

## OCCUPATIONAL STRESS AND THE LAWS IN SELECTED JURISDICTIONS

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### ABSTRACT

In the contemporary modern and globalised world, it is common for the majority of employers to draw a great attention to the productivity of the workforce rather than the employees working capability and physical and mental conditions. Businesses and industries have always been striving towards maximising profit and minimising the cost. As a result, employees of uncountable organisations suffer from the alarming occupational stress in catching up with the respective schedule of productions, shipments and services. The question arises here is that whether there should be some regulatory measures to relief the occupational stress of the workforce? Accordingly, this article examines the laws relating to the occupational safety and health in selected jurisdictions, namely, Malaysia, Australia, Canada, the United Kingdom and New Zealand in order to evaluate whether these laws protect workers' mental health. It is found that the existing legislations on occupational health and safety in the selected jurisdictions do not explicitly address on the emotional and mental health of employees. Therefore, authors propose that a specific legislation is warranted to regulate occupational stress closely and carefully in order to provide better work-life balance to the workforce.

**Keywords:** *Occupational Stress, Work-related Stress, Mental Wellbeing, Occupational Health, Work-life Balance*

## INTRODUCTION

Stress is defined as “to feel pressure or tension, worried and nervous exerted on a material object or caused by a difficult situation, or something that causes this condition”.<sup>1</sup> It can also be defined as “state of mental or emotional strain or tension resulting from adverse or very demanding circumstances”.<sup>2</sup> Stress is usually described as “the body’s nonspecific reaction or response to demands made on it, or to distressing events in the surroundings”.<sup>3</sup> It is “a method by which we perceive and survive with environmental intimidation and challenges”.<sup>4</sup> Stressors - factors that cause stress - can be personal and/or environmental events.<sup>5</sup>

Stress which encourages and facilitates in seeking knowledge is considered as “good quality stress and an optimal level of stress can improve learning aptitude”.<sup>6</sup> In the contrary, stress which restrains and represses learning is called awful stress.

Appalling stress must be prevented and avoided<sup>7</sup> as chronic and excessive stress can affect physical, emotional and mental health of a person.<sup>8</sup> According to Selye, “an important aspect of stress is the wide variety of dissimilar situations capable of producing the stress response such as fatigue, pain, fear and even success”.<sup>9</sup> Lazarus and Folkman are of the view that stress is “a particular relationship between the person and the environment that is appraised by the person as taxing or exceeding his or her resources and endangering his or her well-being”.<sup>10</sup>

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<sup>1</sup> Cambridge English Dictionary, *Stress*, Cambridge University Press, <http://dictionary.cambridge.org/dictionary/english/stress> accessed 04 June 2018.

<sup>2</sup> Longman Dictionary of Contemporary English, *Stress*, Longman, <http://www.ldoceonline.com/dictionary/stress> accessed 04 June 2018.

<sup>3</sup> David L. Rosenham and Martin E.P. Seligman, *Abnormal psychology* (2<sup>nd</sup> edn.), (New York: WW Norton & Company, 1989), at p. 2; Hans Selye, *Stress without Distress*. (New York: Harper & Row, 1974) as cited by Muhamad Saiful Bahri Yusoff, *Stress, Stressors and Coping Strategies among Secondary School Students in A Malaysian Government Secondary School: Initial Findings*, Vol 11 No 2 (2010) ASEAN Journal of Psychiatry, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.385.2939&rep=rep1&type=pdf> accessed 04 June 2018.

<sup>4</sup> David Myers, *Exploring Psychology* (6<sup>th</sup> edn.), (New York: Worth Publishers, 2005) as cited by Muhamad Saiful Bahri Yusoff, *Stress, Stressors and Coping Strategies among Secondary School Students in A Malaysian Government Secondary School: Initial Findings*, Vol 11 No 2 (2010) ASEAN Journal of Psychiatry, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.385.2939&rep=rep1&type=pdf> accessed 04 June 2018.

<sup>5</sup> Richard S. Lazarus, *Theory-Based Stress Measurement*, Vol 1 No 1 (1990) Psychology Inquiry at pp 3-13 as cited by Muhamad Saiful Bahri Yusoff, *Stress, Stressors and Coping Strategies among Secondary School Students in A Malaysian Government Secondary School: Initial Findings*, Vol 11 No 2 (2010) ASEAN Journal of Psychiatry, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.385.2939&rep=rep1&type=pdf> accessed 04 June 2018.

