PART B: LECTURE 10-MALAYSIAN INDUSTRIAL RELATIONS
OVERVIEW

- INTRODUCTION
- LAW OF WORKING HOURS
- TERMINATION OF SERVICE, DISMISSAL & RETRENCHEMENT
- INDUSTRIAL DISCIPLINE
1. INTRODUCTION
1.1 DEFINITION

- Industrial relations/labour relations: study of relationship between employees and their employers pertaining to the employees employment or non-employment, terms and conditions of work, grounds of termination of employment, etc.

- It also refers to the management of employees welfare and internal communications.
1.2 INGREDIENTS IN AN INDUSTRIAL RELATIONSHIP

The employer
- Party that offers an employment. Employer can be individual, a company or any type of organization or society which has paid employees for the job done.

The employee
- People who accept an employment offered by the employer on terms and conditions of service agreed either verbally or properly written in a contract of service.

An employment
- Employment can be full-time job or part-time job that agreed by both employee and employer.
1.3 INDUSTRIAL SYSTEM IN MALAYSIA

- Is recognised as a tripartite system and is made up of 3 groups and Ministry of Human Resources act as a president. His role is to oversee the overall development of discussion.

- Includes
  - Employers and their organizations.
  - Employees and their unions.
  - Government.

- **Machinery for discussion in tripartite system.**
  - National Labor Advisory Council (NLAC) which is made up of 14 representatives from employees, 14 from employers and 12 from government.
  - Minister of Human Resources will chair the NLAC meetings and appoints the government representatives.
  - Other representatives are appointed after consultation from Malaysian Employer’s Federation (MEF), Malaysian Trade Union Congress (MTUC) and Congress of Unions of Employees in Public and Civil Service (CUEPACS).
  - Meeting is held twice a year or when there is urgency (e.g: to approve amendments to the law).
1.4 IMPORTANCE OF INDUSTRIAL HARMONY

- **Management** – employees relationship are important to help achieve organizational goals and lead to higher productivity. Worker will be more committed and motivated, prevent industrial action from employee.

- Good industrial relations involve providing fair and consistent treatment to employees so that they will be committed to the organization.

- Smooth running of the activities in an organization depends on good relationship between employer and employees. This will bring more investment opportunities to the organization and stable economy to the country.
1.5 ROLE OF GOVERNMENT IN INDUSTRIAL RELATIONS

- Legislator through parliament.
- Administer through the Ministry of Human Resources
- Participant by way of being the largest employer in the country
1.6 MINISTRY OF HUMAN RESOURCES

- **Scope**
  - encompass employee and workers state of safety, health and welfare and human resource matters such as training, employment, labor rights and industrial relations.
  - It includes the PERKESO (Pertubuhan Keselamatan Sosial), PSMB (Pembangunan Sumber Manusia Berhad), JTM (Jabatan Tenaga Malaysia), JKKP (Jabatan Keselamatan dan Kesihatan Pekerja)

- **Role and structure of Ministry of Human Resources**
  - Government’s overall goal in the area of Industrial Relations is to encourage harmonious relationships between employers and employees in the interest of the nation’s productivity
Objectives of Ministry of Human Resources:

- To protect the welfare of employees—safety, health and rights.
- To promote good employer-employee relationship through a stable and peaceful Industrial Relations system.
- To equip the unemployed with basic industrial skills and to improve the skill level of the work-force.
- To assist in maximizing country’s manpower resources through manpower planning.
Departments in the Ministry of Human Resources:


- Department of Industrial Relations – administers Industrial Relations Act 1967 and attempts to help settle disputes between employers and employees through conciliation.

- Department of Trade Unions – enforces Trade Union Act 1959 and play central role in the growth of the trade union movement.


- Manpower department.

- Department of Skill Development.

- Industrial court.
1.7 3 MAJOR LAWS THAT GOVERN MALAYSIA INDUSTRIAL RELATIONS

- **Employment Act 1955.** This act stipulates regulations covering all aspects of employment of workers. Among provisions covered are termination, working hours, maternity and sick leave benefits and wage payments. The provisions aim to safeguard against exploitation by employers. The specific coverage including:
  - To provide minimum benefits for those workers covered by the act.
  - To establish certain rights for employers.
  - To establish certain rights for employees.

