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Mental Health at the Workplace: Rights of Employees

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ABSTRACT

Keywords

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In several ways, the Coronavirus Disease 2019 (COVID-19) pandemic has profoundly altered social and working environments. Social distancing policies, mandatory lockdowns, isolation periods, and the fear of becoming ill, in addition to the suspension of productive activity, loss of income, and fear of the future, all have an impact on citizens' and workers' mental health. Workplace factors can have a significant effect on whether people's mental health improves or deteriorates due to the pandemic. This article discusses Malaysian law's position on mental health and whether employers can be held liable for their employees' mental health. The goal of this article is to examine the legal aspects of workplace mental health issues. We conducted doctrinal research on existing laws and policies focusing on workers' rights issues related to mental health in the workplace during the pandemic. It has been discovered that anxiety, depression, post-traumatic stress disorder (PTSD), and sleep disorders are more likely to affect healthcare workers, particularly those on the frontlines, migrant workers, and workers in contact with the public. Job insecurity, long periods of isolation, and uncertainty about the future exacerbate the psychological condition, particularly among younger people and higher educational backgrounds. Therefore, numerous organisational and job-related interventions can help mitigate this scenario, but the regulatory mechanisms governing this matter must be clearly defined.

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1. Introduction

During the COVID-19 pandemic, mental health concerns have become prevalent ([Bai et al., 2022](#); [Yonemoto & Kawashima, 2023](#)). Over the last few months, numerous news articles have revealed that many people are struggling with their mental health ([Wurtz et al., 2022](#)) and some have resorted to drastic measures in response ([Duden et al., 2022](#)). These concerns are

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unavoidable due to concerns about health and safety, the deteriorating COVID-19 situation, being confined to space during the lockdown in isolation, stressing over financial problems, and work performance coupled with fear of job loss ([Singh et al., 2020](#); [Xiao et al., 2022](#)). Furthermore, the 'new normal' of physical distancing contradicts the very nature of human beings as social creatures, as it exacerbates the daily struggles of those who experience them ([Bakkeli, 2021](#); [Mallett et al., 2021](#)).

According to local studies, 20% of people in this country experienced stress symptoms before the COVID-19 pandemic ([Lopez-Serrano et al., 2021](#)). The rate, however, has now risen to 38%. This indicates that people's mental health is deteriorating at an alarming rate ([Akintunde et al., 2021](#); [Aziz et al., 2020](#); [Marzo et al., 2021](#); [Mohamed et al., 2022](#); [Sugawara et al., 2022](#)). It is not something to be taken lightly because stress, if not appropriately managed, can lead to depression, which, if untreated, can lead to suicide ([Kone et al., 2022](#); [Tiesman et al., 2023](#)). According to Ministry of Health (MOH) data, a total of 1,080 attempted suicide cases were reported to have received treatment at MOH hospitals between January and December 2020. Still, this figure did not include statistics compiled by the Fire and Rescue Services Department Malaysia (JBPM). Thus, policies addressing occupational stress in the workplace should include strategies for reducing stress and its associated costs. In the meantime, an effective occupational stress policy should demonstrate the employer's commitment to providing a healthy and safe working environment. In addition, legislation should protect employees by creating a safe and healthy workplace.

This research addresses a significant gap in the existing literature by shifting the focus from conventional psychological perspectives to the legal and human rights dimensions concerning mental health, workplace conditions, and employee rights. While numerous studies have delved into the psychological aspects of these issues, there remains a paucity of research that scrutinises them through the lens of human rights law ([Almond et al., 2022](#); [Bryan et al., 2018](#); [Carta et al., 2022](#); [Irvine & Suter, 2023](#); [Nicholson, 2018](#); [Taubman & Parikh, 2023](#); [Van Hees et al., 2022](#); [Villarreal-Zegarra et al., 2022](#); [Zhang & Chen, 2022](#)). By emphasising the rights of employees within the workplace context, this study pioneers a novel approach that seeks to understand and address mental health challenges within organisations from a legal standpoint. By doing so, it not only offers a fresh perspective on an increasingly pressing societal concern but also contributes to bridging the gap between legal frameworks and mental health advocacy in the workplace.

2. Research Methods

In this work, doctrinal research approach is used ([Muktiono, 2022](#); [Ng, 2022](#); [Yearwood & Newton, 2022](#)). As part of these approaches, doctrinal legal research formed the basis of the investigation ([Anton et al., 2022](#); [Kane & Kahwati, 2023](#); [Wagenaar et al., 2022](#)). Hutchinson and Duncan (2012) describe doctrinal analysis as lying at the foundation of the legal research method and is unique to research in this discipline. The most common methodology used by those conducting legal research is doctrinal or library-based research. Doctrinal research investigates what the law is in a specific case. It is concerned with the examination of legal doctrine and the manner in which it was developed and applied. This is, as is well known, purely theoretical research that consists of either simple research aimed at locating a specific statement of the law or legal analysis with more complex logic and depth. In a nutshell, it is library-based research that seeks the "one correct answer" to specific legal issues or questions. As a result, the goal of this methodology is to conduct specific inquiries in order to identify specific pieces of information ([Ali, et.al, 2017](#)). Drawing on its principles, the investigation was guided by a detailed and critical analysis of the law as presented in sources such as cases, statutes, and regulations. This analysis aims to bring to the surface underlying themes and an



emerging picture of the interconnected nature of the various sources of law. This is achieved through the gathering and organisation of documents to describe and discuss the law.

