

PROFILE

**Partner****Head, Employment & Administrative Law****Shearn Delamore & Co., Kuala Lumpur, Malaysia**

vijayan@shearndelamore.com

T +603 2027 2874

Qualifications

LL.B (Hons), University of London (London School of Economics and Political Science)

LL.M, University of Malaya

Barrister-at-Law, Middle Temple

Advocate & Solicitor, High Court of Malaya

Advocate & Solicitor, Supreme Court of Singapore

Languages

English, Malay

VIJAYAN VENUGOPAL

ABOUT VIJAYAN

Vijayan Venugopal is a Partner of the firm, specialising in Employment and Administrative Law.

He graduated with a Second Class Honours (Upper Division) from the London School of Economics and Political Science, University of London and was called to the Utter Bar of England & Wales in 1993. He was subsequently called to the Malaysian Bar in 1994 and joined the firm thereafter. He was also called to the Singapore Bar in 1997. He also holds a Masters degree from the University of Malaya.

His experience includes advising on labour issues, industrial relations, collective bargaining, industrial actions, trade disputes, contracts of service, mergers & acquisitions, restructuring, reorganisation & retrenchment, occupational health and safety, employee provident funds and social security, statutory benefits, dismissals, judicial review, administrative law and union issues.

Vijayan has conducted hearings at various levels of the employment judicial hierarchy including the Labour Court, the Industrial Court, the Magistrate's Court, the Sessions Court, the High Court, the Court of Appeal and the Federal Court.

EXPERIENCE

- **Beatrice Fernandez v Malaysian Airlines**

Successfully defended the national airline, Malaysian Airlines, in relation to the dismissal of a flight stewardess on the grounds of her pregnancy. A similar issue had arisen in other jurisdictions and in those cases, the courts struck-down the dismissal as being unconscionable. However, in arguing the matter before the Federal Court, he was able to distinguish the other precedents and convince the Federal Court

to uphold the dismissal. This case is considered a landmark decision and established that the Federal Constitution does not extend its substantive or procedural provisions to infringements of an individual's legal rights by a corporate entity.

- **Minimum Wage cases relating to the Hotel industry**

With the introduction of the Minimum Wage Act into Malaysia, the courts held in numerous decisions that the hotel industry was obliged to utilise its own funds to "top-up" the basic wages of employees to meet the minimum wage, and could not use the service charge for the same. Despite established precedent, he was able to convince the Industrial Court in decisions for the Marriott Group that service charge could be utilised for the "top-up" and the hotels did not have to utilise their own funds. This decision had significant impact for the whole industry and this issue is currently pending before the Court of Appeal and the Federal Court.

- **Rights of Foreign Nationals to be deemed as Permanent Employees**

The Federal Court considered the issue of whether foreign nationals could be deemed as permanent employees in light of the fact that their continued employment was subject to the issuance of a work permit by the immigration authorities. The Federal Court determined that the need for a work permit was not a material consideration in determining whether an employment contract is a genuine fixed-term contract, and further affirmed a contract of employment which is renewed successively without any application by the employee and without intermittent breaks is, in reality, permanent employment.

ACCOLADES

Asialaw Leading Lawyers

Labour and Employment 2023 - Distinguished Practitioner from 2020 - 2023

Chambers Asia-Pacific

Employment and Industrial Relations 2024 - Band 2 Leading Individual from 2011 - 2024

- *"Vijayan is powerful and skilful in his presentation during court hearings."*, a client remarks – Chambers Asia-Pacific 2024
- *Source highlight Vijayan Venugopal as an active practitioner who regularly appears and "speaks very well" in court.* - Chambers Asia-Pacific 2016
- *According to one client, he "has proven ability in handling litigation matters due to his vast experience in industrial relations."* - Chambers Asia-Pacific 2017
- *Enthusiastic clients praise him as "knowledgeable, well prepared, sharp and reliable, with an excellent memory for details."* - Chambers Asia-Pacific 2018
- *Vijayan Venugopal is another key member of the practice and is "always approachable, deals with matters in a professional manner and gives us result that we expect," says a client.* - Chambers Asia-Pacific 2014

The Legal 500 Asia-Pacific

Labour and Employment 2023 – Other key lawyer; Recommended lawyer in 2022

Who's Who Legal

Labour & Employment 2023 - Global Leader from 2019 - 2023; Expert in 2017 and 2018

Labour, Employment & Benefits 2023 - National Leader (Southeast Asia) from 2021 - 2023

APPOINTMENTS/MEMBERSHIPS

- Member, Industrial and Employment Law Committee of the Malaysian Bar Council (MBC)
- Member, Diversity & Equality Law Committee of the International Bar Association (IBA)

PUBLICATION

- Malaysian Chapter of the Chambers Global Practice Guide: Employment 2019 and 2021
- Law and Practice of Employment Law in Malaysia - Sweet and Maxwell, 2022 [contributor]