- **Industrial Relations Act 1967.** This act regulates the relationships between employers and their workmen through trade union including:
  - To provide and encourage harmonious relation between employers and employees.
  - To provide guidelines on collective bargaining between employers and employees.
  - To establish procedures for settlement of trade disputes.

- **Trade Unions Act 1959.** This act establishes the responsibilities of trade unions and their members including:
  - To provide the rules on the right of employees to form, join and participate in any lawful trade union activities.
  - To provide the rules on the right of employers to form, join and participate in any lawful employer’s association activities.
  - To establish and promote legislation affecting the interest of the trade union member.
1.8 PEOPLE WHO NEEDS TO UNDERSTAND THE THEORY AND PRACTICE OF INDUSTRIAL RELATIONS

<table>
<thead>
<tr>
<th>Workers</th>
<th>Managers</th>
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<tbody>
<tr>
<td>• To know their rights under the labor law, to be aware of benefits they can gain by joining a trade union, to understand that there may be certain risks associated with being a member to a union and they should know to whom they could complain if their employer fail to provide them with benefits provided under the law.</td>
<td>• IR is important to managers because there is a direct link between profitability and good industrial relations. Bad management will cause conflict, miscommunication, negative attitudes, high turnover rates as workers leave to look for more satisfying workplaces else where. Productivity will be low amongst those who stay and morale will be poor. Therefore good management is required for good industrial relations to avoid conflict, miscommunication, negative attitude etc.</td>
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<tr>
<td>Role</td>
<td>Responsibilities</td>
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<tr>
<td>Lawyers</td>
<td>They are often called upon to <strong>represent workers or employees</strong> at the Industrial Court or at Labor Department hearings, High Court, Court of Appeals or Federal Court.</td>
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<tr>
<td>Trade Unions Leaders</td>
<td>To know how to <strong>play their role effectively</strong> so that workers will be protected from exploitation by greedy employers.</td>
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<tr>
<td>Officers &amp; Executives in HR &amp; IR department</td>
<td>They need to have strong working <strong>knowledge of principles, concepts and laws</strong> so that they can carry out their job responsibilities well.</td>
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2. LAW OF WORKING HOURS
2.1 DEFINITIONS

- **Hours of work.** The time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements. [Section 60A (9)]

- **Normal hours of work.** The number hours of work as agreed between employer and employee in the contract to be the usual hours of work per day [Section 60A(3)(c)]

- **Overtime.** The number hours of work carried out in excess of the normal hours of work per day. [Section 60A (3)(b)]

- **Ordinary rate of pay.** Wages as defined in section 2, whether calculated by month, week, day, hour or by piece rate, or otherwise, which an employee is entitled to receive under the terms of his contract of service for the normal hours of work for one day [Section 60I(1)(a)]
- **Hourly rate of pay.**
  - The ordinary rate of pay
    - The normal hours of work
  - The ordinary rate of pay on a monthly rate is:
    - Monthly rate of pay
      - 26
  - The ordinary rate of pay on a weekly rate is:
    - Weekly rate of pay
      - 6
  - The ordinary rate of pay on a daily rate/piece rate is:
    - Total wages earned by employees during preceding wage period
    - Actual no of days employee had worked during that wage period
2.2 HOURS OF WORK

- Provision in the section 60A of Employment Act 1955 state that employer cannot require an employee to work:
  - >5 consecutive hours without a period of leisure of not less than 30 minutes
  - > 8 hours in a day
  - In excess of a spread over period of 10 hours per day
  - > 48 hours in a week

- However, under section 60A (2), an employee may be required to exceed the above limitation of work by employer when there is a case of:
  - Accident, actual or threatened in or at the workplace.
  - Work that is essential to the life of the community.
  - Work that involves the defenses or security of Malaysia.
  - Urgent work to be carried out to machinery or plant.
  - Unforeseeable interruption of work.
  - Work by employees that are essential to the economy of Malaysia or in any ‘essential service’ as defined in the IR act.
2.3 REST DAY

