



# Comparative Study of Existing Employment Regulatory in Malaysia and Selected Common Law Countries

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**Abstract:** There is little doubt that employment turnover has had a significant impact on employee productivity and is acknowledged to be one of the important issues, with various antecedents including minimum employment provisions. However, employee turnover can be managed through effective approaches, such as employment regulatory. This paper compares and analyses existing employment regulatory provisions in Malaysia to study the differences in terms of employment provisions and make suggestions for the future development of Malaysian employment regulatory. This study adopted a qualitative approach through content analysis of the existing employment regulatory requirements in Malaysia and selected common law countries. This paper urges that Malaysian employment requires improvement in its employment provisions. Take, for instance, the construction industry that is characterised by the practice of different working hours which affects employees' work-life balance. Several weaknesses were identified in this study, namely flexible working arrangements, provision for leave, and other specific employment provisions which meet the industry and occupational demands. This paper recommends improvement of minimum employment regulatory that considers the work-life balance of employees. In addition, specific employment provisions that focus on the industry would benefit all beneficiaries.

**Keywords:** Construction industry, employment regulatory

## 1. Introduction

Demands to improve the construction industry employment conditions in Malaysia have been given some attention. According to a survey by the Construction Industry Development Board of Malaysia (Ipsos Loyalty, 2016), the perceptions of young people towards this industry have declined from previous years. Several factors were identified as the reasons for concern, including safety issues, relatively poor working conditions, health issues, low salary, and unattractive employment packages. However, these factors are seen as a fixed package provided by the employer, with less room for negotiation on an individual level.

The need to ensure that the industry continues to provide a real contribution to the country is based on the achievements of many construction projects undertaken. In the recent years, Malaysia has widened its infrastructure projects through several big projects under the 11<sup>th</sup> Malaysia Plan (Economic Planning Unit, 2015). The increase in the number of construction projects leads to heavy workforce demands (Omran, Kadir, & Omran, 2010) and involves many technical experts who have their own role. Indeed, one of the critical success factors has been proven to be the recruitment of competent personnel who are involved in the project, such as project managers and team members (Gudiene, Banaitis, Podvezko, & Banaitiene, 2014). The success of Malaysia's construction projects is also determined by health- and safety-related planning. According to CIDB Malaysia (2018), the employment of competent personnel for health and safety

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issues leads to a better site safety management. In view of this, the role of communication for competent personnel is of utmost importance (Omran et al., 2010) and the retention of such professionals is crucial. Also, although protection for employees will be most effective if there are mandatory requirements, the protection of employment in Malaysia can be further improved.

## 2. Review of Related Literature

Construction employee is categorised into two groups, namely the blue-collar and the white-collar. The latter has technical skills obtained from college, which allow them to hold professional positions (Townsend, Lingard, Bradley, & Brown, 2011) for a higher salary. In Malaysia, some professional construction bodies have made it compulsory for professional registration to allow employment (Board of Engineers Malaysia, 2015), thus showing the crucial involvement of the professional bodies. The salary range of the professional is between MYR2500 to MYR6000, approximately USD574 to USD1379 (Jobstreet.com Sdn. Bhd., 2016; Kelly and Capita Global, 2019). However, the industry demands have put the employee to work longer than expected. This situation affects their work-life negatively (Oo, Feng, & Lim, 2019; Turner, 2016). It is also observed that the construction industry working style is difficult, with relatively less rest time as the employees sometimes work in standby mode (Rosa, Hon, Xia, & Lamari, 2017). The demand for long working hours contributes to work-life conflicts (Rosa et al., 2017) through adverse outcomes such as stress (Turner & Mariani, 2016). A reasonable approach can be utilised, including the introduction of flexible working hours. However, the construction industry reacts differently towards this approach (Townsend et al., 2011), which means that employee does have insufficient rest time. The implications, however, are not generalised to all employees, but only the professionals (Turner & Mariani, 2016). Apart from the issue of working hours and its consequences, poor employment practice is another issue highlighted. The concern about pregnancy and breastfeeding has been highlighted as crucial through different treatments, consequent to the practice of different policies (French & Strachan, 2015). It can be mentioned that the highly demanding nature of the construction industry may harm employee's work-life demands. Therefore, the effect would also contribute to the employee turnover.

