

RIDING THE GLOBAL WAVE



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Human Resources Ministry secretary-general Datuk Thomas George



Thirty years ago, the government had a very strong policy on this — Malaysianisation. Today, people use terms like globalisation to bring in expatriates. They say this is to bring in investments.

Malaysian Trades Union Congress secretary-general G. Rajasekaran



We do not only want more women but we want retirees, students and the disabled, too. Malaysians shouldn't be thinking of working 9-to-5. The opportunities are aplenty.

Malaysian Employers Federation president Datuk Azman Shah Haru

■ By **SARBAN SINGH**

MALAYSIA'S "cradle-to-grave" employment laws are undoubtedly the most friendliest. It protects workers from exploitation and provides them with avenues to challenge unjust decisions taken by their superiors.

It also allows them to join unions and compel bosses to pay compensation to retrenched workers.

In fact, Malaysia may be one of the very few nations whose workers receive better compensation in the form of voluntary/mutual separation schemes.

Every minute detail to make the working place conducive is taken care of — from paid maternity leave, preventing sexual harassment and ensuring female employees working at night are provided with transport.

There were times when employers gave out healthy bonuses even if business was not so good. Foreign trips and lavish dinners were also a norm.

Although Malaysia has yet to join the league of developed nations, it may be among the few whose employees have social security protection.

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Bosses now more tight fisted



George says employers have the right to determine how they want to manage their business.

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It is also probably among a handful of nations whose employees contribute to a fund for their retirement — with a handsome percentage topped up by their employers.

But a good set of laws doesn't necessarily guarantee employment security. The opening of borders and the dreaded 'C' word — globalisation — has forced employers to rein in the expenditure.

The general view is that Malaysia, being primarily a trading nation, could be hit badly by globalisation.

They have asked the government to review the relevant laws to make it easier for them to shed their workforce.

They also want the amount of compensation awarded by the Industrial Courts to be capped.

Some employers are already paying smaller bonuses despite registering higher profits in recent years. Most are hiring only on contract to circumvent the need to pay compensation in case of dismissals.

New Sunday Times talks to Human Resources Ministry secretary-general Datuk Thomas George (MHR), newly appointed Malaysian Employers Federation president Datuk Azman Shah Harun (MEF) and Malaysian Trades Union Congress (MTUC) secretary-general G. Rajasekaran on the

changing job environment

Q: Many employers these days hire workers on fixed-term contracts rather than on a permanent basis. Isn't this discrimination?

AZMAN: This is not new. The situation is such that things never remain consistent. Some employers may have plenty of work for a short period and sometimes they have none.

For example, if there is a heat wave in Britain, the demand for air-conditioners will increase. But will the demand remain the same in winter?

Globalisation is changing everything and that is why there is so much uncertainty.

When big companies abroad reduce their global workforce by the thousands, it would affect us because we are a trading nation.

GEORGE: Globalisation has made it imperative for organisations to adapt to changes in the business environment.

There seems to be a trend for companies to focus on their core activity and to outsource activities which are peripheral to the core activity.

Innovative human resource management techniques have resulted in new ways of organising

the business arrangement such as outsourcing, and employing home workers and flexi workers, unlike fixed-term contract workers who have been around for sometime.

RAJASEKARAN: Companies do not want to have obligations. When they feel the person's job is done, out he goes. This way, the employer need not pay retrenchment benefits.

Q: Is this allowed?

AZMAN: Section 11 of the Employment Act provides for this.

GEORGE: There are no restrictions for an employer to engage a worker on a fixed-term contract as long as it is bona fide.

RAJASEKARAN: It is legal but definitely not ethical. We are against it.

A temporary worker should only be employed if the job is temporary.

Employers forget that there are also disadvantages in employing someone on a fixed-term contract. Any employee on contract would leave the job for a more secure and permanent job.

But it's an employer's market today as the supply of fresh graduates is more than the jobs available.

Q: Employers say workers are their priority yet they employ fixed-term contract workers who can be easily got rid of when the company is not doing well.

AZMAN: It's not discrimination. A fixed-term contract is an agreement by both parties.

Employees hired on a fixed-term contract in the oil-and-gas industry, for example, are paid very well. We must be prepared to think out of the box to be successful.

GEORGE: It should be emphasised that employment benefits for fixed-term contract workers are specified in their contract of service, agreed upon by the parties concerned.

If there are violations to the contract by either party, there are remedial avenues provided for by the laws and regulations.

(But) The Ministry stands by its principle that employers have the right to determine how they want to manage their business.

RAJASEKARAN: It is not illegal but it is unfair. If the job had always been there, why would the employer hire someone on contract?

Q: The power of unions are eroded when employees are hired on

contract. Isn't this tantamount to union-busting?

AZMAN: Unions must stay relevant. The law allows an employee to join the union if he so wishes.

In fact, we have had cases where employers who wanted to promote their non-executives (to being executives) could not do so simply because the workers earned more (as they were paid overtime and other allowances).

In some cases, technicians get more than engineers.

We admit that there are a handful of irresponsible employers who indulge in such practices and we support action against them.

GEORGE: Fixed-term contract workers can join trade unions. Employees, whether on permanent or fixed-term contract, within the same trade, establishment, industry or occupation are free to join trade unions.

This freedom is amplified by the increase in union membership. In 2001, the registered union membership was 785,441, and in June 2006, it increased to 794,125.

RAJASEKARAN: There have been cases where employees were given voluntary separation schemes by companies supposedly downsizing.