- **Section 59 of Employment Act 1955 provision**
  - **Normal work.** Employer is required to allow each employee a rest day of one whole day each week, to be determined by employer, not employee.
  - **Shift work.** For employees engaged in shift work, the rest day is constituted by any continuous period of not less than 30 hours. Employer will also prepare a roster for employees’ rest days and this roster will be informed to the employees in advance.
  - **Work on rest day.** An employee cannot be compelled to work on a rest day, except in the circumstances listed in section 60A(2) or unless he is engaged in shift work. An employee may work on a rest day on a voluntary basis. Any work carried out by an employee employed on a daily, hourly or other rate of pay, who works on a rest day, shall be paid as per table:
<table>
<thead>
<tr>
<th></th>
<th>Normal Day</th>
<th>Rest Day</th>
<th>Public</th>
<th>Normal Day</th>
<th>Rest Day</th>
<th>Public</th>
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<tbody>
<tr>
<td></td>
<td>Normal Working Hours</td>
<td>Overtime</td>
<td>Normal Working Hours</td>
<td>Overtime</td>
<td>Normal Working Hours</td>
<td>Overtime</td>
</tr>
<tr>
<td><strong>Monthly Rate</strong></td>
<td>Ordinary rate</td>
<td>1 ½ X hourly rate</td>
<td>&lt; ½ day – ½ day rate</td>
<td>2 X hourly rate</td>
<td>2 days rate</td>
<td>3 X hourly rate</td>
</tr>
<tr>
<td><strong>Hourly, daily, weekly rate</strong></td>
<td>Ordinary rate</td>
<td>1 ½ X hourly rate</td>
<td>&lt; ½ day – 1 day rate</td>
<td>2 X hourly rate</td>
<td>2 days rate</td>
<td>3 X hourly rate</td>
</tr>
<tr>
<td><strong>Piece rate</strong></td>
<td>Ordinary rate</td>
<td>1 ½ X hourly rate</td>
<td>&lt; ½ day – 1 X per piece</td>
<td>2 X per piece</td>
<td>2 X per piece</td>
<td>3 X per piece</td>
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2.4 PUBLIC HOLIDAYS

- Section 60D of Employment Act 1955 provision

- An employee is entitled to a paid holiday at his ordinary rate of pay on 10 gazetted public holidays in any one calendar year, 4 of which must be The National Day, The Birthday of Yang Di Pertuan Agong, The Birthday of the Ruler or Yang Di Pertuan Negeri of the state where the employee is employed, and The Worker’s Celebration Day.

- Besides the 4 compulsory public holidays, employee can choose the remaining 6 gazetted public holidays. Example; Hari Raya Puasa, Christmas, Chinese New Year, Deepavali, New Year, Wesak Day, Thaipusam, Awal Muharram, and Hari Raya Haji.

- Employer is required to exhibit conspicuously at the place of employment, before the commencement of each calendar year, a notice specifying the remaining 6 gazetted public holidays in which respect employees are entitled to paid holidays. If any of 10 gazetted public holidays falls on a rest day, then the working day following immediately thereafter shall be paid public holiday in substitution.

- **Work on public holiday.** In case employee employed on a monthly, weekly, daily, hourly or other similar rate of pay, be paid 2 days’ wages at the ordinary rate of pay. In case employee employed on a piece rate, be paid twice the ordinary rate of pay per piece. (as shown in the table 15 above). Regardless that the period of work done on that day is < normal hours of work
Definition: Shift of work can be defined as work, which by reason of its nature requires to be carried on continuously by 2 or more shifts. [Section 60(c) of Employment Act 1955]. An employee who is engaged in shift work may be required to work > 8 hours per day, > 48 hours per week, < 48 hours per week in average of 3 weeks. Employer cannot require employee who is engaged in shift work to work for > 12 hours per day.
Reasons for shift work

- The nature of work requires it to be on a continuous basis.
- The type of production technologies that the organizations have require the need to run continuously.
- To meet the demand of products produced.

Problems with shift work

- Women and night work
- Increase in cost
- Workers health
- Stress and psychological problems

To encourage employees to work on shift:

- Free transportation from house to workplace.
- Free food/meal.
- Shift allowances
2.6 OVERTIME

- **Definition:** Overtime can be defined as the number of hours carried out in excess of the normal hours of work per day. Rate of overtime during normal working days [section 60A(3)(a)], overtime during rest days [section 60(3)], and overtime during public holidays [section 60D(3)] as shown in the table 15 above.
- **Overtime limit** [section 60A(4)(a)]. Employer cannot permit employees to work overtime exceeding such limit as prescribed by Employment (Limitation of Overtime Work) Regulations 1980. Overtime limit shall be a total of 104 hours per month.