Previous studies have sought to identify the factors that influence employee turnover, with several studies showing that employee turnover is associated with organisational management (see Table 1). Zaheer et al. (2019) claimed that turnover was mainly due to teamwork perceptions, rather than the attitude of leadership towards safety and skills management. Some studies also found human resource management (HRM) packages to be one of the main reasons for turnover. Gao, Wen, and Zhang (2019) found that salary and its increments, together with overtime allocation, were the contributing factors. Klundert, Broek, and Yesuf (2018), in contrast, identified a variety of different factors from different perspectives as the catalysts, such as social and personal opportunities, career development, procedural issues, and financial improvement.

**Table 1 - Selected Previous Turnover Studies**

<b>Turnover Determinants</b>	<b>Authors</b>
Teamwork role in turnover	Zaheer et al., 2019
Improvement on compensation	Klundert, Broek and Yesuf, 2018; Gao, Wen and Zhang, 2019
Overtime allocation	Gao, Wen and Zhang, 2019
Organisation procedure	Klundert, Broek and Yesuf, 2018; Hussain and Khan, 2018
Opportunities in career development	Klundert, Broek and Yesuf, 2018
Relationship within organisation	Daykin et al., 2018
Justice implementation on compensation and compensation related decision	Hussain and Khan, 2018;
Performance management	Valle and Ruz, 2015
Demographic element as the employee turnover determinant	Reuben, 2019
Differences of effect towards gender on the use of social media at workplace	Zhang, Ma, Xu, and Xu, 2018
The role of gender in turnover	Scanlan and Still, 2019
Burnout and low commitment affects occupational group differently	Willard-Grace et al., 2019
Likelihood to stay is different across occupational groups	Korff et al., 2015
Age as turnover determinant	Gao et al., 2019
Social media usage in the workplace	Zhang, Ma, Xu, and Xu, 2018

Daykin et al. (2018) emphasized the importance of having positive relationships within the organisational structure. In addition, Hussain and Khan (2018) examined the role of justice and the practice of justice that led to concerns about compensation and compensation-related decisions, while Valle and Ruz (2015) claimed that turnover could be predicted through performance management.

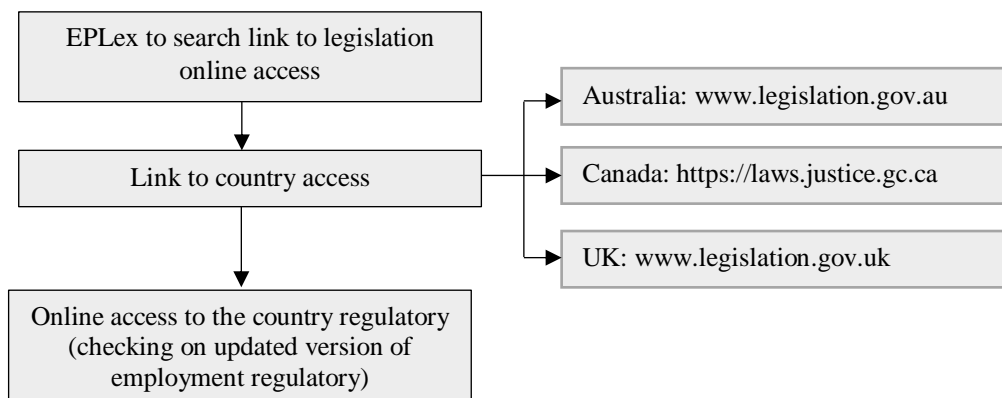
In addition to management factors, previous studies identified individual contributors to turnover, such as demographic factors which influenced the intention to leave thereby might require different solutions (Reuben, 2019).

Zhang, Ma, Xu, and Xu (2018) explored the usage of social media in the workplace and its relation to turnover, identifying different dimensions based on gender. However, Scanlan and Still (2019) mentioned that work satisfaction and burnout that involve all employees, have no influence on gender. Willard-Grace et al. (2019) found that employees who experienced burnout and low levels of engagement were more likely to leave. However, the finding was based on their study of occupational groups that was not related to general employees. Similarly, Korff, Balbo, Mills, Heyse, and Wittek (2015) found that there was a link between occupational groups and retention in humanitarian programmes. Age was also shown as the factor involved in staff turnover in a study by Gao et al. (2019).

