

FORMULATING REGULATIVE FRAMEWORK ON FLEXIBLE WORKING HOURS IN MALAYSIA

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Abstract

For past many years it has been known that working life pattern is changing and a new concept of flexibility is evolving. This new type of working arrangement has now seems to replace the old working arrangement and management concepts in many part of the developed world including developing country like Malaysia. According to the recent survey conducted by the global survey Regus in January 2014, 79% of Malaysians would choose one job over another if it offered flexible working arrangement options. The survey also disclosed that a staggering 76% of Malaysian employees felt that flexible working hour's arrangement would further improve staff commitment as well as their retention. Flexible working hour's arrangement is a key determinant in job retention globally, according to the survey. The global survey of Regus spanned more than 20,000 senior executives and business owners across 95 countries including Malaysia. Additionally, the survey found that 70% of respondents saw flexible working hour's arrangement making employees more loyal towards the organization or company which they belong to and 64% stated they would have stayed longer in their last position had flexible working hour's arrangement been an option. A total of 59% of the people surveyed said they would actually turn down a job that ruled out flexible working arrangement hours. The debate on possible impacts of flexibility is going on for the last 2 decades in the country. There are several academic researchers who have understood impacts of flexibility in positive terms. They said flexibility is not only bring benefits to the organization or the company, it is equally beneficial for the employee as well. According to them flexibility brings empowerment to the workers, improved employability, and generate more productivity to the company or organization in long term. Though flexible working hour's arrangement brings more benefits and despite full encouragement given by the government, sadly the new working arrangement has not been fully accepted and implemented by organizations and companies in the country until today. This paper will discuss the issue surrounding the implementation of flexible working hour's arrangement in Malaysia, analyzing the current laws and practice in the country relating on the matter as well as proposing regulation for the new working arrangement in the country.

Keywords: Flextime, workplace, labour laws

1. INTRODUCTION

Malaysia gained its independent from the British in 31ST August 1957. In the early years following the independent, the country has tried itself to come out from becoming a poor and third world country into high income and fully developed nation. Presently, Malaysia has emerged itself from agricultural based economy

to industrialized nation. Malaysia has been regarded by many people as relatively open state-oriented and newly industrialised market economy in the world. (Boulton, William; Pecht, Michael; Tucker, William; Wennberg, Sam (May 1997)). According to many, Malaysia has had one of the best economic records in Asia, with Growth Domestic Product (GDP) growing an average 6.0 to 6.5 per cent annually from 1957 to 2005. By 2015, Malaysia's economy was regarded as one of the most competitive in Asia. In 1991, the then former Prime Minister of Malaysia, Tun Dr. Mahathir Mohamad has outlined his ideal in Vision 2020, in which Malaysia would become a self-sufficient fully industrialised nation by year 2020 (V. Anantaraman, 1997, pp 1 – 40). However, the current Malaysian Prime Minister, Dato Seri Mohd Najib bin Tun Abdul Razak has said Malaysia could attain developed country status much earlier from the actual target in year 2020, adding the country has two program concepts which are currently being implemented such as Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP). Following the introduction of the mentioned programs, all working sectors in the country namely the public and private sectors must follow all the changes in order for them to maintain their relevancy and competitiveness in the new market system in the country as well as facing all the challenges and competition that come from other countries in the world.

Due to this current nature of working environment as well as the workload which it carries, Malaysian workers (Both in public as well as in private sectors) whether they like it or not must begin to accept the reality of new nature of the working environment which require them to give their full focus and commitment towards their work and fulfilling the target or ambitions of the organization they belong to. Due to this reason, many workers in the country started to face or developed high level of pressure, stress, and tense while working as they are required to achieve the highly ambitious target put forward by the employers in the organization or company which they belong to. The fact the employee need to be in the working place during normal office hour from morning until late evening has been seen as major obstacle and bring huge challenges to them especially when come to a situation to balance their social and family life with the work they have committed to. With the arrival of new technologies like computer and internet, many of the workers stated to think whether or not the old nature of the work management should be change by introducing the element "flexibility" into the working arrangement.

