

# MENTAL HEALTH LAW AND POLICY AT THE WORKPLACE: SHOULD MORE BE DONE POST PANDEMIC?

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## Abstract

In 2019, 2.3 percent of the Malaysian adult population – amounting to approximately 500,000 persons – were found to be depressed or experience some form of mental health issues. This number is expected to increase eminently as an aftermath of the current COVID-19 pandemic, with companies and employers restructuring their businesses to keep themselves afloat. As such, employees who seek to better secure their jobs commit more to their work with less regard to other aspects of their life including their mental well-being. The finding is that at the end of 2020, 82.5 percent of Malaysian workers across different ethnicities expressed a high level of worry about losing their jobs, consequentially contributes to more stress at work and mental health issues in the workplace. This paper seeks (i) to examine the relevant legislations on mental health (ii) to analyse work related legislations and labour policies and (iii) to determine how supportive they are to individual workers with mental health issues. These issues are determined primarily through doctrinal study, legal gap and content analysis of the relevant legislations and labour policies. A comparative study between Malaysia and several other countries was also undertaken to provide a more holistic perspective on the issues. The outcome of this paper would contribute towards a better understanding of the employees' mental needs and better regulations of the workplace environment.

**Keywords:** *workplace mental health, mental health laws,*

## **INTRODUCTION**

As the main driving force in a workplace is the people, discussions on mental health issues and its causes are inescapable. Mental health issues or mental disorders concern conditions that implicate a person's psychological being and may include various conditions including depression, impulsive control disorders and anxiety (1). Being invisible to the eye in contrast to its physical counterpart, mental health often takes the backseat of most discussions including those related to business management and productivity.

The lack of mental health literacy among the public contributed to the negative stigma among the public on mental health, thus leading to failures to mitigate risk of mental health issues and reacting to such issues when they manifest (1). This existing stigma and its implications were further exacerbated by the COVID-19 pandemic in 2020, of which Malaysia and the rest of the world saw major shifts in lifestyle and social and work interactions through practices of physical distancing and remote communications. Businesses and the workplace suffered immensely both in terms of revenue and employee's morale as the International Labor Organization (ILO) warned in its press statement that the world unemployment rate is expected to increase drastically and may have a worse impact than that of the 2008 global financial crisis (2). It was eventually recorded that about 114 million jobs worldwide were lost in 2020, with 81 million of the people becoming inactive (not employed or unemployed) (3).

Therefore, it is imperative for Malaysian businesses and the workplace to brace itself for the mental aftermath resulting from changes brought by the COVID-19 pandemic. As such, this paper seeks to elaborate on the mental health issues at the workplace that exist prior to the pandemic and ones

that arose due to the pandemic and analyse the relevant laws relating to workplace mental health guidelines that are in operation especially in terms of how viable and supportive they are to the employee's mental health.

## **METHODOLOGY**

To better determine the adequacy of the current legal framework pertaining to workplace mental health, a doctrinal study was conducted on existing reports and journal articles that narrated the pre-existing mental health issues at the workplace and the effect the COVID-19 pandemic has towards such issues. Upon such determination, another doctrinal study was conducted of which the relevant legislations and policies in Malaysia, Singapore, and United Kingdom were identified based on their relevancy to the issue in hand. Content analysis was then undertaken on each of these legislations and policies specifically on provisions that be prominent in addressing employer-employee relationship, working arrangements implicating mental health and response to the COVID-19 pandemic. Lastly, a comparative study between the countries is made through another content analysis to determine any existing legal gaps between the countries on workplace mental health.

For the comparative study, Singapore was selected on the basis of it being one of the closest geographical neighbour of Malaysia that shares similar societal culture with historical legislative ties. Meanwhile, the United Kingdom is selected due to its legal prominence and reference as a common law country and considering the fact that many of Malaysia's legislation was modelled after the United Kingdom by virtue of the former being a former colony of the latter.

## **FINDINGS**

### **Existing mental health issues at the workplace**

Among the identified causes of mental health issues at the workplace are poor connection with the employers and colleagues, performance pressure, poor job prospects, bureaucratic constraints, and work family conflict (4).