<sup>6</sup> Harold Kaplan and Benjamin Saddock, *Synopsis of Psychiatry: Behavioral Sciences/Clinical Psychiatry* (8<sup>th</sup> edn.), (Philadelphia, Lippincott Williams & Wilkins, 2000) as cited by Muhamad Saiful Bahri Yusoff, *Stress, Stressors and Coping Strategies among Secondary School Students in A Malaysian Government Secondary School: Initial Findings*, Vol 11 No 2 (2010) ASEAN Journal of Psychiatry, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.385.2939&rep=rep1&type=pdf> accessed 04 June 2018.

<sup>7</sup> Linn B.S and Zeppa R, *Stress in Junior Medical Students: Relationship to Personality and Performance*, Vol 59 No 1 (1984) Journal of Medical Education at pp 7-12 as cited by Muhamad Saiful Bahri Yusoff, *Stress, Stressors and Coping Strategies among Secondary School Students in A Malaysian Government Secondary School: Initial Findings*, Vol 11 No 2 (2010) ASEAN Journal of Psychiatry, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.385.2939&rep=rep1&type=pdf> accessed 04 June 2018.

<sup>8</sup> Päivi M. Niemi and Paula T. Vainiomäki, Medical Students’ Academic Distress, Coping, and Achievement Strategies During the Preclinical Years, Vol 11 No 3 (1999) Teaching & Learning in Medicine at pp 125-134. as cited by Muhamad Saiful Bahri Yusoff, *Stress, Stressors and Coping Strategies among Secondary School Students in A Malaysian Government Secondary School: Initial Findings*, Vol 11 No 2 (2010) ASEAN Journal of Psychiatry, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.385.2939&rep=rep1&type=pdf> accessed 04 June 2018.

<sup>9</sup> Hans Selye, *Stress in Health and Disease*, (Butterworth-Heinemann, 1976). As cited by George Fink, *Stress: Definition and History*, The Mental Health Research Institute of Victoria, Melbourne, Australia (Elsevier Ltd., 2009) [https://www.researchgate.net/publication/303791684\\_Stress\\_Definitions\\_Mechanisms\\_and\\_Effects\\_Outlined](https://www.researchgate.net/publication/303791684_Stress_Definitions_Mechanisms_and_Effects_Outlined) accessed 04 June 2018.

<sup>10</sup> Richard S. Lazarus and Susan Folkman, *Stress, Appraisal, and Coping*. (New York, Springer, 1984) as cited by Gillian Butler, *Definitions of Stress*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2560943/pdf/occpaper00115-0007.pdf> accessed 04 June 2018.

## OCCUPATIONAL STRESS

Stress can be experienced from four basic sources as Matthews observed, namely, “(i) from the environment because it demands to adjust for example, environmental stressors include weather, noise, crowding, pollution, traffic, unsafe environment, and substandard housing and crime; (ii) source is social factors or stressors for instance parents, spouse, caregiver and employee. In addition it also includes deadlines for some event, financial problems, job interviews, presentations, disagreements, demand for time and attention, loss of one’s love, divorce and co-parenting among others; (iii) stress can be experienced as physiological stressors because the situation and circumstances affects our body for instance, rapid growth of adolescence, menopause, illness, aging, giving birth, accidents, lack of exercise, poor nutrition and sleep disturbances and (iv) the source of stress is thinking that leads the brain to interpret and perceive a situation as stressful, difficult, painful or unpleasant. Some situations in life are stress provoking but it is the thought that determines whether they are a problem for us or not”.<sup>11</sup>

The occupational stress in the present globalised world has fraught a serious concern to the employees and other stakeholders of uncountable organisations around the world.<sup>12</sup> Occupational stress can be defined as “the context of discrepancy between environmental demands and individual capacities to fill these demands for instance, perceived loss of job security, lack of safety, bullying, harassment and lack of autonomy in the job, among others”.<sup>13</sup> The underlying causes of occupational stress are lack of resources and equipment; hectic work schedules such as working late hours or overtime, understaffing with an increase workload and responsibility, badly designed shift work, tight deadlines, ineffective handling of bullying and harassment, uninteresting or uninspiring job, poor interpersonal relationship with superior, colleagues not cooperative, worry of losing job due to uncertain economy condition affective the organisation, to name but a few. Occupational stress is also a factor that contributes “high dissatisfaction among the employees in terms of job mobility, burnout and poor work performance and less effective interpersonal relations at work”.<sup>14</sup>

## EFFECTS ON THE EMPLOYEES

As noted above, occupational stress can arise due to several reasons such as “excessive work demand, workload and stressful deadlines, long working hours, insufficient number of staff, lack of support from co-workers and supervisors, annoying co-workers, angry customers, hazardous working conditions,” among others. Job uncertainty such as impending layoffs, restructuring or management changes and hostile work environment, among others can also trigger stress. It is an accepted fact that prolonged job-related stress can drastically affect the physical health of the worker. An employee who is preoccupied with job responsibilities will counter irregular eating habits and would be lacking in the regular exercise,