In spite of the presence of such studies on the influence of management and demographic factors on employee turnover, there has been little focus on the effect of existing employment regulatory provisions. There is a need to improve workplace practice in the construction organisation (Harris, Naoum, Rizzuto, & Egbu, 2020). However, it would not be useful in absence of the guide from the employment regulatory. In order to fill in the gap, this comparative study attempts to investigate the existing employment regulatory in Malaysia. This paper is led by two research questions, namely what is the existing employment regulatory framework and weaknesses of the existing framework as compared to other countries? In view of this investigation, the following section outlines the chosen research methodology, findings, discussion, and conclusion for this study.

### 3. Research Methodology

This study adopted a qualitative approach research design that would allow the researcher to analyse data in a readable form whereby the sources that can be seen, read, interpreted, and acted upon (Krippendorff, 2004, p.17; Hsieh & Shannon, 2005). Naturally, the existing employment regulatory in Malaysia was used as a fundamental basis for this study to meet the research objective of improving the regulatory. This regulatory took the form of basic terms and conditions of employment, and comparisons were made between the existing employment regulatory from the three selected common law countries, namely Australia, Canada, and the UK.



**Fig. 1 - The workflow to access the employment regulatory in selected common law countries**

The process of searching for these employment regulatory requirements was initiated in August 2019. For Malaysia, the database used was derived from the Attorney General's Chamber of Malaysia<sup>1</sup> in order to establish the features of Malaysian employment regulatory framework. For other selected common law countries, the workflow is as shown in Fig. 1. Reference was made to the International Labour Organisation (ILO) website in order to retrieve access links to each country's database. Through the Employment Protection Legislation Database (EPLex)<sup>2</sup> the feature in the ILO website, the link to the document was an early reference. This feature allowed online access of regulatory that are based on a constantly updated legislation of each country. After the links were accessed, the updated version of the regulatory was reviewed. Based on the search process, the current employment regulatory framework was identified. As a basis, the Malaysian employment regulatory framework applies the Employment Act 1955 (Amendment 2012). For Australia and Canada, the Fair Work Act of 2009 (Amendment 2018) and the Canada Labour Code 2019 are currently applied, respectively. The United Kingdom applies the employment legislation found in the Employment Rights Act of 1996 (Amendment 2019).

### 4. Findings

This section elaborates the review findings of the employment regulatory in Malaysia and selected common law countries. The summary of findings can be found in Table 2 and

<sup>1</sup> The database can be retrieved at [www.agc.gov.my](http://www.agc.gov.my). Date accessed; 15 August 2019

<sup>2</sup> The database can be retrieved at [www.ilo.org/dyn/eplex/](http://www.ilo.org/dyn/eplex/). Date accessed; 20 August 2019

Table 3.

#### 4.1 Malaysia

Malaysia has set limitations on its employment regulatory jurisdiction based on occupational groups and range of salary. Regarding its occupational groups, Malaysia has made an effort to protect manual employees regardless of salary, protecting them through its minimal employment requirements via the Employment Act 1955. Other employee groups would have similar protection to manual employees if they earned less than MYR2,000 (approximately USD478 at the time of this paper). The jurisdiction of the act extends to employees with salary ranging from MYR2,000 – 5,000 (approximately USD478 – 1196). However, the terms and conditions of employment should be based on an agreed employment contract between both parties.