#### *Pressure to perform*

Employers tend to push their employees to boost their work performance and productivity without paying greater attention to the employees' needs and mental health despite the fact that stress among the employees is one of the significant factors that influences the level of employees' work performance and productivity (5). Furthermore, changes made by employers towards the work structures that contributed to the widening to the employee's job scope at the cost of their control over such work would also have an adverse effect to the employees' mental health (6).

#### *Discrimination by employers*

According to Bunbury (2009), Konur (2002), and Thornicroff (2006) as cited in Lockwood, Henderson & Thornicroff (2014), it is difficult for those with mental illness to get employed and retained (7). Thus, unemployed individuals with pre-existing mental health issues that are trying to secure a job are afraid of disclosing the truth regarding their mental health problem to the prospective employers during a job interview. This was further exacerbated by the prejudice from employers who view that employees with mental health issues are a risk to the company (8).

Moreover, it was also reported that a bad mental health condition is related to the occurrence of losing one's job (9).

#### *Workplace setting requirement*

Some employees with mental health issues require different needs than that of normal people. However, such a difference does not mean that the former could not outperform the latter. As cited in Leka et al (2015), employment rates of people with mental illness can be improved through a better working environment (10). Catering to these needs would assist employees with mental health issues immensely to sustain a prolonged outstanding performance. On the other hand, it was observed in Goetzel et al (2018) that employers are worried about accumulating the cost for employees' health care including mental health (11).

#### **COVID-19 pandemic and the “New Normal”**

Pursuant to the COVID-19 pandemic, the “new normal” such as social distancing and working from home becomes customary with meetings and work discussions being moved to the digital world via online platforms such as Zoom and Google Meet. However, these changes were not without consequences, as the public grew fatigued by the changing guidelines and restrictions being imposed and the uncertainty of the end to the global pandemic. Prolonged social distancing and quarantine, despite its medical benefits against the spreading of a disease, is also expected to take a toll upon individual's life as it increased the risk of issues such as anxiety, loneliness, depression, domestic violence and child abuse (12).

### *Insecurity over job security*

Job insecurity may be in the form of fear of losing the job, worried about pay cuts, anxious about getting layoffs, and reduced benefits (13). The COVID-19 pandemic and subsequent travel restrictions has taken a toll on the world economy and many lives are at stake especially those who depend on their low income to survive the days. In the previous outbreak of the Severe Acute Respiratory Syndrome (SARS) disease, it was discovered that an epidemic could increase the level of one's job insecurity (14). This insecurity seemed to be emulated in the current COVID-19 pandemic as it was reported that job insecurity has greatly increased the level of anxiety and depressive symptoms among the employees (15). In Malaysia, it was found that 82.5 percent of Malaysian workers across different ethnicities were concerned about their job security (16), which contributed to disregard of their own mental well-being in favour of maintaining good work performance to secure their jobs, even if such performance requires utmost adherence to any work demands.

### *Work-life balancing difficulties*

For some employees, their work-life balance is already in disarray to begin with. Thus, when COVID-19 plagued the world, and most of the government-imposed quarantine or lockdown limits the movement of the employees within their household, WFH became the staple work system for employees to remain productive for their work. This makes it more difficult for the employee to segregate their work and home lives especially those who live with families or friends. (13) WFH, in fact, has been counterproductive, especially for those who have to work from home while at the same time caring and teaching their children (17). Furthermore, as household and job responsibilities increase the workload of a working woman (18), it is not far-stretch to assume that

working in the same space where their household duties are at may contribute to mental health issues among employees.

### **Workplace mental health laws, guidelines and policies**

There are a few legislations that are available in assisting employees to understand better on their work relationship with the employers including on the general welfare of the employees and the liability conferred over employers to always ensure a safe and healthy workplace environment for their employees. For the purpose of this paper, the following laws would be deliberated upon the provisions relevant to dealing with mental health issues at the workplace only.