- **Restriction of overtime** [section 60A(7)].
  - Except in circumstances described in subsection 60A (2)(a), (b), (c), (d) and (e), no employer shall require an employee under any circumstances to work for more than 12 hours per day.
  - While [section 60A(8)] is an exception to the [section 60A(7)] which does not apply to employees engaged in work, which by its nature involves long hours of inactive or standby employment.
Reason for overtime:

- Temporary shortage of manpower.
- Low productivity of the workers. Possible causes are inexperienced, untrained workforce, frequent stoppages of work due to machinery or electricity breakdown; or the phenomenon of workers purposely slacking during normal working hours so as to have the opportunity of doing overtime.

- Difficulty in recruiting additional workers especially in a tight labor market.
2.7 PART TIME WORK

- The Employment Act 1955 defines a part timer as one whose average hours of work do not exceed 70% of the normal hours of work of a full time workers doing the same job in the same establishment.

- An employee can work either during normal working hours or after working hours but he is employed on an hourly basis.

- Group of people who are interested to do part time work are students, housewives, pensioners and moon-lighters (people who have a full time job but have a need to earn more money)
Advantages:

- To individual – they can earn extra income without being tied to the organization on a full time job.
- To organization – organization can increase the number of employees to complete certain demand of projects.
2.8 FLEXITIME

Definition:

- Flexitime is a system of working hours where the starting and stopping times are decided by the individual worker within a number of limitations set by the employer.

- Flexitime divides work schedule into core time when all employees are expected to be at work and flexible time when employees can choose to organize work routines around personal activities.

- A typical schedule will allow employees to begin work between 7.00 a.m and 9.00 a.m and to complete their work between 3.00 p.m and 5.00 p.m.
• Benefits of flexitime:
  • Easier recruitment. Popular with married female workers and may bring this group into the workforce when they would otherwise stay at home.
  • Higher productivity. Workers morale is improved by having a system whereby they are granted more freedom and their personal needs are taken into consideration.
  • Reduction in overtime payments.
  • Better customer service as the organization is open for longer hours.
  • Fewer transport headaches.
Problems caused by flexitime:

- Feasibility. Wherever workers are interdependent or need to work together as a team, flexitime will be unsuitable.

- Supervision and communication. Flexitime system extends the organizations’ working hours and thus supervision will also need to be provided for a longer period. Communication problem can arise especially early in the day and late in the evening when not all workers are present.
2.9 COMPRESSED WORK WEEK

Definition

This is an arrangement of work hours that permits employees to fulfill their work obligation in fewer days than the typical 5 days or 6 days work week. For compressed workweek, the length of workday will be increased to 10 or more hours per day.

Examples of compressed workweek:

- **4/40** – employees work 10 hours per day for 4 days and then employees are off for 3 days.
- **Floating 4/40** – employees work four 10 hours day with 4 days off, in a cycle.
- **4 1/2/40** – employees work four 9 hours days and one 4 hours day, with 2 ½ days off.
- **5/45 – 4/36** – employees work 9 hours per day alternating between 5 days and 4 days week.
Advantages of compressed work week:

- Employees are allowed to schedule their leisure time for family life, personal business, and recreation.
- Low absenteeism and tardiness rates at companies with work sites in remote locations that require long commutes to work.
Section 60E of Employment Act 1955 provides that an employee is entitled to paid annual leave at his ordinary rate of pay of:

- < 2 years service – 8 days for every 12 months of continuous service with the same employer.
- > 2 years but < 5 years service – 12 days for every 12 months of continuous service with the same employer.
- > 5 years service – 16 days for every 12 months of continuous service with the same employer.

If employee has not completed 12 months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service, to the nearest day.

An employee is required to take the paid annual leave not later than 12 months after the end of every 12 months of continuous service; otherwise, he loses his entitlement to it.
2.11 SICK LEAVE

Section 60F of Employment Act 1955 provides that an employee is entitled to paid sick leave at his ordinary rate of pay:

- **Where no hospitalization is necessary:**
  - < 2 years service – 14 days in the aggregate in each calendar year.
  - > 2 years but < 5 years service – 18 days in the aggregate in each calendar year.
  - > 5 years service – 22 days in the aggregate in each calendar year.