**Table 2 - Table of Findings (Malaysia and Australia)**

Provisions	Malaysia	Australia
<b>Coverage of Employee</b>	<ul style="list-style-type: none"> <li>Manual employees</li> <li>Employees earn up to MYR2,000</li> <li>Employees earn MYR2,000-5,000</li> </ul>	All employees, except for vocational placement
<b>Annual Leave</b>	Allocation increase based on years of service, begins with 8 days	4 weeks or 5 weeks
<b>Maternity Leave</b>	<ul style="list-style-type: none"> <li>Maximum of 60 days leave</li> <li>Up to 5 surviving children</li> </ul>	Maximum of 180 day
<b>Sick Leave</b>	60 days (15 weeks) paid sick leave	Included in personal leave (10 days paid and 2 days unpaid)
<b>Parental Leave</b>	No provision	Up to 12 months (48 weeks) and additional 12 months on request (unpaid)
<b>Adoption Leave</b>	No provision	Unpaid leave on employees request
<b>Special Leave</b>	No provision	On the ground of personal, compassionate, family and domestic violence, community service and long service
<b>Working Hours</b>	8 hours per day to a total of 48 hours in per week	38 hours with reasonable additional hours
<b>Flexible Working Arrangement</b>	No provision	May request changes of working arrangements on the ground of taking care of parent or children, disability, carer, 55 years old, family carer.
<b>Suspension of Work</b>	<ul style="list-style-type: none"> <li>Applicable for misconduct matters</li> <li>up to 14 days with half pay</li> </ul>	Not Applicable
<b>Termination</b>	Notice based on year of service begins with four weeks	<ul style="list-style-type: none"> <li>Notice based on year of service begins with one week</li> <li>Two weeks' notice for 45 years old employee</li> </ul>

In terms of minimum employment provision, the Employment Act of 1955 provides items such as leave, working hours, termination notice, and maternity protection. Leave allocation falls into two categories, namely annual and sick leave. Annual leave allocation is applicable for employee who has been working for 12 months, depending on the year or service that begins with 8 days. Sick leave, however, is applicable as soon as employees enter into their employment contract, with an allocation of 60 days. This sick leave allocation includes 14 days of normal medical leave, with the remainder being set aside for the eventuality of hospitalisation. Working hours are to be eight hours a day, with a maximum of 48 hours a week. Employees are also given the right to a rest time of 30 minutes for every five hours of work. Despite the normal working hours, the Malaysian Government has set the maximum overtime working hours to be within 104 hours monthly. There is also an allocation of 14 days leave with half salary for the purpose of conducting domestic inquiries or misconduct issues. In terms of termination notice, both parties are to give at least four weeks as a start and shall increase depending on the year of service. Maternity matters cover all women employees with maternity leave and maternity allowance for up to five surviving children.

**Table 3 - Table of Findings (Canada and United Kingdom)**

Provisions	Canada	United Kingdom
<b>Coverage of Employee</b>	All employees except managers on certain provision (working hours and unfair dismissal)	Employee who enter into contract of service or apprenticeship
<b>Annual Leave</b>	Allocation based on years of service, begins with 14 days	28 days including 8 days public holiday
<b>Maternity Leave</b>	119 days	364 days (normal leave of 182 days and additional of 182 days)
<b>Sick Leave</b>	Maximum of 119 days applicable after 3 months of service	<ul style="list-style-type: none"> <li>• Paid sick leave applicable with conditions</li> <li>• Different sick pay for agricultural sectors</li> </ul>
<b>Parental Leave</b>	63 weeks	2 weeks parental/shared-parental leave, for employee with 3 months of service
<b>Adoption Leave</b>	63 weeks	<ul style="list-style-type: none"> <li>• Adoption leave on request</li> <li>• Time-off is allowed up to five occasions (6.5 hours on every occasion)</li> </ul>
<b>Special Leave</b>	Including compassionate care, critical illness leave for family members, leave related to death/disappearance, bereavement leave, leave for family and domestic reasons	Leave for family and domestic matters
<b>Working Hours</b>	8 hours per day to a total of 40 hours per week	Maximum 48 hours of work per week including overtime
<b>Flexible Working Arrangement</b>	Request for job rearrangement in situation of nursing or pregnancy matters	Employee may apply for flexible working arrangements in certain condition (such as child and family)
<b>Suspension of Work</b>	Not Applicable	Up to 182 days due to medical and maternity matters
<b>Termination</b>	Notice based on year of service, begins with one week	<ul style="list-style-type: none"> <li>• Notice based on year of service begins with one week for one month of service</li> <li>• One weeks following years of service</li> </ul>

## 4.2 Australia

Australian employment regulatory is generally applicable to all employees, but not including employees under vocational placement working arrangement. However, the other forms of employment regulatory are based on the industrial and occupational groups and are limited to such groups. The Australian Government manages industrial employment through its own regulatory known as the modern awards. Four modern awards that are applicable to the construction industry include the Architect Award 2010, the Building and Construction General On-site Award 2010, the Joinery and Building Trades Award 2010, and the Surveying Award 2010. These modern awards, however, are excluded from analysis in the present study due to resources and scope.