### **Malaysia**

#### *Employment Act 1955 (EA 1955)*

Being the most pertinent legislation governing the employer-employee relationship, the EA 1955 laid down the prerequisites for employers upon the employment of any persons. Among these prerequisites are the number of leaves entitled by the employees – sixty days for maternity leave (Employment Act 1955, s.37) (albeit female employees from public sectors are entitled to up to 90 days paid leave pursuant to a 2012 amendment of the EA 1955), eight to sixteen days of annual leave depending on the length of service rendered by the employee (Employment Act 1955, s.60E) and fourteen to sixty days for sick leave depending on the severity of such illness (Employment Act 1955, s.60F) – by which throughout the period of these leaves, employers shall ensure that the employees are paid accordingly.

EA 1955 also deliberated extensively on the termination of service whereby the notice of termination by the employer or employee must be provided within a certain period prior to such termination except for willful breach of specific conditions mentioned in the contract (Employment Act 1955, s.13). To emphasize on such a matter, it is also required by the Act for the conditions leading to termination of an employment and the necessary procedures to be spelt out clearly in the contract of service prior to it being signed (Employment Act 1955, s.10). Apart from benefitting the knowledge of both the employers and employees pertaining to the rendered service, the provision also protects the interest of the employee from any wrongful or discreet termination by the employer, thus contributing to increased sense of job security for the employees.

#### *Occupational Safety and Health Act 1994 (OSHA 1994)*

OSHA 1994 was enacted with the aim of ensuring safety and well-being of the employees through the promotion of a safe workplace environment (Occupational Safety and Health Act 1994, s.4). To fulfil such aim, the National Council for Occupational Safety and Health (NCOSH) were established as a body that is responsible in determining policies and guidelines for occupational safety and health (Occupational Safety and Health Act 1994, s.8) and was composed of representatives from the Ministry of Human Resources and other relevant stakeholders (19).

Pursuant to the Act, employers are conferred with the duty to make the necessary arrangements to the best of their capabilities and practicality to create a safe and secured work environment for their employees during their course of work (Occupational Safety and Health Act 1994, s.15.) Policies and regulations relating to the work must also be made in respect of the safeguarding of the employees' overall safety and well-being and must also be made to be known amongst the



employees (Occupational Safety and Health Act 1994, s.16.) Failure to fulfil such duties may render the employer to be liable to a maximum of RM50,000.00 fine or two years in prison or both (Occupational Safety and Health Act 1994, s.19).

Aside from duties of employers, employees were also expected to take reasonable care of their own safety and well-being during the course of their work by adhering to the company's guideline or policies relating to occupational health or safety while also practicing practical and reasonable protective measures during the course of work including wearing the appropriate clothing and equipment (Occupational Safety and Health Act 1994, s.24).

#### *Person with Disabilities Act 2008 (PDA 2008)*

In consideration of the need to assist individuals with disabilities to integrate with society, the Act was enacted to protect the interest of these individuals as a legitimate member of society that deserves special needs (Persons with Disabilities Act 2008, Preamble). The Act defines those with disabilities to include "those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society" (Persons with Disabilities Act 2008, s.2).

Mental health issues do not necessarily correspond to a disability as the majority of such issues do not cause any permanent impairment on persons suffering from it. However, it is important to acknowledge that there is a risk for an employee to become disabled during their course of work and thus the PDA 2008 ensures that even in the worst-case scenario, the right of the employee remains protected. The Act guarantees any persons with disability the right to access to

employment including their right to be given equal opportunities similar to those offered to those without disabilities, the right to be properly remunerated in conjunction with their work performance, and the right to a safe and healthy working condition where they are protected from any forms of harassments and discriminations (Persons with Disabilities Act 2008, s.29).

### *Mental Health Act 2001 (MHA 2001)*

As the main legislation directly dealing with issues of mental health, the Act governs matters relating to mental disorders and serves the objective of providing “for the admission, detention, lodging, care, treatment, rehabilitation, control and protection of persons who are mentally disordered and for related matters” (Mental Health Act 2001, Preamble). It extensively covers all procedures relating to the treatment of those suffering from mental health issues beginning from the admission of the individual into the relevant psychiatry hospital up till their eventual discharge from the institution. The Act also authorised the appointment by the Minister of any private community health centre to undertake any “screening diagnosis, treatment and rehabilitation of any person suffering from any mental disorder.” (Mental Health Act 2001, s.33). Each of the centres would be provided with a trained medical officer who is experienced in psychiatry as the person in charge of the centre (Mental Health Act 2001, s.35).

