FOREIGN WORKERS
The Law And Practice In Malaysia

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An employer has a duty to protect their migrant workers from exploitation. It is immaterial whether the exploitation proceeds from the superior or the co-workers. When the employer is aware of the occurrence of any form of ill-treatment or abuse of foreign workers at the workplace or such is brought to the employer’s attention, the latter has a duty to act immediately on the complaint and to take firm action against the perpetrator. This issue arose in Kian Joo Can Factory Berhad v. Ng Kok Hooi.1 The case involved a supervisor who assaulted a foreign worker. It was stated that an employee, particularly a subordinate and also a foreigner, should not be required to work in such an environment shrouded with fear. The Court noted that physical violence should be condemned and that the punishment of dismissal in such an instance cannot be said to be excessive.

It is noteworthy to mention that despite the existence of labour legislations, migrant workers, in certain sectors, are still subjected to physical, verbal or psychological abuse with little or no consideration of their well-being. For example, poor and unsafe working standards, excessive working hours, non-payment or lower payment of wages, forced labour, child labour and sexual exploitation, among others are still being reported. An employer who physically abuses or maltreats their migrant workers may be charged in court pursuant to the Penal Code (Act 574) (Revised 1997). The Penal Code is the principal statute in Malaysia relating to criminal offences. If he is found guilty, an employer may be subjected to severe penalties such as imprisonment, fine and/or whipping.

* This Chapter is contributed by Ashgar Ali Ali Mohamed.
1 [2010] 2 ILR 258.