- **Where hospitalization is necessary:**
  - 60 days in the aggregate in each calendar year, as may be certified by a registered medical practitioner or medical officer.
  - An employee is **not entitled to paid sick leave** for the period which she is entitled to the maternity allowance, and for the period during which he is receiving any compensation for disablement under the Workmen’s Compensation Act 1952.
3. TERMINATION, RETRENCHMENT AND DISMISSAL
3.1 TERMINATION OF SERVICE

Termination of contract of service. Part 2 of Employment Act 1955 stipulates when and/or how a contract of service terminates or may be terminated by a party thereto.

- **Normal termination.** [Section 11 of Employment Act 1955]
  - A contract of service for a specified period of time or for the performance of a specified piece of work terminates when the period of time for which the contract was made has expired or when the piece of work specified in the contract has been completed.
  - A contract of service for an unspecified period of time shall continue in force until terminated.

- **Termination by notice.** [Section 12 of Employment Act 1955]
  - A contract of service may be terminated by one party giving notice to the other party of his intention to terminate the contract.
  - Termination notice must be in writing. Length of notice period required of each party must be the same as agreed in the contract of employment.
  - Where the contract is silent on the length of notice period, then the notice period shall be not less than:
    - 4 weeks notice if employee has been employed for < 2 years.
    - 6 weeks notice if employee has been employed for > 2 years but < 5 years.
    - 8 weeks notice if employee has been employed for > 5 years.
Termination without notice.

- [Section 13 of Employment Act 1955]. A contract of service may be terminated by either party without notice or if notice has already been given, without waiting for the expiry of that notice, the payment of an indemnity to the other party of a sum equal to the amount of wages which would have been accrued to the employee during the period of such notice or during the unexpired period of such notice.

- [Section 15 of Employment Act 1955]. Either party may also terminate a contract without notice in the event of a ‘willful breach’ by the other party of a condition of contract of service. Employer is deemed to have broken his contract with an employee if he fails to pay wages as required by relevant section on wages (Part III). Employee is deemed to have broken his contract with an employer if:
  - Continuously absent from work for > 2 consecutive working days without prior leave from his employer.
  - Unless he has reasonable excuse and has informed/attempted to inform his employer of such excuse.
Termination for misconduct (dismissal). [Section 14 of Employment Act 1955].

- An employer may, on the ground of misconduct by an employee *dismiss employee without notice, demote employee, and suspend employee from work without pay for a period of < 1 week*. Employer may do so only after holding domestic inquiry.

- For the purpose of holding domestic inquiry, employer may suspend employee for a period of < 2 weeks with half pay. If inquiry discloses that employee is not guilty of misconduct, the remaining half pay must be paid to the employee.
3.2 LAY-OFFS

- Employee is deemed to be laid off if he is employed on a contract which his remuneration depends on work provided by employer and
  - 1) employer does not provide such work for him on at least 12 normal working days within any period of 4 consecutive weeks,
  - 2) employee does not get any remuneration for the period in which he is not provided with work.
3.3 TYPES OF TERMINATION OF SERVICE

- **Resignation.** Resignation is a voluntary termination of service by employees. Employee can terminate his service as long as he fulfills the requirements laid down in Employment Act 1955 (section 12 and 13). Some of the reasons given by employees who want to resign:
  - To open up their own business.
  - To pursue or further their studies.
  - They have got a better job offer elsewhere.
  - They want to migrate to another country.
Retirement.

Retirement is a voluntary termination of service by employees.

Employees will be retired once they have reached retirement age as specified in their terms and conditions of employment.

The normal retirement age is 55 – 60, but increasingly earlier today, due to firm’s early retirement incentive plans.
Dismissal.

Dismissal is an involuntary termination of service by employer. Employer can only dismiss employees; 1) after all reasonable steps to rehabilitate the employees have failed, 2) after holding domestic inquiry. Bases for dismissal (section 14 of Employment Act 1955):

- **Unsatisfactory performance.** Unsatisfactory performance is the persistence failure of employees to perform the assigned duties. This can be seen through excessive absenteeism, excessive wastage of materials, tardiness, persistent failure to meet job requirements and negative attitudes towards the company, supervisor and colleagues.