### *Pandemic guidelines and policies for workplace*

The Malaysian National Security Council (NSC) through various ministries issued strict restrictions and health guidelines on businesses that wished to survive the pandemic. Among the conditions imposed by the Ministry of International Trade and Industry were the reduction of employee’s presence in workplace premises to only 50 percent with employers (20) being

encouraged to have employees whose physical attendance is unnecessary to continue work on a Work from Home (WFH) basis (21).

Employees who are present at the workplace are required to always maintain physical distance between each other while those who exhibit any signs of illness were not allowed to attend any business premise and were isolated in quarantine before being referred to the nearest health centre (20). Employers were required to prepare hand sanitizers and body temperature-checking devices near the entrance of their business premise and must also ensure proper sanitization of any place where physical contacts are the most frequent (22). In addition to employers' duties to maintain the physical health of their employees, the Ministry of Health in its guideline stated the requirement for employers to carry out mental health assessments among employees and take any reasonable initiatives to reduce stress in their workplace.

## **Singapore**

Many laws in Singapore are modelled after the common law of England such as the previous Mental Disorders and Treatment Act 1965 which was modelled after the UK's Mental Health Act 1959 (23). In 2008, the Mental Disorders and Treatment Act 1965 was replaced with the Mental Health (Care and Treatment) Act 2008. In the same year, Singapore had also legislated another law related to mental health issues - the Mental Capacity Act 2008.

### *Employment Act 1968 (EA 1968)*

Similar to the EA 1955, the EA 1968 deliberated on the general rights of the employers and employees regarding the conditions of employment. In 2019, the EA 1968 was amended to include

all employees under a contract of service which covers both local and foreign employees. Employees in Singapore are entitled to different kinds of leaves (24) including adoption leave for adoptive mothers, annual leave, childcare leave, maternity leave, paternity leave, shared parental leave, sick leave, and unpaid infant care leave.

### *Workplace Safety and Health Act 2006 (WSHA 2006)*

The function of the Act is to ensure the safety and health of all employees by requiring the stakeholders to take reasonably practicable measures at the workplace. The three guiding principles of the Act (25) are (i) reducing risk at the source by requiring all stakeholders to remove or minimise the risk they create; (ii) encouraging industries to adopt greater ownership of safety and health outcomes; and (iii) imposing higher penalties for poor safety management and outcomes. The Act deliberated on the general duties of employers and employees in respect of their health and safety while also act as an authority for the establishment of the Workplace Safety and Health Council (WSHC), a council which serves to assist with the fulfilment of the objective of the WSHA 2006.

The WSHA 2006 also provides for general penalties (Workplace Safety and Health Act 2006, s. 50). A natural person guilty of an offence under the Act may be fined to a maximum \$200,000 or imprisonment not exceeding 2 years or both. A maximum fine of \$500,000 may be imposed to the body corporate that is guilty of an offence under this Act.

### *Mental Health (Care and Treatment) Act 2008 (MHCTA 2008)*

The main purpose of the MHCTA 2008 is to allow the State authority to detain into a psychiatric institution, involuntarily, someone who has or suspected to have mental illness if that someone is a danger or risk to himself or other people (26). The authority vested with the power under this Act is trained and provided with the internal Standard Operating Procedures (SOP) that allow them to recognize the symptoms of a person with mental health issues and how they can respond and/or interact effectively. Notably, the persons detained under the Mental Health (Care and Treatment) Act 2008 are treated fairly with the same standard of care of other patients. If there is any concern regarding the detention and services provided by the Institute of Mental Health, the patients or family are welcomed to give feedback (26) for future improvisation.

