

CODE OF CONDUCT FOR INDUSTRIAL HARMONY

What is the Code of Conduct for Industrial Harmony?

The Code of Conduct for Industrial Harmony (the Code) is an agreement made between the Ministry of Human Resources (then known as the Ministry of Labour and Manpower) and the Malaysian Council of Employers' Organisations (the predecessor to the Malaysian Employers Federation and the Malaysian Trades Union Congress).

Aim

The aim of the Code is **“to lay down principles and guidelines to employers and workers on the practice of industrial relations for achieving greater industrial harmony”**.

Under clause 7 of the Code, the central employer and employee organisations have agreed to endorse and recommend employers and workers to observe and comply with the industrial relations practices agreed upon and accepted by the Ministry of Human Resources.

What the Law States

The Code provides useful guidelines in the area of industrial relations practice. There is no legal obligation on the part of the employer to adhere to the contents of the Code. However, the Code has been given its legal “teeth” by virtue of sec 30(5A) of the *Industrial Relations Act 1967*. It states:

“In making its award, the Court may take into consideration any agreement or code relating to employment practices between organisations, representative of employers and workmen respectively where such agreement or code has been approved by the Minister.”

Where an employer does not follow the procedures set out in the Code, the employer in fact commits an unfair labour practice. The Industrial Court has been very consistent in its reliance of the Code in retrenchment cases. Failure to follow the Code can result in a retrenchment being declared an unfair dismissal.

Contents of the Code

The Code lists 50 specific industrial relations practices under four broad areas for cooperation, namely:

- responsibilities

- employment policy
- collective bargaining and
- Communication and consultation.

Responsibilities

At the level of establishment or undertaking

(1) As employers and workers and trade unions representing them are jointly and severally responsible for good industrial relations, the first step is for both management and trade unions to accept, at the highest level, the same degree of responsibility for industrial relations as for other functions within their respective organisations.

Good industrial relations need to be developed within the framework of efficiency of the establishment or undertaking. As such, a major objective of management must be to develop just and effective personnel and industrial relations policies which engender the confidence of all employees, subject to the purpose for which the establishment or undertaking was established and its social obligation to the nation.

Equally, trade unions should ensure that the policies and practices that they adopt are not only fair in relation to the function and purpose for which they have been formed but also take into consideration national interests.

- (2) Good industrial relations depend upon good organisation of work. Management should therefore take all reasonable steps to ensure that:
- (a) All management personnel understand their responsibilities and what is required of them, and have the training and authority necessary to discharge such duties and responsibilities efficiently
 - (b) Duties and responsibilities for each group of employees are stated with clarity and simplicity in the organisational structure
 - (c) Individual employees or work-groups know what their objectives are and are regularly kept informed of progress made towards achieving them
 - (d) Where possible, work is organised in such manner so that the individual employee has the chance to achieve a sense of job satisfaction.
- (3) Where a trade union has been recognised:
- (a) Management should take the initiative in seeking to establish, jointly with the trade union concerned, effective procedures for negotiation, consultation and the settlement of grievances and disputes

- (b) Management and the trade union should take all reasonable steps to ensure that both the management and union personnel observe agreements reached and use agreed procedures
- (c) Management should not discourage employees from joining the recognised union and from taking an active part in its legitimate activities.

(4) The supervisor is management's first "contact" man with the employees and special attention should be given to his appointment and his needs on the job. The employer should ensure that he:

- (a) is technically proficient and adequately trained and possesses the personal qualities required to exercise supervision
- (b) Has charge of a work-group of a size that he can supervise effectively
- (c) Is an effective link in the interchange of information and views between senior management and members of his work group
- (d) Is briefed about innovations and changes before they occur so that he can explain management's policies and intentions to his work-group.