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<sup>11</sup> Gerald Matthews, *Levels of Transaction: A Cognitive Science Framework for Operator Stress*, (University of Dundee, 2001) [https://www.google.com/ur/sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwj7v8fulbjbAhXPT30KHdC2BAQQFggvMAE&url=https%3A%2F%2Fwww.researchgate.net%2Fprofile%2FGerald\\_Matthews%2Fpublication%2F284577742\\_Levels\\_of\\_transaction\\_a\\_cognitive\\_sciences\\_framework\\_for\\_operator\\_stress\\_in\\_Stress\\_Workload\\_and\\_Fatigue%2Flinks%2F57c9dd9708ae59825180f5a3%2FLevels-of-transaction-a-cognitive-sciences-framework-for-operator-stress-in-Stress-Workload-and-Fatigue&usq=AOvVaw2Chs-BtlyLnYhjPyksaWj](https://www.google.com/ur/sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwj7v8fulbjbAhXPT30KHdC2BAQQFggvMAE&url=https%3A%2F%2Fwww.researchgate.net%2Fprofile%2FGerald_Matthews%2Fpublication%2F284577742_Levels_of_transaction_a_cognitive_sciences_framework_for_operator_stress_in_Stress_Workload_and_Fatigue%2Flinks%2F57c9dd9708ae59825180f5a3%2FLevels-of-transaction-a-cognitive-sciences-framework-for-operator-stress-in-Stress-Workload-and-Fatigue&usq=AOvVaw2Chs-BtlyLnYhjPyksaWj) accessed 04 June 2018.

<sup>12</sup> C.L. Cooper and S. Cartwright, *Healthy Mind; Healthy Organization - A Proactive Approach to Occupational Stress*, Vol 47 No 1 (1994) Journal of Human Relations at pp 455-71; Phillip E. Varca, *Work Stress and Customer Service Delivery*, Vol 13 No 3 (1999) Journal of Services Marketing at pp 299-241.

<sup>13</sup> Sandy Ornelas and Brian H. Kleiner, *New Development in Managing Job Related Stress*, Vol 22 No 5 (2003) Equal Opportunities International at pp 64-70; Elisa F. Topper, *Stress in the Library*, Vol 108 No 11/12 (2007) New Library World at pp 561-564; Christo Botha and Jaco Pienaar, *South Africa Correctional Official Occupational Stress: The Role of Psychological Strengths*, Vol 34 No 1 (2006) Journal of Criminal Justice at pp 73-84.

<sup>14</sup> Amat Taap Manshor, Fontaine Rodrigue and Chong Siong Choy, *Occupational Stress among Managers: Malaysian Survey*, Vol 18 No 6 (2003) Journal of Managerial Psychology at pp 622-628.

with the resulting consequences such as weight problems, high blood pressure and elevated cholesterol levels, the onset of heart disease.

Apart from health effects, there is a significant “relationship between stress and job performance”.<sup>15</sup> Stress is the common denominator for depleting work performance and productivity. This may arise due to various factors such as “persistent lateness or tardiness, taking excessive sick leave and repeated absences,” among others. Persistent lateness or tardiness, absence from workplace and leaving the office earlier than the scheduled working hours, can have serious effects on employer’s productivity, profits and reputation. It may also cause hassle to other co-workers who will have to cover up the more tasks in order to compensate for those who absent from work or reported late for work.<sup>16</sup>

Some commentators have argued that occupational stress effects on memory uniformity where it shows the elements of working memory are prejudiced by occupational pressure like the memory is working even after the office hours.<sup>17</sup> Anxiety is one of the most frequent stress condition through which memory performance has been examined by the concern researchers.<sup>18</sup> Ashcraft and Kirk observe that a person in high anxiety inevitably will lead to slower processing of different aspects of mathematical calculations.<sup>19</sup> Furthermore, researches have also shown that stress plays a vital role in judgment and decision making in day to day life.<sup>20</sup>

## THE LAWS ON OCCUPATIONAL STRESS IN SELECTED JURISDICTIONS

### Malaysia

The minimum rights of an employee in Malaysia is contained in the Employment Act 1955, a statute which is only applicable to employees in the private sector. This Act prescribes inter alia, the payment of wages, deduction of wages under certain circumstances, maternity protection, certain restriction on night work, underground work and in certain places of work for female workers, rest days in each week for workers, annual leave, maximum hours of work in a day, public holidays, annual and sick leave, and overtime payment for extra hours of work, among others. However, the primary concern of this Act is monetary benefits such as annual leave, sick leave, maternity allowances and overtime payment, amongst others. The Act however does not deal with safety and health of workers at the workplace let alone the occupational stress.