### *Policies and advisories on workplace mental health*

The Tripartite Advisory on Mental Well-Being at Workplaces was jointly issued by the Ministry of Manpower (MOM), the National Employers Federation (SNEF) and the National Trades Union Congress (NTUC) of Singapore (27), each of them is one of the members of the Tripartite Alliance Limited (TAL) which also supports the WSHC (28). The advisory identified the possible factors leading to work stress and as such issued three sets of recommendations to the employees, department and organizations on how to deal with mental health issues at the workplace (27). Furthermore, the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP), one of the agencies under the WSHC updated its advisory to employers in which it discourages employers from bringing up any questions regarding mental health condition of the prospective employees during job interviews or applications, failure of which may cause their employing privilege to be revoked by MOM (29).

## **United Kingdom (UK)**

### *Employment Act 2002 (EA 2002) and the Employment Rights Act 1996 (ERA 1996)*

On employer-employee relationship, the EA 2002 shares major similarity with the EA 1955 especially on the rights of employees to certain leave periods subject to varying situations. However, a key notable difference lies with the existence of the ERA 1996, an act which serves to consolidate on employment matters including towards safeguarding the employee's interests, of which the Act explicitly spell out the various rights for employees including the right to be protected from suffering any detriments due to the action of the employers (Employment Rights Act 1996, s.44), the right to take reasonable time off from work to attend to family matters as listed in the Act subject to informing the employers of the matter or incident (Employment Rights Act 1996, s.57A), and the right to request for variation to the conditions of employment (Employment Rights Act 1996, s.80F). The Act also further deliberated on the right of the employee to not be unfairly dismissed from work (Employment Rights Act 1996, s.94) which includes the necessary procedures to be taken by an employer to effect any dismissal (Employment Rights Act 1996, s.96) and the appropriate compensation to be awarded in the event of such unfair dismissal (Employment Rights Act 1996, s.118-123).

### *Health and Safety at Work etc. Act 1974 (HSWA 1974)*

The Act mainly deliberates on ensuring safety and health protection of persons at work, of which it elaborated on the general duties of every person at the workplace including the duty of employers to make necessary arrangements to safeguard the well-being of employees (Health and Safety at Work etc. Act 1974, s.2) and the duty of employees to take reasonable care of themselves at their workplace (Health and Safety at Work etc. Act 1974, s.7). The Act also authorised the

establishment of a body governance in the form of the Health and Safety Executive (HSE) (Health and Safety at Work etc. Act 1974, s.10) of which the body functions to issue and approve any regulations or practical guidance pertaining to health and safety at a workplace (Health and Safety at Work etc. Act 1974, s.15) as well to enforce the provisions of the Act (Health and Safety at Work etc. Act 1974, s.18) and appoint inspectors for such purpose, who will carry out his duties subject to the powers and limitations expressed in the Act (Health and Safety at Work etc. Act 1974, s.19).

### *Equality Act 2010 (EA 2010)*

As an effort to reduce socio-economic inequalities among the people, the Act was introduced to combat against discrimination and harassment and secure interest of people. To do so, the Act deliberated on several characteristics that are deemed as ‘protected characteristics’ which are age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation (Equality Act 2010, s.4). These protected characteristics were each dealt with according to a well-defined context, although the general notion is that they are not to be discriminated against or harassed due to the person falling in one of the protected characteristics.

In relation to mental health, the Act defined any person who has any long-term mental impairment which affects the person’s ability to carry out their daily activities to be regarded as a person with disability (Equality Act 2010, s.6). To reduce discrimination or inequality against such person, the Act conferred the duty to any relevant person, whenever the situation permits, to make the necessary adjustment by removing any physical hindrances at a specific location (for employers

would be the relevant office or workplace) or by providing such auxiliary aid necessary for the disabled persons. (Equality Act 2010, s.20) The Act further elaborated on ensuring equality in different settings including at work of which employers are prohibited from conducting any form of harassment against their employees (Equality Act 2010, s.40) and that it is a duty for employers to make necessary adjustments to prevent such ordeal even if the employees are contract workers (Equality Act 2010, s.41).

