

LEGISLATING THE RIGHTS OF INDEPENDENT CONTRACTORS IN MALAYSIA

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The students/ authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

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ABSTRACT

This paper presents the need to legislate the rights of independent contractor in Malaysia. The content will be focused on three main scopes specifically vicarious liability, termination of work and payment issues. This is because many local independent contractors have experienced problems in these areas mentioned. These situations are far worse when it comes to small companies which also fall within the terms of independent contractors. This problem actually involves the liability of the employer towards independent contractors. The study conducted through research found that these problems are due to the absence of statutory provisions to uphold the rights of independent contractors. Hence, this research also highlights on some importance to propose some recommendations to protect the rights of the independent contractors similar to the situation in the United States of America. Amongst the appropriate recommendation is the very need of legislating the rights of independent contractor, preparing a venue for a speedy dispute resolution mechanism, establishment of the specific association and payment of stipulated interest. Thus, we believe that perhaps it is very timely for Malaysia to introduce the Independent Contractors Act.

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CHAPTER ONE: INTRODUCTION

1.0 Research Background

There are two types of employment, contract for service and contract of service. Contract for service is where the job is done by the independent contractor and they are known as freelancers, consultants or self-employed. Meanwhile for contract of service the person employed is hired by an employer and he or she is bound by the policy of a company. In Malaysia, the statutes pertaining to the employment contracts are: Industrial Relations Act 1967, Employment Act 1955 and Trade Unions Act 1959. These statutes generally cover the regulations of relations between employers and their employees. Not forgetting, the Workmen's Compensation Act 1952 which will only be operative when there is the presence of a contract of service.

A person who is called as employee¹ will benefit a lot compared to those who are called independent contractor. An employee under a contract of service with an employer and satisfies the other conditions stated in the Employment Act 1955 is entitled to several safeguards such as termination benefits, employer will be responsible for their liabilities , and tax payments which are all not obtainable by independent contractor.

Several issues arise when the benefits received by employee cannot be obtained by an independent contractor. In Malaysia, the law which provides the safeguards to the rights of an independent contractor is limited. Among others, the independent contractor is entitled for some medical and safety benefits as stated in the Occupational Safety and Health Act 1994 but seemingly that are the only rights they entitled to.

¹ Teng Kam Wah,"Who is an employee?

<http://www.lexisnexis.com.ezaccess.library.uitm.edu.my/my/academic/> accessed on 21 February 2011.