Apart from the above, the Employees’ Social Security Act 1969 is a social legislation primarily aimed at according protection to workers in the course of employment. The 1969 Act provides *inter alia*, benefits within their scheme of insurance. Under this Act all industrial are required to register their establishment with the Social Security Organisation and their employees should be insured in accordance with the Act.<sup>21</sup>

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<sup>15</sup> Peter A. Hancock and Paula A. Desmond (Eds.), *Stress, workload, and fatigue*, (Lawrence Erlbaum Associates, Publishers, Mahwah, NJ, 2001) at p 682.

<sup>16</sup> See *Thawendran Wendran v Malaysian Airline System Berhad* [2014] 2 ILR 570.

<sup>17</sup> Alan Baddeley, *Working memory*, Vol 20 No 4 (2010) *Current Biology* at pp 136-140.

<sup>18</sup> Micheal W. Eysenck, *Anxiety, Learning, and Memory: A reconceptualization*, Vol 13 No 4 (1979) *Journal of Research in Personality* at pp 363-385; Micheal W. Eysenck, *Anxiety and Cognitive Task Performance*, Vol 6 No 5 (1985) *Personality and Individual Differences* at pp 579-586.

<sup>19</sup> Mark H. Ashcraft and Elizabeth P. Kirk, *The Relationships among Working Memory, Math Anxiety, and Performance*, Vol 130 No 2 (2001) *Journal of Experimental Psychology: General* at pp 224-237.

<sup>20</sup> A. Bröder, *Assessing the Empirical Validity of the “Take-the-Best” Heuristic as a Model of Human Probabilistic Inference*, Vol 26 No 5 (2000) *Journal of Experimental Psychology: Learning, Memory, and Cognition* at pp 1332-1346; G. Keinan, *Decision Making under Stress: Scanning of Alternatives under Controllable and Uncontrollable Threats*, Vol 52 No 3 (1987) *Journal of Personality and Social Psychology* at pp 639 - 644.

<sup>21</sup> Employees’ Social Security Act 1969, ss. 4 and 5.

The Act primarily protects the workers and their families against economic and social distress in situations where the employee sustains injury or death in the cause of employment. A worker who was involved in an accident whilst going or returning from the workplace would be able to recover compensation under this statute. Again, just like the Employment Act 1955, the Employees' Social Security Act 1969 is primarily concerned with monetary benefits within their scheme of insurance and thus does not deal with occupational stress.

The employment statute which is closely related to occupational stress is the Occupational Safety and Health Act 1994. This Act is applicable to industries specified in the First Schedule, namely: "Manufacturing; Mining and Quarrying; Construction; Agriculture, Forestry and Fishing; Utilities (i.e., Electricity, Gas, Water, and Sanitary Services); Transport, Storage and Communication; Wholesale and Retail Trades; Hotels and Restaurants; Finance, Insurance, Real Estate and Business Services; and Public Services and Statutory Authorities." The objectives of the Act as provided in the preamble are as follows: "to secure the safety, health and welfare of persons at work and to promote an occupational environment adaptable to the person's physiological and psychological needs".

The Act impose an obligation on the employer to ensure the safety, health and welfare of the workers at the workplace. Further, the workplace should be free from any hazardous risk to workers health. The employer is required to provide the necessary equipment and clothing at the workplace. In order to promote safe and health work environment, necessary information, instruction, training and supervision is also emphasised under the Act. Further, safety and health officers must be employed by the company and their duties would include ensuring that their employer comply with the provisions of the Act.

Further, an employer with more than 40 workers is under an obligation to establish a safety and health committee.<sup>22</sup> It is an offence for an employer to neglect or disregard the safety and health of workers at the workplace and if the offence is established, the employer may be fined up to RM50,000 or imprisoned for a term not exceeding two years, or both.<sup>23</sup> The Act also empowers the creation of a National Council for Occupational Safety and Health. The function of this Council is to carry out the objectives of the Act and to submit reports as well as make relevant recommendations with regard to any matters relating to the objectives of the Act.<sup>24</sup> It is apparent from the above discussion that the Occupational Safety and Health Act 1994 merely ensures physical safety and health of workers and thus, does not cater for occupational stress.

Lastly, the Factories and Machinery Act 1967 provides for matters relating to safety, health, and welfare of persons in the factory, and the registration and inspection of machinery. The Act regulates on the safety and health of workers at the workplace in relation to cleanliness, ventilation, room temperature, lighting, sanitary convenience, personal protective clothing and appliances, welfare of workers such as drinking water and washing facilities. When an accident has occurred at the workplace which either causes loss of life or bodily injury to any person or causes serious damage to machinery or other properties of the employer, the Act requires the occupier of a factory to report to the nearest inspector.<sup>25</sup> If there is a failure to do so, the occupier shall be guilty of an offence and on conviction be liable to a fine not exceeding RM100,000 or imprisonment for a term not exceeding two years, or both.<sup>26</sup> Alternatively, an employee who suffered injuries due to an accident at the workplace may file a civil claim for special and general damages against the employer. For example, in *Guo Feng Ting v Ta Yang Agricode Sdn Bhd*,<sup>27</sup> the High

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<sup>22</sup> Occupational Safety and Health Act 1994, s. 30.