### *Mental Health Act 1983 (MHA 1983)*

As the main legislation governing matters relating to mental health, the Act mainly deals with the treatment and care of patients similar to the MHA 2001. It elaborated extensively on the due process to be undertaken in treating those detained under the Act and the duties of the relevant authorities and persons who are responsible to the patient. A notable provision of the Act concerns the enabling of independent mental health advocates, individual persons who are authorised to help patients according to regulations and in circumstances as may be determined by the Secretary of State (Mental Health Act 1983, s.130A and 130E).

### *Workplace mental health guidelines*

To address mental health issues at the workplace, the HSE issued the *HSE's Management Standards* which provided employers with important management points and the necessary measures to reduce stress-inducing risks at the workplace (30). The approach outlined six key standards that need to be taken into consideration by employers for effective implementation of the Management standards which are demands, control, support, relationships, role and change (30). To assist employers with the implementation of these standards, the HSE provided a thorough



step-by-step workbook *“Tackling Work-Related Stress using the Management Standards Approach”* as reference for employers accompanied with various toolkits as additional resources (31). The HSE also added to its Health Priority Plan series to address work-related stress through the *“Health priority plan: Work related stress”* which was aimed to encourage employers to take a proactive stance in managing work related stress, a prevalent factor leading to workplace mental health issues in the UK, in an effort to properly reduce such mental health issues (32).

In 2017, the UK government also commissioned an independent review to study the role of employers and the government in assisting those with mental health issues at the workplace. The *Stevenson / Farmer review of mental health and employers 2017* outlined a framework and set of recommendations that calls for actions by various stakeholders from different industries to enhance their approach in providing mental health support to their employees (33). The report engaged on multiple perspectives relating to the matter including on the prevalence of mental health issues among employees, the cost expected to be incurred by employers to deal with such matters, and recommendations to players from both public and private sectors (33).

In light of the recent pandemic, apart from issuing revisions to the workplace management guideline, the HSE issued the *“Talking with your workers about preventing coronavirus (COVID-19)”* guideline which provided a more comprehensive management recommendations for employers to maintain a healthy workplace environment and relationship with their employees as part of the effort to curb the spreading of the coronavirus (34). The guideline stressed on the importance of communication, whereby employers are guided with illustrations of methods on how to engage with their employees in identifying the sources of work-related stress, obtain

feedback, conduct assessments and implement adjustments according to the information gained from the employees (34).

## **DISCUSSION**

### **Distinguishing workplace mental health laws between Malaysia, Singapore and UK**

In analysing the different laws and policies in the countries, the differences were noted in accordance with different criterias; (i) laws concerning employer-employee relationship (ii) laws concerning health and safety at the workplace and (iii) policies and guidelines to manage mental health issues and needs of employees.

#### *Employer-employee relationship*

Having a better understanding of the nature of relationship between employers and employees may have a positive impact on the employees as such understanding mitigates any chances of dispute pertaining to the conditions of the persons employment, thus improving the employee's morale in the course of their work. As such, all three countries enacted Employment Acts that are very similar in terms of the conferment of leaves for employees, albeit varying periods for each different circumstances of maternity and annual leaves. The Malaysian EA 1955 is commonly regarded as the minimum benchmark for which the employers would be held liable to uphold (35), and such a notion is apparent upon going through the other Employment Acts in Singapore and UK.

A key distinction, however, could be observed in the ERA 1996 in the UK, an Act which provides a more extensive deliberation of the rights of the employees, many of which are absent in both

Malaysia and Singapore. Having the option to take time off from work rather than using up the annual leave is a more flexible and viable option to employees, who may want to utilise such annual leave for personal reasons.

Another important right being secured through the Act is the right of the employees to not suffer from any detriment caused by their employers. This expressed provision may be crucial as “leaving behind work” becomes a more difficult ordeal with the advancement of communication technology causing employees to be disturbed during their entitled time away from work including during their annual leaves (35). Such a situation is further exacerbated during the current COVID-19 pandemic, with WFH providing more leeway for employers to maintain work-related communications with their employees even beyond working hours.

The mental load exerted upon the employees especially when their livelihood both at home and at work are worsened by the pandemic necessitates assurance on their rights against any form of discrimination as a result of existing or deteriorating mental health conditions pursuant to the new working norms and the ability to make further adjustments and variations to their conditions of employment wherever necessary for the mutual benefit of themselves and their employers. Hence, the explicit protection against such detrimental treatment as conferred in the ERA 1996 may go leaps and beyond to assist employees in maintaining good mental health.