- **Misconduct.** Misconduct is a deliberate and willful violation of the employer’s rule and regulations. Examples: drunk, stealing, insubordination and fighting at workplace.
Unfair dismissal.

Unfair dismissal is an employee dismissal that does not comply with the law or does not comply with the express or implied employment contract.

Constructive dismissal.

Constructive dismissal occurs when an employer deliberately makes conditions intolerable in an attempt to get an employee to quit or when an employee breaks the employment contract. For an employee to prove constructive dismissal has taken place, he must be able to show:

- Employer breached a fundamental terms of the employment contract.
- Employee left his employment in direct response to that breach.
- Employee left in a timely manner.
The sort of behaviour might lead an employee to claim constructive dismissal

- A major wage cut made without employee’s consent.
- Demotion to a lower level position even if wages and other benefits are not changed.
- Transfers to a different location, especially where employer’s right to transfer an employee is not clearly stated in the employment contract.
- Major changes of job duties. Example; A maintenance technician responsible for looking after electrical and mechanical equipment in a retail store, was reassigned to dishwashing and cleaning duties in the fast food outlet of the store.
- Humiliation of an employee, especially if combined with physical violence and this will lead an employee to walk off the job.
- A force resignation. A resignation will be treated as dismissal if the employee is invited to resign and it is made clear to him that, unless he does so, he will be dismissed.
- A letter of appointment but no job to follow. Example: An employee resigned from his employment of 8 years with a multinational company after receiving a letter offer from another company. After serving his 3 months notice period, he reported for duty at the new company, but was told to go back and wait for further instructions. After telephoned the company several times and wrote to them to clarify his status, they refused to speak to him. He claimed constructive dismissal.
Retrenchment: Retrenchment is an involuntary termination of service by employer. There is non-disciplinary termination of services of employees due to economic of business reasons. This is because reduced sales and profit of the company may require employees to be retrenched or company to be downsized.

Steps to be taken to avoid retrenchment:
- Freezing the recruitment of new employees
- Cut all unnecessary costs.
- Cut wages of employees.
- Retrain employees to do other jobs.
- Introduce early retirement scheme.
- Encourage voluntary resignation.
After all these steps have been taken, employer now has the managerial prerogative to retrench.

**Procedures for retrenchment:**

- **Consult the union** and inform the workforce. The discussions with the union should be aimed at getting the union representatives to understand why retrenchment is necessary.
- **Choose whom to retrench.** LIFO principles are preferred way to choose which employees to be retrenched. Meaning most junior employees should be the first to go out of the company.
- **Notice** to be given to employees identified to be retrenched (section 12 of Employment Act 1955).
- **Provide outplacement services.** Outplacement is all about helping the employee who is about to be retrenched to find another job. This service can be provided in-house or by hiring a consultant experienced in this area.
- **Provide retrenchment benefits to:**
  - All employees covered by the Employment Act (Regulation 11 of Employment – Termination and Layoff Regulations 1980).
  - All employees covered by a collective agreement with a termination provision.
  - Any employee with a provision for termination benefits written into his contract of employment.
Non-confirmation of a probationer.

On completion of a probationary period, a new employee must be evaluated and a decision made as to his suitability for his post.

If he is unsuited, his services may be terminated. The requirements for the termination of a probationer’s service are similar to that for any employee who is not performing up to the standard required by the employer.
3.2 BENEFITS FOR RETIREMENT, TERMINATION, AND RETRENCHMENT/LAYOFFS

- [Section 60J of Employment Act 1955]. Minister may be by regulations (Employment – termination & layoff regulations 1980) provides for entitlement of employees to and for payment by employers of termination benefits, retirement benefits and layoff benefits.

