (1), the contract of service of the employee shall be deemed to have been terminated, and consequently, the person by whom the employee was employed immediately before the change in ownership occurs shall be liable for the payment of all termination benefits payable under these Rules.

(3) Where an offer by the person by whom the business is taken over immediately after the change occurs to continue to employ the employee is accepted by such employee, the period of employment of the employee under the person by whom the employee was employed immediately before the change occurs, shall, be deemed to be a period of employment under the person by whom the business is taken over, and the change of employer shall not constitute a break in the continuity of the period of his employment.

Death of employer

9. (1) Rule 8 shall not apply to any change where the ownership of the business, for the purposes of which an employee was employed by a deceased employer, passes to a personal representative of the deceased employer.

(2) Where an employer dies, the personal representative of the deceased employer shall be deemed to continue to be the employer in relation to any employee employed by the deceased employer notwithstanding any break between the date of the death of the deceased and the date of the appointment of the personal representative of the deceased.

Death of employee

10. (1) Where an employer has given notice to an employee to terminate his contract of service, and before that notice expires the employee dies the provisions of these Rules shall apply as if the contract of service has been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where an employer has made an offer to an employee under subrule 4(3) and the employee dies without having either accepted or refused the offer, the employee shall, be deemed to have reasonably refused the offer and be accordingly entitled as on the date of his death to termination benefits payment by the employer.

Payment of termination or lay-off benefits

11. (1) Any termination or lay-off benefits payment payable under these Rules shall be paid by the employer to the employee not later than seven days after the relevant date.

(2) Any employer who fails to comply with subrule (1) commits an offence.

Written particulars of termination or lay-off benefits payment

12. (1) On making any termination or lay-off benefits payment, otherwise than in pursuance of a decision of the Director under section 8A of the Ordinance, the employer shall at the same time give to the employee a written particulars of the amount of such payment and the manner in which the payment has been calculated.

(2) Any employer who—

(a) Fails to comply with subrule (1); or

(b) in the written particulars under subrule (1) includes anything which is to his knowledge false in any material particular, or recklessly includes anything which is false in any material particular,

commits an offence.

(3) Without prejudice to any proceedings for an offence under paragraph (2)(a), if an employer fails to comply with the requirements of subrule (1), the employee may by notice in writing to the employer require the employer to give to the employee written particulars complying with those requirements within fourteen days beginning with the day on which the notice was given.

(4) An employer who fails to comply with a notice under subrule (3), commits an offence.

Disputes may be dealt with under Chapter IIA of the Ordinance

13. Any dispute between an employee and his employer in respect of any payment payable under any provisions of these Rules may be dealt with under the provisions of Chapter IIA of the Ordinance.

Representation in disputes and proceedings in the case of a deceased employee

14. For the purpose of any dispute or proceedings in relation to any claim for termination or lay-off benefits payment under these Rules, the Director may appoint any suitable person to represent the interest of an employee who has died before the termination or lay-off benefits payment is made, or to represent the estate or the dependants of such deceased employee.

Notice to Director

15. Every employer shall inform the Director in the format prescribed by him at least 30 days prior to the date of actual retrenchment or lay off.

Made 3 June 2008

[KSM/PUU/T/01/09 Jld. 4; PN(PU³) 207/VII]

DATUK DR. S. SUBRAMANIAM
Minister of Human Resources

P.U. (A) 222.**ORDINAN BURUH SARAWAK****KAEDAH-KAEDAH BURUH (SARAWAK) (KANDUNGAN KONTRAK) 2008**

PADA menjalankan kuasa yang diberikan oleh perenggan 130o(2)(i) Ordinan Buruh Sarawak [*Sarawak Bab 76*], Menteri selepas perundingan dengan Pihak Berkuasa Negeri membuat kaedah-kaedah yang berikut:

Nama

1. Kaedah-kaedah ini bolehlah dinamakan **Kaedah-Kaedah Buruh (Sarawak) (Kandungan Kontrak) 2008**.

Kandungan kontrak

2. (1) Tiap-tiap kontrak perkhidmatan bertulis yang dibuat menurut seksyen 19 Ordinan hendaklah mengandungi terma yang jelas dan tidak kabur segala yang mungkin perlu untuk menentukan hak dan kewajipan pihak-pihak kepada kontrak dan hendaklah dalam segala hal termasuk butir-butir yang berikut:

- (a) nama dan alamat majikan dan, jika praktik, jenis pemiagaan atau perusahaan dan tempat pekerjaan;
- (b) nama pekerja;
- (c) Nombor Kad Pengenalan Pendaftaran Negara, Pasport atau Nombor Pas Imigresen dan tarikh luput (bagi pekerja bukan pemastautin);
- (d) pekerjaan dan perihalan kerja;
- (e) jangka masa pekerjaan;
- (f) tempoh notis yang hendaklah diberikan oleh pihak yang berhasrat untuk menamatkan kontrak atau bayaran amaun upah yang sama sebagai ganti notis itu;
- (g) kadar upah dan kaedah pengiraannya, cara dan kekerapan bayaran upah, pendahuluan upah, jika ada, dan cara bayaran balik mana-mana pendahuluan itu;
- (h) syarat-syarat penghantaran pulang;