



TERMINATION AND LAY OFF BENEFIT REGULATIONS 1980

by

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TERMINATION AND LAY OFF BENEFIT

- Provided under 60J- the minister may provide for the retirement benefit, lay off benefit, termination benefit



TERMINATION AND LAY OF BENEFIT

- Lay-Off and Termination Benefit Regulation 1980 provide the regulation pertaining to it.





TERMINATION AND LAY OFF BENEFIT

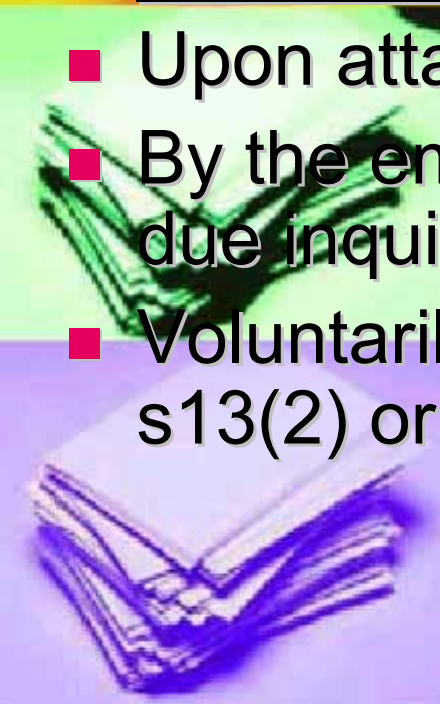
- Reg 3- Entitlement of lay –off and Termination Benefit
- 1)The employer shall be liable to pay the layoff and termination benefit if :-
 - a) the contract of service is terminated
 - b) the employee is laid off within the meaning of reg.5
- 2) Provided that the employment is not less than 12 months of continuous service.



TERMINATION AND LAY OFF BENEFIT



■ Reg 4 Termination

- Subject to para 2,3 & 4,an employee shall be entitled for terminations benefits payments where his contract of service is terminated for **any reason whatsoever** otherwise than
 - Upon attaining the age of retirement;
 - By the employer, on the ground of misconduct after due inquiry;
 - Voluntarily by the employee other than under s13(2) or for the reason under S 14(3)
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TERMINATION AND LAY OFF BENEFIT

- The principle pertaining to retirement age is that it must be stipulated under the contract of employment. The absence of the such term renders that the employee shall be entitled for termination benefits.
- In *Malakoff Bhd v. Kuppusamy & Ors* (1991) 12 MLJ p 39, it was held that :-
...The agreement was silent on the age for retirement and therefore the 19 respondents were entitled to their claim for termination benefits payment





TERMINATION AND LAY OF BENEFIT

- However, the terms pertaining to retirement can be stipulated in an implied manner.
- In *Colgate Palmolive (M) Sdn Bhd v. Yap Kok Foong* (2001) 2 AMR p2309 :-
- On the facts, the industrial court had asked itself the right question, taken into account relevant considerations and acted in accordance with the law, Its decision in the circumstances of the respective cases was entirely reasonable. The finding of the industrial court that the retirement age of the respective respondents should be 55, was a finding of fact based on the credibility of witnesses and should not be interfered with

TERMINATION AND LAY OFF BENEFIT

- Termination due to misconduct- the failure of conducting due inquiry prior to the termination is a statutory breach. Therefore, employer is not exempted from paying termination benefit.



TERMINATION AND LAY OF BENEFIT

- In *Yeo Hiap Seng Trading Sdn Bhd vs. Lim Lee Choon* (2004) 1CLJ 634 per Dato Low Hop Bing:-
- On my part, I would add that the requirement under S 14 (1)(a) is a statutory expression of the first fundamental principle of common law rules of natural justice ie *audi alteram partem* (hear the other side) or no man shall be condemned unheard. A breach of this fundamental rule would vitiate a judicial or quasi judicial decision. The principle is so trite and settled that there is hardly need to cite any authority in support thereof.





TERMINATION AND LAY OFF BENEFIT

- For resignation under S 13 (2). To entitle for termination benefit, it must be proven that the resignation is due to the **willful breach** on the part of the employer under the contract of service.

TERMINATION AND LAY OF BENEFIT

- In *Kilang Beras Ban Eng Thye Sdn Bhd vs Yacob Bin Noor Mohamed & Anor* (1998) 5 MLJ 195, it was held :-
- The late payment of wages is sufficient that a breach has occurred under S 13(2)



TERMINATION AND LAY OFF BENEFIT

- 2) an employee shall not be entitled for termination benefit payments:-
 - a) his contract of service is renewed or he is reengaged under a new contract of service which the terms and condition are not less favourable; and
 - b) the renewal and the reengagement takes effect immediately on the ending of his employment under the previous contract



TERMINATION AND LAY OFF BENEFIT

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



TERMINATION AND LAY OFF BENEFIT

- In Terry v Sussex County Council (1976) ILR 536 per Philip J:-
- “ the great thing to make sure that the case is a genuine one-on the one hand, employers who have genuine need for a fixed term employment, which can be seen from the outset not to be ongoing need to be protected. On the other hand employees have to be protected against being deprived their rights through ordinary employment being dressed up in the form of temporary fixed term contract. What we are saying in this judgement that there is no magic about fixed term contract: that they are not excluded from the Act (EPCA)



TERMINATION AND LAY OFF BENEFIT

- 3) An employee shall not be entitled for termination benefit if not less than seven days before the date with effect from his service are to be terminated, the employer has offered to renew or to reengage under a new contract of service



TERMINATION AND LAY OFF BENEFIT

- a) would not be less favourable prior to the previous contract
- b) the renewal and the reengagement will take effect 7 days before the date of termination and the employee has unreasonably refused that offer.