3. Discussion

One in three Malaysians struggle with mental health issues, according to the 2019 Malaysian National Health and Morbidity Survey ([Chua, 2020](#)). Despite the prevalence, only 20% of those who have a mental health condition actually get the professional assistance they require, in part because of a lack of resources and the stigma associated with mental illnesses. In the context of organisations, an average of 29% of employees will experience poor mental health. In a medium-sized company with 200 employees and an RM5 million annual gross output, this translates to 60 employees who will experience signs of stress, anxiety, or depression. The resulting business expense, calculated as the sum of employee turnover, presenteeism, and absenteeism, is roughly RM189,068 annually (RM946 per employee), or 3.78% of the company's annual gross output. On a national scale, it is conservatively estimated that the economic cost of mental health issues at work will be RM14.46 billion in 2018, or 1% of GDP, with costs for absenteeism (RM3.28 billion, 0.23%), presenteeism (RM9.84 billion, 0.68%), and staff turnover (RM1.34 billion, 0.09%). Even though the financial costs are high, less than 1% of Malaysia's annual health budget is set aside for mental health-related issues ([Balakrishnan et al., 2023](#); [Cheah et al., 2023](#); [Kamaruddin et al., 2022](#); [Munawar et al., 2022](#); [Pinheiro et al., 2017](#); [Samy et al., 2021](#)).

The Mental Health Act 2001 (MHA 2001) and the Mental Health Regulations 2010 (Mental Health Regulations) are Malaysia's principal mental health laws. Although Parliament passed the MHA 2001 in 2001, it did not take effect until 2010, along with the Mental Health Regulations. This law primarily concerns the lawful detention of an individual who lacks the mental capacity to make an informed decision. The MHA 2001 is being enforced solely to establish a framework for comprehensive care of individuals with mental disorders. It provides for establishing private and public psychiatric hospitals, nursing homes for the mentally ill, and community mental health centres.

World Health Organization (WHO) states that a mental disorder is characterised by a clinically significant disturbance in an individual's cognition, emotional regulation, or behaviour. It is usually associated with distress or impairment in important areas of functioning. Whereas, the American Psychiatric Association (APA) defines mental illness as health conditions involving changes in emotion, thinking or behavior (or a combination of these). Mental illnesses can be associated with distress and/or problems functioning in social, work or family activities ([Fried, 2022](#); [Mizock et al., 2024](#); [Stein et al., 2021](#)). There are many different types of mental disorders. Mental disorder is defined under section 2 of MHA 2001 as any mental illness, arrested or incomplete development of the mind, psychiatric disorder, or any other disorder or disability of the mind however acquired; and "mentally disordered" shall be construed accordingly. As Khan et al. (2015) argued, "promiscuity or other immoral conduct, sexual deviancy, alcohol or drug consumption, expressing, refusing or failing to express a particular political or religious opinion/belief, or antisocial personality" do not constitute mental disorders ([Khan et al., 2015](#)). Accordingly, the problems relating to occupational stress are not being tackled under MHA 2001. In addition, the law does not provide adequate protection for suicide survivors or those suffering from mental illnesses.

Aside from this primary law, if individuals lack the mental capacity to make informed choices, they may have legal recourse under the Persons with Disabilities Act 2008 (PWD Act 2008). This Act defines "persons with disabilities" as those who have long term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder

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their full and effective participation in society. This Act provides that "reasonable accommodation" means necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of the quality of life and wellbeing on an equal basis with persons without disabilities; "rehabilitation" refers to a process aimed at enabling persons with disabilities to attain and maintain their complete physical, mental, social and vocational ability and full inclusion and participation in all aspects of life.

However, this Act is silent on mental health discrimination (past or present). In contrast to the United States, the United Kingdom, and Australia, Malaysia lacks anti-discrimination legislation that protects the rights of individuals with a mental health condition ([Botha et al., 2023](#); [Corrente et al., 2023](#); [Voitsidis et al., 2021](#)). Discrimination based on religion, race, descent, place of birth, or gender is expressly prohibited by the Federal Constitution. Discrimination against disabled people was surprisingly omitted. Hence, this Act appears to be advisory rather than enforcing. The recognition of disabled people's rights in Malaysia seems motivated by charity rather than an inherent right. As a result of the lack of protection, is it necessary for an employee to disclose their mental health history to their employer? The paragraph that follows will look into other laws to discuss this issue.