At national or industry level

(5) Employers' association should:

- (a) Co-operate with the trade unions in establishing effective procedures at industry or national level for the negotiation of terms and conditions of employment and for the settlement of disputes
- (b) Encourage the establishment of effective procedures among member organisations for the settlement of grievances and disputes at the level of the establishment or undertaking
- (c) Take all reasonable steps to ensure that member organisations observe agreements and agreed procedures
- (d) collect, analyse and distribute information to its members concerning industrial relations matters
- (e) Identify trends and new developments in industrial relations and help its members to anticipate and keep abreast of change
- (f) Provide an efficient and realistic advisory service to its members on all matters of industrial relations.

(6) A trade union can promote the interests of its members effectively only if it accepts, that, in common with management, it has an interest in and a responsibility for the success of the undertaking and for the national, economic and social well-being of the country as a whole. This involves co-operation with the employer in promoting efficiency and good industrial relations.

(7) To secure these aims, a trade union should:

- (a) Co-operate with employers' association in establishing effective procedures at industry level for the negotiation of terms and conditions of employment and for the settlement of disputes that arise
- (b) Co-operate with individual management in establishing effective procedures for negotiation, consultation, communication and the settlement of grievances and disputes
- (c) Take all reasonable steps to ensure that their officials and members observe agreements and use agreed procedures
- (d) Make full use of the established procedures for the settlement of disputes.

(8) To ensure that its organisation is effective, a trade union should also:

- (a) Have enough officials, full time or otherwise, to maintain regular contacts not only with union members but also with management of establishments or undertakings where the union has been recognised
- (b) Maintain a communications system which secures the interchange of information and views between different levels in the union and ensures that members are systematically and regularly kept informed, factually and objectively, of the progress of negotiations for a collective agreement
- (c) Encourage its members to attend union meetings and to participate fully in union activities by holding branch meetings at times and at places convenient to the majority; and, where there is a large enough membership, consider forming the branch organisation of the establishment
- (d) Establish effective procedures for the settlement of disputes among members of the union.

(9) The trade union should also ensure that all its officials:

- (a) Clearly know and understand the nature and extent of their responsibilities and authority
- (b) Are adequately trained to look after members' interests in a responsible and efficient way
- (c) Wherever possible and practicable, hold regular dialogues with officials of employers' association and its members.

(10) As the basic relationship between an employer and the individual employee is defined in the individual contract of employment, it should be expressed in clear and precise language. It is the employee's responsibility to satisfy himself that he or she understands the terms of the contract and to abide by them.

(11) The employer and relevant trade union should ensure that procedures for dealing with questions that arise on the individual contract of employment are clearly laid down. But it is the responsibility of the employer himself to:

- (a) Familiarise himself with these procedures and
- (b) Make use of them when the need arises.

Employment policy

(12) A sound employment policy is a prerequisite to good employer-employee relations. It should also reflect the Government's policy requirements, announced from time to time. Good planning and efficient use of manpower are important both for the success of the establishment and for the security of those employed in it. The employer should, therefore:

- (a) Keep fluctuations in manpower requirements to a minimum by means of advance planning
- (b) Make changes, wherever necessary, with as little disruption as is necessary
- (c) Where practicable, maintain, in consultation with the employees or their representatives or trade union, as appropriate, a scheme for transferring employees from one job to another within the establishment or undertaking so that unavoidable changes in manpower requirements can be handled smoothly.

Recruitment

(13) Recruitment and selection policy can help good industrial relations by ensuring that workers are engaged for jobs suited to their abilities. The employer should, therefore:

- (a) Define the qualifications and experience needed for the vacant job
- (b) Ensure that selection is based on suitability for the job
- (c) Consider filling the vacancy by transfer or promotion before trying to recruit from outside
- (d) Explain the terms and conditions of employment to applicants before they are engaged
- (e) Ensure that those who carry out recruitment and selection are competent to do so and that the recruitment and selection methods are regularly checked to be effective.

Training

(14) Adequately trained employees are essential for the success of the undertaking. Training appropriate to his work also helps the individual to develop his potential, to increase the satisfaction he finds in his work and to improve his earning capacity.