- **Entitlement to benefits.** [Regulation 3]. Employer is required to pay termination and layoff benefits to an employee who has been employed under a continuous contract of service for a period of > 12 months.
Termination. [Regulation 4]. Employee shall be entitled to termination benefits if his contract of service is terminated by employer for any reasons except under the following conditions:

- Employee attaining the age of retirement as stipulated in employment contract (normal retirement).
- On the ground of misconduct after due inquiry (dismissal).
- Voluntary resignation of employee (resignation).
- His contract is renewed and the renewal takes effect immediately on the ending of previous contract.
- Employer offer to renew his contract 7 days before expiry date of previous contract and employee has unreasonably refused the offer.
- Employee leaves the service before expiry of termination notice given by employer and without prior consent by employer (section 12 of Employment Act 1955).
- Employee leaves the service without making payment to employer (section 13 of Employment Act 1955).
Amount of termination & layoff benefits payment. [Regulation 6]. The amount of termination and layoff benefits which an employer is required to pay and employee is entitled to receive cannot be less than:

- 10 days wages for every year of employment if employee has been employed < 2 years.
- 15 days wages for every year of employment if employee has been employed between 2 – 5 years.
- 20 days wages for every year of employment if employee has been employed > 5 years.
- And pro-rata in respect to any incomplete year, calculated to the nearest month.

[Regulation 11]. Employer must pay termination and layoff benefits to employee not later than 7 days after the relevant termination/layoff date.
4. INDUSTRIAL DISCIPLINE
4.1 Definition

- **Definition.** Industrial discipline can be defined as a procedure that corrects or punishes an employee because rules or regulations have been violated. Industrial discipline also can be defined as a form of training of employee in order to enhance their performance at work that enforces organizational rules.

- **Disciplinary action.** Disciplinary action is a penalty against an employee who fails to meet established standards.
Misconduct. Misconduct is behaviour by an employee, which conflicts with the interests of the employer. Such behaviour may be a breach of either employee’s express or implied terms of his employment contract. Industrial court in an Award no 255 of 1990 defines misconduct as improper behaviour that violates the rules or standard of behaviour. There are 2 types of misconduct. Classification is important as it affects the penalty chosen:

- Minor – example: lateness, inappropriate clothes. Penalty for this misconduct can be warning.
- Major – example: Theft, drunk, habitual absence without permission. Penalty can be dismissal

Unsatisfactory performance.

- Unsatisfactory performance can be defined as employees who are unable to do work assigned to them at a reasonable standard.
- When a manager/supervisor identifies an employee whose work is unsatisfactory, it is essential that he make an accurate diagnosis of the weakness in the employee.
- The worker could be working too slowly and his quantity of output is below expectations or he could be making too many mistakes leading to poor quality work or his absenteeism may be unacceptably high.
- Once the manager has identified an employee’s weakness, he must check to see whether the employee has the proper skills and ability to do the job.
- **Payment of retrenchment benefits.**
  
  Payment must be made within 7 days of the retrenchment and the employee must be given a written statement showing the amount of payment and its method of calculation.
4.3 APPROACHES TO DISCIPLINE

- **Progressive (negative) discipline.** Progressive discipline incorporates a sequence of steps, each of which becomes progressively more stringent and are designed to changed the employee’s inappropriate behaviour. Purpose of negative discipline is to give chance to employee to correct behaviour before being punished. A typical progressive discipline system:
  - **First offence; Verbal warning.** Employee will be notified of the problem and warned that disciplinary action can be taken against him if the problem is not solved.
  - **Second offence; Written warning.** If unsolved, a written warning reminding that the problem remains will be given to the employee.
  - **Third offence; Suspension.** If still unsolved, employee will be suspended without pay for a certain period of time.
  - **Fourth offence; Discharge/Dismissal.** Employee can be terminated if all steps taken before have failed.
Positive discipline. Positive discipline builds on the philosophy that violations are actions that usually can be constructively corrected without penalty. Focus on fact-finding and guidance to encourage desirable behaviours instead of using penalties to discourage undesirable behaviours. Both manager and employee will have join discussions to resolve the incidents of employee irresponsibilities. Purpose of positive discipline is to solve problem, not to punish employee. The 4 steps that need to follow are:

- **Counselling.** The goal at this phase is to heighten employee awareness of organizational policies and rules. Counselling by a supervisor in the work unit can have positive effects.

- **Written documentation.** If employee fails to correct his behaviour, then a second conference becomes necessary. This time the meeting will be documented. Employee and supervisor develop written solutions to prevent further problems from occurring.

- Final warning. If there is still no improvement in performance, the third step is a final warning. Some firms incorporate a decision day off, in which employee is give a day off with pay to develop a firm, written action plan to remedy the problem behaviours. The decision day off is used to emphasize the seriousness of the problem and the manager’s determination to see that the behaviour is changed.