<sup>23</sup> Occupational Safety and Health Act 1994, s. 19.

<sup>24</sup> Occupational Safety and Health Act 1994, ss. 8, 9, 10, 11, 12, 13 and 14.

<sup>25</sup> Factories and Machinery Act 1967, s. 31.

<sup>26</sup> Factories and Machinery Act 1967, s. 51(1).

<sup>27</sup> [2016] 7 MLJ 827.

Court found the defendant was negligent in failing to take reasonable care for the safety of its workers in all the circumstances of the case so as not to expose them to unnecessary risk. Again, just like the earlier mentioned Acts, the Factories and Machinery Act 1967 also does not address on occupational stress experience by workers. In short, there is no specific legislation in Malaysia that protect workers against occupational stress.

## Australia

In Australia, there are several regulations covering an important aspect of employee's health and safety in terms of physical, psychological or mental conditions at the workplace. The Commonwealth Fair Work Act 2009 provides a balanced atmosphere for productive workplace relations which can promotes national economic development and social inclusion for all Australians.<sup>28</sup> The observance of the Act is overseen by the Fair Work Commission and the Fair Work Ombudsman. The Fair Work Commission enforces the Act and examines the legislation including "updating entitlements, national minimum wages, and operates as a tribunal to hear claims and declare rulings". The Fair Work Ombudsman administers and investigates "allegations of breaches in the workplace and initiates legal proceedings". Besides, the terms and conditions of employment is governed by the law itself and concurrently with the National Employment Standards (NES), the Modern Awards which are legal documents that guide the minimum pay rates and conditions of employment introduced in 2010, the National Minimum Wage Order 2016, the Enterprise Agreements and the Workplace Determinations.<sup>29</sup>

The Commonwealth Fair Work Act 2009 sets a comprehensive guideline for employer and employee in Australia with every possible opportunities, flexibilities and protection for employees with minimum occupational burden or stress. It provides *inter alia*, that an employer cannot ask a full-time employee to work more than 38 hours in a week.<sup>30</sup> In addition, an employee can refuse to work additional hours as these hours may affect employee's health and safety or disrupt personal matters, including family responsibilities<sup>31</sup> The Act further entitles "an employee who is a parent or has responsibility for the care of a child may request the employer for a change in working arrangements to assist the employee to care for the child under school age or is under 18 and has a disability".<sup>32</sup> Besides annual leave, the Act provides several leaves for employee like entitlement to unpaid special maternity leave and paid personal leave.<sup>33</sup> It also allows an employee for "two days of compassionate leave and community service leave".<sup>34</sup>

Apart from the above, the Act includes flexible terms and excludes discriminatory conditions against an employee on the ground of "race, color, sex, sexual preference, age, physical or mental disability, marital status, family or pregnancy, religion, political opinion, national extraction or social origins" which are often responsible for occupational stress.<sup>35</sup> The discrimination in the workplace is governed by the anti-discrimination legislations such as "the Age Discrimination Act 2004, the Disability Discrimination Act 1992, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Anti-Discrimination Act 1977 (New South Wales), the Equal Opportunity Act 1995 (Victoria), the Anti-Discrimination Act 1991 (Queensland), the Equal Opportunity Act 1984 (Western Australia), the Equal Opportunity Act 1984

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<sup>28</sup> EmploySure, *What Is the Fair Work Act?* <http://employsure.com.au/guides/fair-work-australia/what-is-the-fair-work-act/> accessed 04 June 2018.

<sup>29</sup> Fair Work Act 2009, Chapter 2.

<sup>30</sup> Fair Work Act 2009, s. 62.

<sup>31</sup> Fair Work Act 2009, s. 62(3)(a) and (b).

<sup>32</sup> Fair Work Act 2009, s. 65(1)(a) and (b).

<sup>33</sup> Fair Work Act 2009, ss. 80 and 96.

<sup>34</sup> Fair Work Act 2009, ss. 104 and 108.

<sup>35</sup> Fair Work Act 2009, ss. 144 and 153.