The Occupational Safety and Health Act 1994 (OSHA 1994) is the most relevant mental health at work law in Malaysia. OSHA 1994 emphasises self-regulation. It provides a legislative framework for promoting, stimulating, and encouraging high safety and health standards at work. Employers must follow OSHA regulations, codes of practice and guidelines, and best practices and advice. However, OSHA 1994 only applies to specific industries. Employees must comply with OSHA 1994 and work with employers to ensure a safe and healthy workplace. As a result, those who create and work with risks bear responsibility for safety and health. According to OSHA 1994, employers must provide employees with a safe and secure work environment, but mental health is not explicitly addressed. When defining the objects of OSHA 1994, namely "safety, health, and welfare," the Guidelines define health as "a state of complete physical, mental, and social wellbeing and not merely the absence of disease." In addition, the Guidelines define a "working environment" to include both the physical and psychological aspects of a workplace. Thus, an employer's duty of care under OSHA 1994 may extend to its employees' mental health, but only to the extent that it is "practicable".

Based on OSHA's 1994 definition, "practicable" is defined as taking into account: (i) the severity of the hazard or risk in question; and (ii) the state of knowledge about the hazard or risk and any way to remove or mitigate the hazard or risk; (iii) if there are ways to remove or mitigate the hazard or risk, they are readily available and suitable; (iv) cost of removing or mitigating the risk. It can be inferred that; the OSHA requires employers to protect workers. Company liability was usually limited to the workplace. The workplace's physical health hazards are prioritised over mental health ([Ariapooran et al., 2022](#); [Bergefurt et al., 2022](#); [Bonaccio et al., 2019](#); [Hecker et al., 2022](#); [Hutton et al., 2022](#); [Javed et al., 2021](#); [Kangarlou et al., 2022](#); [Mata et al., 2021](#); [Nikunlaakso et al., 2022](#); [Turna et al., 2021](#)). Unfortunately, treating mental health as a permanent disability ignores the fact that some mental illnesses are treatable and controllable ([Hossain et al., 2021](#); [Jackson & Lee Williams, 2022](#); [Jalilianhasanpour et al., 2021](#); [Navinés et al., 2021](#); [Nikunlaakso et al., 2022](#); [Tandon, 2020](#)). Pre-pandemic mental health issues were not mainstream, so these laws were drafted. The ambiguity may allow for employer-employee negotiations. Employment rights should be stated to guide employers and reassure workers.

However, despite its effectiveness in ensuring worker safety and health, OSHA 1994 does not address occupational stress. This is evident when OSHA imposed an obligation on employers in 1994 to ensure that the workplace is free of any hazardous risk to workers' health,



provide the necessary equipment and clothing at the workplace, and provide the required information, instruction, and training. In addition, there are no explicit provisions in OSHA 1994 imposing employer duties to deal with issues of depression or anxiety concerning their jobs and working lives that may trigger mental health illness, which is also considered an outcome of occupational stress. Therefore, multiple recommendations are made in light of the limitations of OSHA 1944 as it is currently being implemented. First, any proposed amendment to the OSHA 1994 should include providing a supportive environment to foster mental wellbeing at every workplace. In addition, it is suggested that OSHA Safety and Health Committees include activities related to mental health because their functions do not concern mental health.

While mental health disorders are protected under Malaysian regulatory mechanisms, simply adhering to the law is insufficient to protect employees from the stigma that prevents them from seeking help. Unfortunately, Malaysian laws do not protect them from being bullied or harassed because of their mental health or being fired if their employer can prove that their illness limits their performance (Luong & Green, 2023; Tsuno & Tabuchi, 2022). Impairment in occupational functioning is a diagnostic criterion for many mental illnesses. A mental illness will, by definition, have an impact on job performance.

4. Conclusion

Larger firms could provide more special assistance via an employee support programme. Still, even small employers can share details about the various services and programmes available to the employees in their area. Companies should also train their managers to deal with situations when they notice an employee concerned about mental health. Managers often feel it's not their place to engage in personal issues and thus ignore the warning signs. Everybody saw terrible stories of employees with mental illness and former workers who commit violence at work – but these are the exceptions. Managers should be aware of behaviour or attitude changes that could indicate the needs of the employee. A manager can make a difference in his life by reaching out and providing support and resources. An additional bonus is to improve productivity and commitment. Employers must also exercise caution when dealing with employees who are on sick leave due to stress, especially if disciplinary or absence management proceedings are pending. Of course, employers must be allowed to run their businesses and follow formal procedures but doing so without understanding an individual's specific personal and medical situation will rarely result in a favourable outcome. It may expose the employer to a variety of claims.

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