Pertaining to the right conferred to individuals who were mentally disabled to gain employment and to get similar opportunities offered to other employees, such is necessary in order to mitigate concerns of employees on the possibility of ramifications upon developing any mental health

issues as consequence to the new working norms and WFH. Such right is guaranteed through the PDA 2008 and the EA 2010. This guarantee of employment is not concisely legislated upon in Singapore although such guarantee may be implied through Singapore's ratification of the United Nations Conventions on the Rights of Persons with Disabilities (UNCRPD) in 2013 (36).

Lastly, the MHA 2001, MHCTA 2008 and MHA 1983 focused more on treating individuals with mental health issues. They do not provide for any specific guidelines or recommendations for any entities outside of the relevant psychiatric institutions to mitigate the risk of individuals developing mental health issues. However, these Acts remain as useful reference for employers to formulate their own mental health policies as well as identifying the relevant psychiatric institutions or advocates for beneficial communication on issues of mental health.

#### *Health and safety at workplace*

In general, Malaysia, Singapore and UK each have their own occupational safety legislations which provided the general duties to be abided by the employers when it comes to the physical workplace regulations and arrangements as well as its implications on the safety and well-being of the employees. The OSHA 1994 may have provided better and more concise direction on occupational well-being for the employers to abide by. However, there are no specific provisions on mental health of the employees nor were there any specific approach being recommended to deal with such an issue. One may assume mental health to be under the general blanket of health itself, thus employers must also take into consideration the mental state of their employees. Nevertheless, the lack of any specific provisions on the matter may imply that the OSHA 1994 were meant only to deal with the physical safety and well-being of the employees (5).

This notion may also be assumed in both the WSHA 2006 and HSWA 1974, which along with the OSHA 1994 also provided for the establishment of a governing body relating to occupational safety and well-being – Malaysia with its NCOSH, Singapore with its WSHC and UK with its HSE. The powers conferred to them are similar across the three Acts albeit a minor distinction in the HSWA 1974 which conferred more power to the HSE including the power to issue and approve health and safety guidelines. Nevertheless, a major difference could be observed regarding the exercise of these powers by the relevant bodies, which will be discussed in the next part of this discussion.

#### *Policies and guidelines for management of workplace mental health*

As deliberated previously, each country had established their own governing bodies as the authority for regulating workplace guidelines and recommendations and other functions corresponding to the powers conferred to them by each of their Acts. In general, these bodies are at the position of power to address any mental health issues and conduct any form of workplace overhaul where they deem necessary to protect the employees. As such, it is in the exercise of power of these bodies that we observed a disparaging approach between Malaysia and its counterparts in Singapore and UK, particularly in the issuance of relevant guidelines addressing the issue of workplace mental health.

Singapore through the WSHC and TAL issued the *Tripartite Advisory on Mental Well-Being at Workplaces* pursuant to their own Singaporean Mental Health Study 2016 while the UK issued two different guidelines in the form of the *Tackling Work-Related Stress using the Management*

*Standards Approach* and the *Health priority plan: Work related stress* based upon their own government commissioned studies. The UK's study, in particular the *Stevenson / Farmer review of mental health and employers 2017* provided a much holistic view on mental health including on the business cost implications to employers and the sociological concerns regarding the working culture in UK.

This is a stark difference from Malaysia's own initiatives of which until this day, there has yet to be any emphasis on workplace mental health despite myriad studies stating on the rapid inclination of mental health issues among Malaysians. Many of the issued guidelines revolved heavily on physical health and safety concerns, of which, without denying the importance of addressing such physical concerns, pose less to no concern on the explicit mental well-being of employees. This is prominently illustrated on the government's guidelines and policies issued to companies in response to the COVID-19 pandemic whereby the only mentioning of mental health management is through the broad context of general assessment of mental health risk to be conducted by the employers (20-22). Such guideline pales in comparison with Singapore's full-reliance upon its earlier issued Tripartite Advisory, which managed to deal with issues that are further implicated by the pandemic. UK's HSE meanwhile responded to the global pandemic by issuing the "*Talking with your workers about preventing coronavirus (COVID-19)*" guideline along with various toolkits as well as constant reiteration of the emphasis in implementing other relevant issued guidelines to deal with such matter more comprehensively.