(South Australia), the Anti-Discrimination Act 1998 (Tasmania), the Discrimination Act 1991 (Australian Capital Territory), the Anti-Discrimination Act 2015 (Northern Territory)”<sup>36</sup>

Furthermore, Part 3 of the Commonwealth Fair Work Act 2009 outlines that rights and responsibilities of employees and employers organisations. The aims of this Part are to protect workplace rights, freedom of association, workplace discrimination and to provide effective relief for persons who have been discriminated against and victimised.<sup>37</sup>

As far as safety and health is concern, the Occupational Safety and Health Act 1984 and the Occupational Safety and Health Regulation 1996 are the governing laws in the Western Australian workplaces. The above laws are also supported by codes of practice and guidelines introduced in 2017. Safety and health issues are responsible for occupational stress and ought to be handled in an effective manner. The Act and regulation impose several responsibilities on employers, employees, self-employed people, manufacturers, designers, importers and suppliers. These include obligation to provide safe workplace; provide information, instruction and training; conduct risk assessments investigation of hazards or injuries reported to employer by employee, provide notification about reportable injuries for work safety and not to expose workers to hazards.<sup>38</sup> Under the Occupational Safety and Health Act 1984, employers shall provide and maintain a working environment where the employees are not exposed to hazards. Any breach of obligation from the part of the employer is treated as an offence and will be liable to penalties imposed under the Act.<sup>39</sup>

An employee is also under obligation “to take reasonable care for ensuring his or her own safety and health at work; and to avoid adversely affecting the safety or health of any other person through any act or omission at work”. If an employee contravenes his or her duty in circumstances of gross negligence, the employee commits an offence and is liable for a first offence, to a fine of AUD25,000 and for a subsequent offence, to a fine of AUD31,250 under the Act.<sup>40</sup> The Act further obliges the employer to provide information, instruction and training regarding on grievance procedure, appropriate workplace behaviour and monitor the employees in order not to expose them to psychological factors that may lead to work-related stress.<sup>41</sup> In addition, the reported injuries and hazard in relation to “psychological factors and work-related stress” should be investigated and determine the action to be taken and notify the employee as well.<sup>42</sup>

In New South Wales, the law that governs the issues of health, safety and welfare of persons at work is the Work Health and Safety Act 2011. The objectives of the Act are “to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant, and providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety, securing compliance with this Act through effective and appropriate compliance and enforcement measures, providing a framework for continuous improvement and maintaining and

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<sup>36</sup> Fair Work Act 2009, s. 351(3).

<sup>37</sup> Fair Work Act 2009, s. 336.

<sup>38</sup> Government of Western Australia, *Stress - What is the Law?* <http://www.commerce.wa.gov.au/worksafe/stress-what-law> accessed 04 June 2018.

<sup>39</sup> Occupational Safety and Health Act 1984, ss. 19 and 19A.

<sup>40</sup> Occupational Safety and Health Act 1984, ss. 20 and 20A.

<sup>41</sup> Occupational Safety and Health Act 1984, s. 19(1)(b); Occupational Safety and Health Regulations 1996, Regulation (3.1).

<sup>42</sup> Occupational Safety and Health Act 1984, s. 23K.

strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction”.<sup>43</sup>

Part 2 of the Work Health and Safety Act 2011 deals with detail outlines regarding health and safety issues under several divisions. The Act discusses the “primary duty of care that a person conducting a business or undertaking must ensure, so far as it is reasonably practicable, the health and safety of workers engaged, or caused to be engaged by the person, and workers whose activities in carrying out work. The person should also ensure that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking”.<sup>44</sup> These provisions indicate that the law is very much concern about unwanted circumstances in the workplace which is often happens in the form of stress. The Queensland Work Health and Safety Act 2011 contains same provisions with the same objectives as New South Wales. The Act deals with detail outlines regarding health and safety issues under several divisions.

Apart from the above, the Work Health and Safety Regulation 2012 is aligned with New South Wales, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory and the Commonwealth. These laws establish certain duties relating to the health and safety, provide for worker representation, consultation and participation including through Health and Safety Representatives and Health and Safety Committees. Part 3 of the regulation contained detail guidelines on workplace management which includes the health and safety issues. On the other hand, Part 4 deals with the hazardous work which may also be the cause for occupational stress.

## Canada

In Canada, there are Federal and Provincial Occupational Health and Safety Regulations for ensuring and protecting occupational health and safety of employees at the workplace. Every province in Canada has their own regulations for covering the occupational health and safety in workplace for the employees.<sup>45</sup> The Occupational Health and Safety Regulations are the basic laws for the protection of the employees in the workplace from any sort of physical and mental disturbance which is often known as occupational stress. Part X of the Regulations outlines in detail about hazardous substances including workplace safety data sheet. The Regulations also provide guidelines on occurrence investigation, reporting and recording of workplace injury.<sup>46</sup> Furthermore, Part XVII of the Regulations discusses the safe occupancy of the workplace and the prevention mechanisms are discussed in Part XIX.