But these same workers were

re-hired on contract and the union was not able to help them. A tobacco company offered more than half of its in-house union members executive positions and a fixed-term contract for a few hundred ringgit more. These workers are doing the same job, only that previously they were known as production technicians. The workers accepted it without giving much thought to what the future holds

Q: Is there a limit to the numbers of years an employee can be hired on contract?

AZMAN: None.

GEORGE: The abuse of a fixed-term contract can be addressed by the court.

Even though there is no specific time frame set by the law for fixed-term contract, the employer may determine a specific or relevant time frame for a job that is being offered to the employees.

On the other hand, employees have the right to either accept or reject the contract.

RAKASEKARAN: The law does not specify this.

Q: Fixed-term contract employees are not necessarily given similar perks and privileges accorded to permanent ones. Some employers say this is part of cost-cutting measures.

AZMAN: Yes, they are given similar perks. In fact, when we train management trainees, we pay them a salary as well. We take it as part of our corporate social responsibility.

GEORGE: Any establishment which has a collective agreement, recognised by the Industrial Court, provides for equal benefits to be enjoyed by members and non-members of the union.

In the absence of such an agreement, permanent and fixed-term contract employees enjoy benefits that are stipulated under their contracts.

RAJASEKARAN: Rightfully, they should but again the law is silent on this. The law is only applicable to those earning less than RM1,500.

Q: More companies are now outsourcing some of their operations. How is the employee's welfare protected?

AZMAN: The global outsourcing industry is worth RM380 billion. Companies outsource because they want to do better. A manufacturing company cannot be equally good at delivering its products or running its IT department.

GEORGE: Outsourcing certain non-core business has become a trend in the corporate world. This business arrangement is said to have created strategic advantage and value creation for the business community.

However, outsourcing will also entail problems that generally falls into two categories — the procurement process and relationship management.

The ministry is looking into these issues seriously and proposing amendments to existing labour laws

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to accord sufficient protection for workers involved in outsourcing activities.

RAJASEKARAN: The problem is prevalent, particularly in American multinationals. The law is also silent on this aspect.

There was the case of a bank which told its staff in one section to resign because they were union members and handling confidential information.

The job was then outsourced to a company. The staff were just told that they were now employees of that company. But what happened to (the benefits, allowances, etc) those who had served the bank for 15 to 20 years. The case is now in court.

Q: Some employers, particularly multinationals, are also hiring foreigners to fill top positions although locals can do an equally good job?

AZMAN: Under the Ministry of International Trade and Industry (MITI) ruling, the post of CEO and chief technical officer in a company wishing to invest here can be given to a foreigner.

But if we are too rigid and reserve the other posts for Malaysians, the company may not be interested and would rather invest elsewhere. We need to be flexible at times.

We must remember that it is not cheap to hire expatriates, so these companies are doing it for a good reason.

GEORGE: The flow of foreign direct investments is subject to certain terms and conditions which are under the purview of MITI.

As such, employers are allowed to engage foreign expertise in certain positions.

However, there are instances where locals are trained to take over these senior positions.

RAJASEKARAN: Thirty years ago, the government had a very strong policy on this — Malaysianisation. Today, people use terms like globalisation to bring in expatriates.

They say this is to bring in investments. It's arm twisting actually. A foreign company setting up operations may want to bring in 20 expatriates and this is usually allowed.

Q: In this IT age, an increasing number of Malaysians are working from home. Isn't the ministry considering ways for them to be cov-

ered by Socso?

AZMAN: Socso has been doing a good job so far. But the self employed IT people must find other ways to get themselves protected. If we include them, then what about the hundreds of thousands who are also self employed.

GEORGE: The ministry, Socso and other relevant agencies are conducting a study with the view to extend coverage to this category of workers.

The objective to extend coverage is also to ensure these workers are guaranteed income when faced with temporary or permanent disablement which results in the loss of earnings.

RAJASEKARAN: Since these people are individual service providers, they should also be accorded similar privileges, which include EPF deductions and healthcare coverage. This is important because they do not get unemployment benefits or pension.

Q: Several years ago, the Human Resources Ministry said a flexi-hour system would be introduced to encourage housewives to enter the job market. What happened to the scheme?

AZMAN: About 60 per cent of women in the Organisation for Economic Co-operation and Development countries are employed. In Malaysia, only 47 per cent make up the labour force.

We do not only want more women but we want retirees, students and the disabled, too. We must change the mindset of Malaysians. They shouldn't be thinking of working 9-to-5. The opportunities are plenty.

GEORGE: The flexi-hour system is already being widely practised in Malaysia.

To encourage housewives to enter the job market, the ministry is proposing amendments to the Part Time Regulations of the Employment Act 1955. The proposed amendment will be discussed with the ministry's dialogue partners.

RAJASEKARAN: Nothing has happened. Some employers are only prepared to pay RM10 to housewives for a few hours of work. With transport and meals already more than half the workers' cost, why would they to take the offer.

Q: There have been repeated requests from women's organisations that maternity leave be increased from 60 to 84 days.

AZMAN: We have no objections. However, there needs to be a study to assess its financial and social implications.

GEORGE: The present legislation is sufficient as it covers the mother's confinement period.

If you speak of having to nurse the child, there are mothers who breast-feed up to two years. So are we going to allow them to take paid leave till then?

RAJASEKARAN: We have asked for 90 days. If we provide only 60 days, how are we to encourage breastfeeding and bonding between mother and baby.



Employees in Malaysia contribute to a fund for their retirement — with a handsome percentage topped up by their employers.