Leave allocation has a wide coverage in the Australian regulatory, including annual, maternity, sick, parental, adoption, and several cases of special leave. Annual leave allocation becomes applicable once employees enter into employment, starting with four weeks for each year of service. Maternity leave applies to a maximum of six months for pregnant women. However, the starting date of each arrangement is different. Parental leave allocation is on a payment basis up to a maximum of 48 weeks, followed by paid adoption leave, which depends on employee requests and special leave entitlements. There are two payments of parental leave that employees can obtain; one from the employer and another from the Australian Government Parental Leave Payment Scheme. In addition, there is unpaid parental leave on request. Special leave may also be paid and unpaid for the following reasons: personal, compassionate, family and domestic violence, community service, and long service. Regarding working hours, Australians are allowed to work 38 hours a week with reasonable additional hours upon employees' approval.

No suspension of work allocation is provided but flexible working arrangements are allowed based on reasons such as taking care of children, disability, the carer of parents at the age of 55, and family-related matters. In terms of termination notice, both parties may give a termination notice within a stated period that begins with one week for less than a year of service. There is also a special allocation for employees aged 45 years and above to begin with two weeks of termination notice and an additional of one week following each year of service.

### 4.3 Canada

Canadian employment regulatory applies to general employees but exclude the managerial level on specific provisions such as working hours. Leave allocation has a wide coverage, including annual, maternity, sick, parental, adoption, and several cases of special leave. Annual leave allocation starts with two weeks and increase for each year of service. Maternity leave stretches to a maximum of 17 weeks. Sick leave is limited to 17 weeks after three months of service. Parental leave allocation is on an unpaid basis up to a maximum of 63 weeks, which is applicable to parents of newborn and adopted children. Special leave covers issues of compassionate leave, critical illness for family members, death-related leave, and for family and domestic reasons. Working hours are set at eight hours a day to a maximum of 40 hours a week. Arrangements for overtime should be on an emergency basis with an allowance provided by the employer. There is no suspension of work allocation. Flexible working arrangements are allowed based on nursing or pregnancy matters. Both parties may give a termination notice for a period stated that begins with one week for less than a year of service.

### 4.4 United Kingdom

The United Kingdom (UK) employment regulatory applies to all employees, including apprentices. Leave allocation has a wide coverage and includes annual, maternity, sick, parental, adoption, and several types of special leave. Annual leave allocation is applicable in the UK, with 28 days of leave, including public holidays. This excludes marine work employees, trainee doctors, and those who are working in the agricultural industry. Maternity leave is granted to a maximum of 26 weeks. Sick leave, which is unpaid, has no limitations, but, interestingly, employees in the UK are paid a small amount of statutory sick pay if their illness continues over a certain amount of weeks. Again, this provision does not apply to those who are working in the agricultural industry. Parental leave of two weeks is applicable to all employees with at least three months of service and can be shared between parents. Adoption leave could be requested by employees at any time to attend adoption-related matters. In the UK, time-off is allowed to attend adoption-related matters, pension matters, employee representative meetings, and dependent issues. Leave to attend study and training must also be provided. The working hours are eight hours a day for 48 hours a week, including overtime work. Suspension from work for 182 days is applicable to medical- and maternity-related issues. Flexible working arrangements are allowed but on the basis of family reasons. Both parties may give a termination notice within the period stated, with one week's notice for one month of service. The notice period is increased by one week for each year of service.

## 5. Discussions

In contrast with the selected common law countries, Malaysia has circumscribed its employment legislation protection to specific employees based on their salary and employee classification. This finding is opposed to the salary range of the construction professionals in the executive level that is outside the regulatory coverage (Jobstreet.com Sdn. Bhd., 2016; Kelly and Capita Global, 2019). Although professional employees are required to register with the board (Board of Engineers Malaysia, 2015), the capacity of board in employment is low, and employment protection is still lacking even when the limitation in the regulatory is maintained. Generally speaking, for other common law countries, the employment protection is wider and limitations are given to specific employees, such as vocational placement employees of Australia and managerial level employees of Canada. Interestingly, Australia has also initiated industrial-based employment management. Therefore, the improvement of salary coverage in the Malaysian regulatory should be one of the main concerns.