- **Discharge.** Employee will be terminated when there is a failure to improve performance after the final warning.
4.4 GUIDELINE FOR EFFECTIVE DISCIPLINE

- It should be given in private
  - Any verbal disciplinary action e.g.: verbal warning, should be given in private.

- It should be expected
  - Employees must know the rules of the organization and the penalties for breaking the rules.

- Action should be consistent
  - The same act of misconduct committed by 2 different employees should lead to same penalties. To ensure consistent disciplinary action within the organization, supervisors should periodically undergo training in order to give them common frame of reference.

- It should be progressive
  - Progressive discipline seeks primarily to correct employee’s behaviour rather than punish him. Therefore it requires that increasingly severe penalties impose on employees who repeats act of misconduct.

- It should be documented
  - Supervisor should have accurate, written record keeping and written notification to the employee.

- It should be impersonal discipline
  - Supervisor should minimize unpleasant effects by presenting it impersonally and focus on correcting behaviours.
4.5 FINAL STEP - DISMISSAL

- Section 14 of Employment Act 1955. An employer may, on the ground of misconduct by an employee:
  - Dismiss employee without notice.
  - Demote/downgrade employee.
  - Suspend employee from work without pay for a period of < 2 weeks.

- Employer may only do so after holding domestic inquiry.

- Pending an inquiry, employee charged with misconduct can be suspended for up to 2 weeks on ½ pay.

- If inquiry discloses that employee is not guilty of misconduct, the remaining ½ pay must be paid to the employee.

- Suspension may be necessary in the following circumstances:
  - When employee’s presence might threaten the work situation.
  - When there is a perceived need for a cooling off period.
  - When it is necessary to remove employee from the opportunity to continue his misconduct.
  - When it is suspected that employee may have the opportunity to tamper with the documentary evidence or threaten witness.
4.6 PROCEDURES FOR DISmissing AN EMPLOYEE

- Basically, the requirement is that the worker be treated fairly and justly. Where the employer has acted justly, the Industrial Court is unlikely to find fault. A reasonable procedure would be as follows:
  - Carefully record any complain of alleged wrongdoing.
  - Investigate the complaint thoroughly.
  - Charge the employee. Before the employee is asked to face an inquiry board, he must be presented with clearly worded, written charges.
  - Hold an inquiry. Not only must an inquiry be held, but it also needs to be run properly.
    - Adequate preparation time.
    - Availability of witnesses and evidence.
    - Impartiality of the inquiry panel.
A domestic inquiry is a formal hearing held by an employer before an employee is dismissed, or before any other penalty is imposed.

Employer has the right to penalize employees who commit misconduct. However, the right is limited by 2 requirements:

- Procedural requirements. Employee must be treated fairly and justly.
- Substantive requirements. Employee should not be punished without sufficient proof of his guilt.
Before an employee can be dismissed for misconduct, certain procedures are necessary. It is essential that organization follow these procedures carefully because any employee who is dismissed and who feels he has a case wrongful dismissal, can under section 20 of Industrial Relation Act 1967, appeal to Director General for reinstatement within 60 days of the dismissal date. If director General is unable to settle the dispute, he may refer to Minister of Human Resource, who may refer to Industrial Court for a decision.

**Procedures.**
- An inquiry is mandatory even where employee is caught red-handed committing misconduct.
- Inquiry must be held according to the principles of natural justice.

**Natural justice.**
- **Components.** In Award No 93 of 1985, the Industrial Court said, “the concept of natural justice has 2 basic components;
  - 1) rule requiring a fair hearing,
  - 2) rule against bias.

**Principles.**
- Employee has the right to know what he is accused. He must be presented with a written charge sheet clearly set out the nature of misconduct which employee has allegedly committed.
- No one should be condemned unheard. Employee has the right to speak in his own defence or to have representative to speak on his behalf.
- Employee must be given time to reply to accusations. The reasonable amount of time given to employee should depend on the nature of the alleged misconduct, i.e. between 48 hours to 7 days.
- An unbiased party must conduct inquiry. An Inquiry Officer must be appointed to preside over the hearing and to act as Chairman of the Panel of Inquiry.