These differences illustrate the lack of collaboration or "power will" by the relevant authorities in Malaysia to address the issue of workplace mental health. Despite a number of Non-Governmental

Organisation (NGO) and institutional reports detailing the growing concerns of Malaysians on mental health and recommendations for the appropriate response to the issue (1-3,5,8,16), there was little effort into converting these data and information into actual actions that could compel or bind, if necessary, the employers to consider on their employee's mental well-being.

Discussion	Malaysia	Singapore	UK
Employer-employee relationship	Sole reliance on EA 1955.	Sole reliance on EA 1968.	Reliance on EA 2002 supplemented by ERA 1996 which provided a much more extensive protection to rights favourable to employees.
	Right to employment and non-discrimination through the PDA 2008.	No specific legislation but implied guarantee through ramification of UNCRPD.	Right to employment and non-discrimination through the EA 2010.
Health and Safety at Workplace	General duties for both employers and employees deliberated in OSHA 1994.	General duties for both employers and employees deliberated in WSHA 2006.	General duties for both employers and employees deliberated in HSWA 1974.
	Established NCOSH	Established WSHC	Established HSE

Policies and guidelines for management of workplace mental health	No policy issued specifically on workplace mental health.	Issued the <i>Tripartite Advisory on Mental Well-Being at Workplaces</i>	Issued <i>Tackling Work-Related Stress using the Management Standards Approach</i> and the <i>Health priority plan: Work related stress</i>
	Minimal mentioning of mental health on the issued COVID-19 management guideline.	Reliance on Tripartite Advisory.	Issued <i>Talking with your workers about preventing coronavirus (COVID-19)</i> ”.

Table 1: Summary of discussion

### **Recommendation for post-pandemic workplace mental health planning in Malaysia**

Some countries have initiated guidelines and strategies to deal with mental health crisis since the beginning of pandemic in 2020. The UK for example, has issued several guidelines to organisation and corporations on dealing with mental health issues among employees. The International Labour Organisation (ILO) meanwhile has also provided many policy recommendations on how to manage work-related psychosocial risks during the Covid-19 pandemic. Malaysia being one of ILO’s signatories should take advantage of access to such recommendations. The easiest way is for Malaysia to transplant the recommendations to local policies and guidelines as appropriate.

The relevant body must also pay more attention on mental heavily on mental health issues at the workplace. Employers must be proactive in studying employee’s mental health needs.



Organisations must be convinced that creating the right eco-system and strategies would be an investment for the future. What is important is for organisation to have a framework that outlines concise management of mental health issues at the workplace including for work for home arrangements.

Among others, workplace hazard identification and risk assessment must also include work environment that affects psychosocial factors such as long working hours, reduced rest periods, increased workload and pressure, violence, and harassment towards employees with mental health issues. Organisations must regularly conduct hazard and risk assessment and identify control measures to reduce factors that trigger stress and anxiety at the workplace. Equally imperative is to have continuous promotion of training on coping mechanisms as well as mentoring and counselling employees with negative coping behaviours. Setting up psychological support at the workplace such as buddy system, self-calming sessions and access to psychosocial support services.

## **CONCLUSION**

The COVID-19 pandemic had brought upon changes to the workplace culture that poses impact on employees' mental health. This is further aggravated by the lack of understanding by employers on the employee's mental health issues and needs and the difficulty in maintaining a healthy work-life balance amidst such turbulent times.

We found that the existing laws and policies in Malaysia have already provide a foundation for a viable framework concerning workplace mental health. However, such may still be inadequate if

the relevant authority lacks attentiveness on the issue. In such case UK's comprehensive legislation and proactive attitude should be emulated if Malaysian authorities and employers wish to seek to provide the best for the employee's mental health at the workplace.

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