The Canadian Centre for Occupational Health and Safety Act 1985 is serving as the primary national agency for ensuring and improving occupational health and safety in workplace and preventing work-related injuries, illnesses and deaths. The Act was legislated in 1978 and revised in 1985. The primary purpose of the Act is “to promote the fundamental right of Canadians to a healthy and safe working environment by creating a national institute concerned with the study, encouragement and cooperative advancement of occupational health and safety”.<sup>47</sup> The objectives of the law are to promote health and safety in the workplace and the protection of physical and mental health of the workers in Canada.

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<sup>43</sup> Work Health and Safety Act 2011, s. 3.

<sup>44</sup> Work Health and Safety Act 2011, s. 19.

<sup>45</sup> The provincial regulations are as follows: the British Columbia Occupational Health and Safety Regulation, the Alberta Occupational Health and Safety Act, the Manitoba Workplace Safety and Health Act, the Saskatchewan Employment Act together with the Occupational Health and Safety Regulations 1996, the Ontario Occupational Health and Safety Act, Quebec Regulation Respecting Occupational Health and Safety, Newfoundland Occupational Health and Safety Regulations 2012, the New Brunswick Occupational Health and Safety Act, the Prince Edward Island Occupational Health and Safety Act, and the Nova Scotia Occupational Health and Safety Act.

<sup>46</sup> Occupational Health and Safety Regulations (15.1) to (15.11).

<sup>47</sup> Canadian Centre for Occupational Health and Safety Act 1985, s. 2.



It also aims at facilitating “consultation and cooperation among federal, provincial and territorial jurisdictions, and the participation by labour and management in the establishment and maintenance of high standards of occupational health and safety appropriate to the Canadian situation”. In addition, it is intended to assist in the “development and maintenance of policies and programs aimed at the reduction or elimination of occupational hazards, and to serve as a national center for statistics and other information relating to occupational health and safety”.<sup>48</sup> Therefore, the Center has the power to ensure occupational friendly environment for the employees which ultimately contributes to a stress free workplace.

## **The United Kingdom**

In the United Kingdom, the Health and Safety at Work Act 1974 is the basic legislation for health and safety management in the workplace. The law is enacted and enforced by the Health and Safety Executive (HSE) and local authorities known as the “Local Council”. The Act requires the employers to ensure health, safety and welfare at work for all of their employees. The Act plays a significant role in providing proper guidance on relevant legislation. It undertakes study on the effectiveness of regulations, consult and advice with the employers and employees representatives and also advocates the legislators about the new recommendations for advancement of health and safety.<sup>49</sup>

Section 2 of the Act imposes general responsibility of employer towards their employees. It provides *inter alia*, that every employer shall be duty bound to ensure the health, safety and welfare at work of all his employees. In order to keep a safe workplace, the employer should maintain a system of work, making appropriate arrangements in “handling, storage and transport of articles and substances safely, provide information, instruction, training and supervision as is necessary to ensure the health and safety at work of the employees”.<sup>50</sup>

Apart from the above, Management of Health and Safety at Work Regulations 1999 is another regulation functioning in the United Kingdom. These Regulations require the employers to review and manage risk arising out of the employees’ work activities. They are also responsible to make arrangements for emergency situations, provide adequate information and training for employees, and health surveillance as necessary. In contrast, the employees are also obliged to follow the instructions given through training and required to communicate with the employer or authorised person about any imminent danger to health and safety or any inadequacy in health and safety arrangements.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, which was revised in 2013, deals with the reporting of work-related deaths, major injuries, work-related diseases and dangerous occurrences. It requires the employer or his representatives in charge of work premises to report and keep records of work-related accidents which cause deaths. Moreover, the Workplace (Health, Safety and Welfare) Regulations 1992 is concerned with the working environment of the employees in a workplace. It imposes duties on the employers to make sure that the workplace is suitable and safe for the employees to carry out the tasks, and that the workplace has no risk to employees and others. These regulations cover all aspects of the working environment such as maintenance of the workplace, equipment and so on.

## **New Zealand**

The occupational stress is also emphasised in New Zealand and the authority there is trying to tackle the problem through enacting laws and regulations. A report in 2012 has shown that one out of five employees is struggling with work-related stress and one out of ten workers is dissatisfied with their

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<sup>48</sup> Canadian Centre for Occupational Health and Safety Act 1985, s. 3.

<sup>49</sup> NHS Health Scotland - Healthy Working Lives, *Health and Safety Legislation*, <http://www.healthyworkinglives.com/advice/Legislation-and-policy/Workplace-Health-and-Safety/health-safety-legislation> accessed 04 June 2018.

