

MECA EMPLOYERS CONSULTING AGENCY

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15th October 2018

Dear members,

RE: Announcement of Public Holiday For Kedah Only – Installation of the 29th Sultan of Kedah, Sultan Sallehuddin Ibni Almarhum Sultan Badlishah

The State Government of Kedah has declared 22nd October 2018 (Monday) as a State public holiday as an occasional holiday in conjunction with the Installation of the 29th Sultan of Kedah, Sultan Sallehuddin Ibni Almarhum Sultan Badlishah.

This holiday has been declared under s.9 of the Holidays Act 1951. As such, employers in the State of Kedah are advised of the following legal position.

If your terms and conditions specify that you observe ALL gazetted public holidays:

- You are obligated to observe 22nd October 2018 as a public holiday.
- Employees who are required to work on 22nd October 2018 are to be paid 2x their ordinary rate of pay.
- This holiday is also replaceable, therefore employers who are not intending to pay the holiday rates can replace this holiday to any other day.

If your terms and conditions do not specify that you observe ALL gazetted public holidays:

- You are under no obligation to observe 22nd October 2018 as a public holiday.
- If you wish to observe it as an occasional holiday in conjunction with the Installation of the 29th Sultan of Kedah, then you are free to replace or to impose any terms and conditions as you deem fit.

We would also like to remind you that by virtue of s. 60D(2) of the Employment Act 1955, if the employee is absent without leave or reasonable excuse on the working day immediately preceding or immediately succeeding a public holiday, he forfeits entitlement to the holiday pay. This means that he will not be paid for the day he is absent and for the public holiday.

Enclosed herewith are some FAQs for further clarification. We encourage members to be in touch with any one of our Consultants for further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Koh', is written over a white background.

DAVID KOH

Consultant

FREQUENTLY ASKED QUESTIONS ON PUBLIC HOLIDAY

Q1: Every year, I list down the exact public holidays that our Company observes through a memo. It includes all the holidays announced in the beginning of the year but the word ALL is not specified. What is the legal position?

A: You are not obligated to observe 22nd October 2018 as a public holiday because your Company has provided a specific list of public holidays that is to be observed.

Q2: Our Company did not mention the number of public holidays we observe. What is the legal position?

A: In the absence of a clause, reference must be made to s.60D of the Employment Act 1955. This means that you observe a minimum of 11 public holidays in a year. For this holiday, you are not obligated to declare it as a public holiday.

Q3: How do I calculate the public holiday rate of pay? Assuming they work for 10 hours (8 hours normal + 2 hours OT) on a public holiday. Their salary is RM1300 per month.

A: You need to determine the ORP and HRP.

- ORP is calculated based on $RM1300/26$. The ORP is RM50.
- HRP is calculated based on $ORP/8$. The HRP is RM6.25.

For the first 8 hours, the employee is entitled to 2x his ORP of RM50. He is entitled to RM100.

For the 2 hours of OT, the employee is entitled to 3x his HRP for each hour. This means you need to take $RM6.25 \times 2$ hours of OT $\times 3$. He is entitled to RM37.50.

Therefore, for 10 hours of work on a public holiday, the employee is entitled to an additional RM137.50 over and above his wage for the month.

Q4: Can I choose not to pay them the public holiday rates and replace the public holiday to another day?

A: Yes, you can replace this holiday to any other day.

Q5: Do I need my employees to consent to the replacement?

A: No. This is not necessary.

Q6: Instead of providing a replacement leave, can I credit this replacement into my employee's annual leave balance?

A: The Act is silent on this. We recommend providing a replacement leave instead of crediting it as annual leave.

Q7: My employee is scheduled to be on rest day (22nd October 2018). What happens to the public holiday?

A: When a public holiday falls on a rest day, the next working day immediately thereafter shall be the public holiday. This means that 23rd October 2018 will be the public holiday for those who are having a rest day on 22nd October 2018. Nonetheless, the holiday is still replaceable to another day.

Q8: I have employees working on shifts. Some of them are starting work at 11pm on 21st October 2018. When is their public holiday?

A: The 'day' for a shift worker begins from the time they commence their shift for 24 hours. Therefore, 21st October 2018 will commence at 11pm, the night of 21st October 2018. Their public holiday will commence on 22nd October 2018 at 11pm.

Q9: My employee is scheduled to work on the public holidays and I am ready to pay them the public holiday rates. What if they are absent without leave?

A: If they are absent without leave, it shall be unpaid. You should also impose disciplinary actions. Further, if your employee is absent on a day immediately before or after the public holiday without reasonable excuse, then the paid holiday is also forfeited.

Q10: So many holidays are declared suddenly. If I am not observing them but my employees take things to their own hands and do not turn up for work, what options do I have?

A: For starters, we recommend you to send a memo (or to incorporate in your terms and conditions of service) moving forward to all employees, stating that the Company would require all employees to turn up for work on a suddenly declared holiday unless otherwise informed. This will clear the confusion. If such absences are repeated, you should impose disciplinary actions.

Q11: Is this applicable to foreign workers?

A: Yes.

Q12: I need further clarification. Who do I contact?

A: Please call or write in to any one of our Consultants listed below:

- Victor Gan (victor@meca.com.my) or 012-653 6262
- David Koh (david@meca.com.my) or 012-627 7421