

Malaysia: Employers required to contribute social security for foreign employees

January 18, 2019

In brief

Effective January 1, 2019, all Malaysian employers must register their foreign employees working in Malaysia (excluding domestic servants) with the Malaysian Social Security Organisation (SOCSO) and contribute to the Employment Injury Scheme. This scheme covers employees in the event of occupational injuries, including occupational diseases and accidents occurring during travel in connection with work, as well as provides cash benefits, medical treatment, physical rehabilitation, or vocational training to employees and their dependents in the event of such incidents.

This *Insight* details the changes and the impact that this new requirement brings to globally mobile foreign employees and their employers.

In detail

Revocation of foreign worker social security exemption

Since April 1993, accident compensation and insurance coverage for foreign workers came under the Workmen's Compensation Act, 1952 which was enforced by the Department of Labour. Foreign workers under the ambit of this legislation and coverage are those employed by way of manual labour whose earnings do not exceed MYR500 a month, persons employed under a casual nature of employment, and domestic servants. Foreign workers are exempted from employee's social security

contributions administered by SOCSO.

However, under the Employer's Circular No. 3 Year 2018 issued by SOCSO recently, insurance coverage of foreign workers under the Foreign Workers Compensation Scheme (FWCS) from the Department of Labour will be transferred to SOCSO with effect from January 1, 2019. Upon expiry of the coverage in 2019, they will be covered under SOCSO's Employment Injury Scheme. If the expiry date extends beyond 2019, the Employment Injury Scheme will automatically apply to all Malaysian employers who employ foreign workers starting from January 1, 2020.

Accordingly, consistent with this change, the employee's social security exemption for foreign workers has been revoked.

Though the Circular did not provide any further guidance on the eligibility requirements of other foreign employees who are not covered under the FWCS, such as expatriate employees, the 'Frequently Asked Questions' document subsequently issued by SOCSO clarified that expatriate employees who hold valid working permits in Malaysia also will need to have social security coverage from January 1, 2019.

Comparison of new and old law

While there are still some ambiguities surrounding the applicability of this requirement to non-FWCS foreign employees working in Malaysia, this

announcement has critical implications to globally mobile employees and their employers. For a clearer picture into what the changes bring to the non-FWCS employees,

below is a tabular comparison of the legislation prior to January 1, 2019, and from January 1, 2019 onwards.

No.	Before January 1, 2019	After January 1, 2019
1	Gazette Order PU(A) 56/1993 exempts foreign employees from SOCSO unless the individual holds a red identity card (denoting 'Permanent Resident' status in Malaysia) and/or if the individual falls within the ambit of the Workmen's Compensation Act 1952.	<p>PU(A) 56/1993 (except for certain clauses that still remain in operation) has been revoked effective January 1, 2019. Foreign employees have to be registered with SOCSO by their Malaysian employers for coverage under the Employment Injury Scheme.</p> <p>The rate of employer's contribution for this Category is 1.25% of the employee's monthly wages, capped at RM49.40 for wages exceeding RM4,000. The contributions for a month are due by the 15th of the following month; for example, January 2019 contribution is due by February 15, 2019.</p> <p>The employees themselves do not need to contribute to SOCSO.</p>
2	<p>Other benefits administered by SOCSO, such as Invalidity Scheme and Employment Insurance System* are not applicable to foreign employees.</p> <p><i>*The Employment Insurance System provides benefits and a re-employment placement programme for insured persons in the event of loss of employment, and is not to be confused with the Employment Injury Scheme.</i></p>	<p>These benefits under the current arrangement will not be applicable to all foreign employees, unless the foreign employee obtains a red identity card (denoting 'Permanent Resident' status in Malaysia) or a green identity card (denoting 'Temporary Resident' status in Malaysia.)</p>

Implications to Malaysian employers

Broadly, the new mandatory requirements are expected to increase the administrative burden and compliance costs for Malaysian employers who hire foreign employees. Below are some key areas that employers would need to

consider now before deploying employees to work in Malaysia:

- Generally, foreign employees already are covered and protected under their existing employer's insurance scheme. The added obligation for employers to contribute social security for such employees, which is capped at a

maximum amount of RM49.40 per month per employee, increases the cost of deploying a foreign employee into Malaysia.

- Employers will need to quickly register all their existing expatriate employees in Malaysia to meet the first contribution deadline on February 15, 2019.

- For new expatriate employees commencing their Malaysian assignments in 2019, employers would have a shorter window between the contribution deadline and any registration actions, as this can only commence upon the issuance of a valid work permit. For example, if the work permit is issued on January 20, 2019, the employee would have to be registered as soon as possible before contribution can be made by February 15, 2019.
- Employers also would need to be mindful of whether this requirement applies to their frequent business travelers, commuters, and rotators who alternate periods of work in Malaysia and other countries, differentiating their arrangement from that of typical expatriate employees.

Currently, SOCSO does not accept registration for contributions from foreign employers and hence, foreign employers cannot make any contributions to SOCSO for their employees working in Malaysia. This has presented a wide range of challenges that potentially could make compliance with this requirement difficult.

Issues include whether a cost re-charge / absorption of costs by the local or foreign entity has any bearing to an entity's responsibility for paying SOCSO, impact on home/host split payroll considerations, and procedural matters, such as registration, deregistration, and mode of payment / contribution. Currently, we are still seeking clarity on these areas.

The takeaway

Extending the social security protection to foreign employees is in

line with the equality convention and application of standards under the International Labour Organisation, and appears to be a step in the right direction. Apart from individual tax and immigration considerations, employers now have the added obligation of ensuring that foreign employees in Malaysia are covered by social security insurance.

Given that foreign employees have to register with SOCSO before the employer can make the respective contributions with the first payment due by February 15, 2019, Malaysian employers need to promptly respond in order to be compliant with their social security obligations. Advance planning by the employer is required to ensure that this additional obligation can be satisfied.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your Global Mobility Services engagement team or one of the following team members:

Global Mobility - Malaysia

Hilda Liow Wun Chee
+603 2173 1638
hilda.liow.wun.chee@my.pwc.com

Global Mobility – United States

Peter Clarke, *Global Leader*
+1 (646) 471-4743
peter.clarke@pwc.com

© 2019 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.

SOLICITATION

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

At PwC, our purpose is to build trust in society and solve important problems. PwC is a network of firms in 158 countries with more than 250,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com/US