<sup>50</sup> Health and Safety at Work Act 1974, s. 2.

work-life balance.<sup>51</sup> In some cases, the employer expects their employee to go above and beyond in the line of duty which is a key aspect of creating occupational stress. Ill health is another significant cause of emerging stress often deriving from working practice between employer and employee. There has also been a noticeable increase in the number of stress related personal grievance claims in New Zealand.<sup>52</sup>

The New Zealand Health and Safety in Employment Act 1992 has been substituted by the Health and Safety at Work Act 2015. This is the basic legislation that regulates workplace health and safety issues in New Zealand together with the regulations made under that Act. By the recommendation of Independent Taskforce on Workplace Health and Safety, the legislature enacted the above Act and the formation of New Zealand Work Safe which is the government agency that works as the health and safety regulator. The Act introduces principles, rights and obligation in relation to workplace health and safety.

The purpose of the Act is to give a balanced mechanism for ensuring safety matters in workplace through “protecting employees from all sorts of harm, providing logical and competent workplace representation, co-operation, and resolution of issues in relation to work health and safety”. The Act aims at requiring the employers to improve on work health and safety practices by means of providing counseling, information and training about safety issues. The Act also requires the employers to arrange an appropriate enforcement measures and to ensure effective scrutiny and review of actions toward the welfare of the employees. Additionally, the Act imposes an obligation on the employers to furnish a framework for continuous improvement and progressively higher standards of work health and safety.<sup>53</sup>

Part II of the Act outlines the principles of health and safety duties and liabilities from section 30 to section 57. Section 36 of the Act directs “the person conducting a business or undertaking certain responsibilities regarding maintenance of plant, structures and safe systems of work and adequate facilities for the welfare at work and continuous supervision for keeping safety of the workplace for the employees”.<sup>54</sup> Liabilities to breach of obligation are discussed in section 50 of the Act.<sup>55</sup>

In 2016, a special guide was introduced to provide a key health work and safety law and its regulators in New Zealand. The guide explained the fundamental requirements of the Health and Safety at Work Act 2015 and the role of Work Safe. This guide also provides explanation of certain concepts and instruction to meet regulatory requirements. It has 10 clauses describing the duties of persons conducting a business or undertaking, notifications and authorisations, duty of the officers, workers, and other persons at workplaces, enforcement tools, offences and penalties under the Act.

Apart from the above, the Hazardous Substances and New Organisms Act 1996 is the law that regulates the hazardous substance and new organism to protect the workplace environment for the sake of health and safety of the employees.<sup>56</sup> The governing principles are “the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems and maintenance and enhancement of the capacity thereof for well-being of future generations”.<sup>57</sup> Duties of an enforcement officer under this Act are to give “advice and information on the provisions of this Act, promote and monitor compliance, provide information to

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<sup>51</sup> Newshub, *Does New Zealand need an anti-stress law?* <http://www.newshub.co.nz/nznews/does-new-zealand-need-an-anti-stress-law-2014101716> accessed 04 June 2018.

<sup>52</sup> Find Law New Zealand, *Workplace Stress*, <http://findlaw.co.nz/articles/4251/workplace-stress.aspx> accessed 04 June 2018.

<sup>53</sup> Health and Safety at Work Act 2015, s. 3.

<sup>54</sup> Health and Safety at Work Act 2015, s. 36.

<sup>55</sup> Health and Safety at Work Act 2015, s. 50.

<sup>56</sup> Hazardous Substances and New Organisms Act 1996, s. 4.

<sup>57</sup> Hazardous Substances and New Organisms Act 1996, s. 5.

the Authority if requested to do so<sup>58</sup>. General responsibilities are discussed in section 13 of the Act. Part V of the Act deals with the Assuagement of Hazardous Substances and New Organisms. The pecuniary penalties and civil liability for breaches relating to new organisms is provided in Part VII-A which from section 124A to section 124I.

## CONCLUSION

The common perception of employers is to maximise profit and minimise the cost. In order to achieve this goal, sometimes, they become less attentive toward the employees working capability and physical and mental conditions. They focus much on the schedule of production and shipment and tend to neglect the physical and psychological conditions of their workers. As discussed above, the laws in Malaysia, Australia, Canada, the United Kingdom and New Zealand do not explicitly address the issue of occupational stress. The workplace safety and health legislations in the abovementioned jurisdictions merely emphasised on workers safe and healthy work environment at the workplace and thus excludes psychological distress at work. In other words, the existing legislations on occupational health and safety do not explicitly address on the emotional and mental health of employee let alone imposing any liability on the employer. It is therefore submitted that a specific legislation is warranted to regulate occupational stress closely and carefully in order to provide better work-life balance to the workforce.

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<sup>58</sup> Hazardous Substances and New Organisms Act 1996, s. 12.

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