(15) Newly recruited employees should be given initial instruction covering:

- (a) The organisation, its employment policy and welfare and social facilities that are available
- (b) Specific training in the job to supplement previous training and experience.

(16) Younger persons entering employment or the first time should be given broader basic instructions covering a general introduction to working life.

(17) In appropriate cases, further training should be provided when there is a significant change in the content of the job or in the level of the job being performed.

Payment system

(18) Although payment systems vary according to the nature and organisation of the work, local conditions and other factors, the following principles should be observed so as to ensure that the system of payment is soundly based and thereby reduces the incidence of disputes arising:

- (a) Payment systems should be as simple as possible
- (b) Differences in rates should be related to the requirements of the job which should, wherever possible, be assessed by agreed as well established methods
- (c) piece-work rates, incentive bonuses, etc should be determined by agreed or well established methods
- (d) Rates of payment should be jointly negotiated where a recognised trade union exists.

Security of employment

(19) Insecurity of employment and fear of the consequences of redundancy and retirement have a major influence on attitudes to work and good industrial relations. Consistent with the efficiency and success of the undertaking, the employer should provide greatest possible stability in terms of job tenure. The employer should also, where practicable:

- (a) Offer prospects for advancement and promotion within the undertaking with opportunities for any necessary training
- (b) Provide retirement, retrenchment and sick pay schemes to supplement statutory provisions.

Redundancy and retrenchment

(20) In circumstances where redundancy is likely an employer should, in consultation with his

employees' representatives or their trade union, as appropriate, and in consultation with the Ministry of Labour and Manpower, take positive steps to avert or minimise reductions of workforce by the adoption of appropriate measures such as:

- (a) Limitation on recruitment
- (b) Restriction of overtime work
- (c) Restriction of work on weekly day of rest
- (d) Reduction in number of shifts or days worked a week
- (e) Reduction in the number of hours of work
- (f) Re-training and/or transfer to other department/work.

(21) The ultimate responsibility for deciding on the size of the workforce must rest with the employer, but before any decision on reduction is taken, there should be consultation with the workers or their trade union representatives on the reduction.

- (22) (a) If retrenchment becomes necessary, despite having taken appropriate measures, the employer should take the following measures:
- (i) Giving as early a warning, as practicable, to the workers concerned
 - (ii) Introducing schemes for voluntary retrenchment and retirement and for payment of redundancy and retirement benefits
 - (iii) Retiring workers who are beyond their normal retiring age
 - (iv) Assisting, in co-operation with the Ministry of Human Resources, the workers to find work outside the undertaking
 - (v) Spreading termination of employment over a longer period
 - (vi) Ensuring that no such announcement is made before the workers and their representatives or trade union has been informed.

(b) The employer should select employees to be retrenched in accordance with objective criteria. Such criteria, which should have been worked out in advance with the employees' representatives or trade union may include:

- (i) The need for the efficient operation of the establishment or undertaking
- (ii) Ability, experience, skill and occupational qualifications of individual workers required by the establishment or undertaking under part (i)
- (iii) Consideration for length of service and status (non-citizens, casual, temporary, permanent)

(iv) Age

(v) Family situation

(vi) Such other criteria as may be formulated in the context of national policies.

(23) Employees, who are retrenched, should be given priority of engagement/re-engagement, as far as is possible, by the employer when he engages workers.

(24) The appropriate measures and objective criteria should comprise part of the establishments or undertaking's employment policy.

Working conditions

(25) Good physical working conditions help to achieve good industrial relations. The first need is for the employer to ensure that the standards laid down by law are fully complied with.

But this is not enough by itself, for most work-places could be made safe, healthier and more pleasant to work in if more care were taken about the working environment — like improving the cleanliness, tidiness and general appearance of the work-place; reducing strain and monotony involved in the work; encouraging workers and their representatives to co-operate in improving working conditions and providing for consultation with workers on their representatives on these matters. Workers or their trade union representatives should co-operate with employers in making the best use of the arrangements for consultation in this field.