It is clear that the allocation of annual leave in Malaysia is rather low as compared to the other three countries. The range of annual leave allocation is between 14 days to 28 days. Maternity leave allocation is also low in Malaysia when compared to the range between 119 days to 364 days, as practiced in the other three common law countries. Entitlement to sick pay in Malaysia, however, is similar to Australia and the United Kingdom and is considered reasonable as it is applicable right after employees enter into employment on the basis that the sickness cannot be predicted. However, Canada allows sick leave to be taken only after three months of service. In terms of benefits, the practice of sick leave in Malaysia is in line with other countries that allow payment on the sick leave days. Other types of leave are also practiced in other countries, such as parental, adoption, and special leave in employment to achieve a healthy work-life balance. Malaysia has not considered personal matters in its leave allocation, which contradicts with the industry urgency on work-life balance issue due to long working hours (Rosa et al., 2017; Turner & Mariani, 2016; Zheng & Wu, 2018; Dong, 2015). While Malaysia does not yet practice such types of leave, the Government has taken this provision into account in its latest proposed amendment<sup>3</sup>.

The impact of work-life conflict can be seen from the working time allocation in which Malaysia has no specific industrial-based working hours as being practiced in Australia. Flexible working arrangement that requires different working hours is needed in the industry (Turner & Mariani, 2016). As compared to Australia and Canada, Malaysia and

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<sup>3</sup> Ministry of Human Resources proposed amendment of Act 265 can be viewed from 28 September 2018 through Schedule of Proposed Amendment of Employment Act 1955 at [http://www.mohr.gov.my/index.php/ms/?option=com\\_content&view=article&id=887](http://www.mohr.gov.my/index.php/ms/?option=com_content&view=article&id=887) for limited time only.

UK have more working hours; being 48 hours a week, including any additional hours at the request of the employer. Interestingly, Australia has not made any limitation on additional hours. However, in the modern award system of Australia, the industry is allowed to locate its working requirements based on the industry's specific requirement where the nature of industry is encountered.

Malaysia has no provision for considering the work-life balance issues of its citizens in spite of the practices of other countries to promote this important dimension. There is no allocation of work suspension in Australia and Canada, but this provision is provided in the UK and Malaysia. However, the allocation in Malaysia is meant to manage disciplinary matters, unlike in the UK, which provides this facility to avoid termination for special needs. Clearly, this provision promotes employee motivation during unpredictable occasions. Poor employment practices, such as the issue of breastfeeding and pregnancy, has not been the minimum provision in Malaysia but is practiced in the UK. The need for this provision is in line with French and Strachan (2015), who highlighted the need for the related policy standard by considering the gender diversity workforce in the industry. Interestingly, the approach taken by the UK that allows salary payment during such leave supports employees financially, thus reduce inconvenient circumstances.

The notice of termination in Malaysia is considered high, with four weeks' notice being obligatory as compared to other countries. This circumstance points to a cultural difference, as in Malaysia, 'job-hopping' is considered the norm by many as compared to developed countries where the focus is more on skill and knowledge development within a long-term job.

## 6. Conclusion

Turnover issues clearly have a huge impact on both organisation and employee motivation. Malaysian employment regulatory lacks important components and requires improvements in its minimum employment provision, especially in terms of widening the coverage of employee protection. The specific characteristics of the construction industry, where different working hours are required as compared to other industries, can have a major impact on employees' work-life balance. This needs to be taken into serious consideration in the form of recommendations which allow improvements in such areas as the provision of flexible working arrangement, leave allocation, and specific employment provisions based on the industry and specific occupational groups. Generally, the employment-related policy makers should support such improvements with assistance from the industry and professional boards. Naturally, this effort will require time but with these kinds of improvements, the industry can focus on a better planning for its employees, leading to a reduction of employment issues that negatively impact the industry. This paper has a limitation on data coverage, focusing only on selected common law countries. It is recommended that future research may be extended to other geographical regions or economic classifications.

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