TERMINATION AND LAY OFF BENEFIT

- In *Compagnie Du Cambodge v Boy Kanamah @ Nadarajah & 8 orang lain* (Court of Appeal) (Civil Appeal No.J-02-101-2002), the principle is that the employee shall not be entitled for termination benefit when his contract is renewed or reengaged within 7 days prior to the effective date of termination.



TERMINATION AND LAY OFF BENEFIT

- 4) An employee shall not be entitled for termination benefit where he leaves the service of the employer before the expiration of any notice given to him by his employer under S 12 –
 - a) without the prior consent of the employer, which consent shall not be unreasonably be held; or
 - b) without having made payment to the employer in accordance with S 13





TERMINATION AND LAY OFF BENEFIT



- **Reg 6 Amount of termination benefit**

- a) 10 days wages for each year of service if he has been employed by the employer less than 2yrs.

- b) 15 days wages for each year of service if he has been employed by the employer more than 2yrs but less than 5yrs



- c) 20 days wages for each year of service if he has been employed by the employer 5 yrs or more.



- And pro-rata as respect to the incomplete years, calculated at the nearest month



TERMINATION AND LAY OFF BENEFIT

- For the purpose of the regulation the wages is as defined under S 2 (1) of the act and a days wages shall be computed so as to give the employee his average true day's wage calculated over the period of 12 completed months service immediately preceding the relevant date

TERMINATION AND LAY OFF BENEFIT

- In **Lee Fatt Seng vs Harpers Gillfillan** held:-
- The amount of wages must be calculated according to the “true days wage”





TERMINATION AND LAY OF BENEFIT



■ Method of calculation

12 mths salary x 12 x days of entitlement of each
year

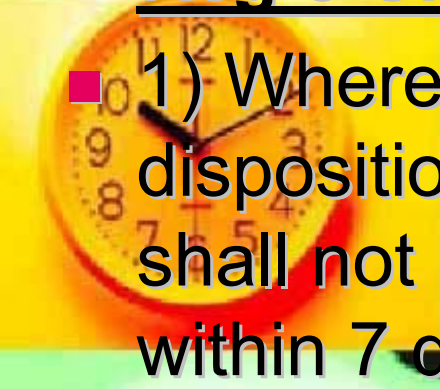

365 days





TERMINATION AND LAY OFF BENEFIT

■ Reg 8 Change of ownership

- 
- 1) Where a change occur (by virtue of sale or other disposition or by operation of the law)-the employee shall not be entitled for any termination benefits if within 7 days from the date of change of ownership, the new owner offers to continue to employ the employee with the terms and condition of service which is not less favourable and the employee unreasonably refuse the offer .
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TERMINATION AND LAY OFF BENEFIT

- 2) If no offer made, the previous owner shall be liable to pay the termination benefit.
- 3) The offer and the new contract of service shall not constitute the break of the length of service.



TERMINATION AND LAY OF BENEFIT

- Whether there is a termination due to transfer of shares?
- In *Abdul Aziz & Ors vs. Ladang Renggo* (1986) 2MLJ 98 , it was held by the Supreme Court that the transfer of shares does not amount to change of ownership



TERMINATION AND LAY OFF BENEFIT

- **Reg 9** Death of an employer shall not constitute a change of ownership
- -the personal representative of the deceased employer shall be deemed to continue the employment of the employee and the death of the employer shall not constitute the break of service



TERMINATION AND LAY OFF BENEFIT

- Reg 10 – Death of employee
- 1) Where employer has given notice to an employee to terminate his contract of service and before the notice expires the employee died the reg shall apply as if the contract of service have duly been terminated





TERMINATION AND LAY OFF BENEFIT

- Reg 11 Payment of termination or lay off benefit
- 1) The payment of termination or lay-off benefit shall be not later than seven days after the relevant date.
- 2) late payment is an offence.

TERMINATION AND LAY OFF BENEFIT

- Reg 12 – The particulars pertaining to termination or lay-off benefit shall be in writing:-
- E.g i) date of employment
- ii) date of termination
- iii) method of calculation
- iv) less authorized deduction
- v) any other relevant particulars






TERMINATION AND LAY OFF BENEFIT



- 2) Any employer who:-

- a) Failure to comply with para (1) or,



- b) Giving information in his knowledge to be false or recklessly includes anything which is false shall be guilty of an offence





TERMINATION AND LAY OFF BENEFIT

■ Lay Off (Reg 5)

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



TERMINATION AND LAY OFF BENEFIT

■ Lay Off

■ 2 conditions :-

- a) the employer does not provide such work for him at least a total of 12 normal working days within any period of 4 consecutive week : and
- b) the employee is not entitled to any remuneration under the contract of service for the period or periods (within such period of 4 consecutive weeks) in which he is not provided with work

TERMINATION AND LAY OFF BENEFIT

- Lay Off

- Exceptions: that any period which is not provided with work as resulted of rest day, sick leave, maternity leave, public holiday leave or any other leave authorized by law or any leave applied by employee and granted by the employer shall not be taken into account into determining whether the employee has been laid off.

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TERMINATION AND LAY OFF BENEFIT

- 2) the continuity of the contract of service shall not be treated as broken by any lay –off as a result of which no lay off benefits has been paid.





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