2. AN OVERVIEW OVER THE CONCEPT OF FLEXIBLE WORKING HOURS ARRANGEMENT

Flexible working hours or generally known as flextime or flexi time is a variable and changeable work in terms of its schedule or the nature of the working environment, in contrast to traditional work arrangements which normally required employees to work at a standard time period from 8 am until 5 pm per day from Monday until Friday in one standard or usual place. The Malaysian Employment Act 1955 (Act 265) defines the work weeks as 48 hours, with a maximum of 8 working hours per day and 6 working days per week (Maimunah Aminuddin, 2011, p 53, M. N. D'Cruz, 2008, p. 165, & Thavalingam C. Thavarajah & Raymond T. C. Low, 2014, pp.1 – 57) There are various kinds of flexibility working hour's arrangement being implemented from various countries like "Flexi Hours" that allow employees to vary their work hours, "Flexi Weeks" that allow employees to vary their weekly work pattern, "Flexi Year" that allow employees to vary their yearly work pattern, "Flexi Location" that allow employees to work from locations other than their designated workplace, "Flexi Worksite" that allow employees to work from different locations within the workplace, and "Flexi Career" that allow employees to move in and out of the workforce and structure their career around other interests or responsibilities. The listed examples given above aren't exhaustive but it provides a description of some of the more common forms of flexible work that being adopted all over the world. (Can further refer to Tan Kwang How, 1994, pp. 13 – 28 which discussed on the issue pertaining to work schedules & Devanand Subramaniam, 2000, pp. 143 – 148 on managing changes in workplace).

Implementing any work life balance policy like a flextime policy in the organization or company can certainly bring benefits to both employer and the employee. (Abdul Aziz Yusof & Tan Fee Yean, 2014, p. 154). Introducing flexible working hour's arrangement could bring the following benefits to the employer and the respective organization by increasing staff morale and job satisfaction. Most employers offering flextime working report improvements in recruitment reduced the number of absenteeism and increased the level of organization or company productivity and production. It also reduces the high level or stress and fatigue and unfocussed amongst their employees towards the job assign to. Places which offer such working arrangement will have the greater ability to attract a higher level of skills workers into the workplace as most of the skills workers are now focusing to find places which offer such scheme or arrangement which seen to

be more relevant in the present working world. Based on the mentioned benefits, it would also at the end bring satisfaction to the customer or client as the workers would be able to serve them efficiently and effectively. This in long term would bring increased the good reputation of the organization or the company itself. As for the employee, it would increase opportunity to fit other commitments and activities in with their work, and make better use of their free time to commit for other important things. It would allow employee to have more in control of their workloads, and manage a better balance between personal life and work. It would allow the employee to schedule their travel time to avoid congestion, it would also allow time to be used for leisure or personal activities which is essential for every human being. It would reduce their occupational stress level which affects their health like sleeping disorders, headache, mood disorders, upset stomach, hypertension, high cholesterol, autoimmune disease, cardiovascular disease, depression, and anxiety (Sauter S, Hurrell J, Murphy L, Levi L., 1997, pp. 34.1-34.77). Most important, it would allow the employee to give more focus, care, and attention towards their family (Can further refer to Tan Kwang How, 1995, pp. 49 – 67 which discussed the issue pertaining to worker productivity & John Adair, pp. 50 – 72 which discussed the issue on worker absentee)

Besides mentioning the benefits the flexible working hour's arrangement will bring, if the scheme is not been supervised and monitored properly, there is high potential risk for any irresponsible workers to take advantage and abuse the system. The idea behind the implementation of the working arrangement is based on the element of "honesty" and "trust" of the workers. As such, it all up to the respective individual in the organization or company to use the new working arrangement with integrity and full of responsibilities. Any abuse will certainly affect not only the concern individual but the reputation of the entire organization or company which they belong to. Administration of the system may also increase the task job of every organization and company human resources department or unit as well as creating additional workload for the entire organization and company which adopt the new arrangement and putting the burden of supervise and monitor the new working arrangement. (Can further refer to Ibrahim Ariff, 2007, pp. 11 - 55 on role of human resource department).

3. FLEXIBLE WORKING HOURS ARRANGEMENT FROM SEVERAL SELECTED JURISDICTIONS

When discussing the concept over the implementation of flexible working hour's arrangement, it is vital to refer to several selected jurisdictions in the world. Over the past few years, there have been significant legal developments over the implementation of the new working arrangement in several countries especially in few developed countries like United Kingdom, United States of America, Australia, and New Zealand. It is the hope of the researcher to examine the effort taken by those countries and possibly introduce the new working arrangement concept into our country through legislative process for the benefits of the local workers both in public and private sectors. In the United Kingdom, flextime working arrangement is commonplace in both of their public and private sectors. The practice is often found in their administrative and back office functions of commercial organisations and local councils.

In 2003, the United Kingdom Government had introduced a legislation that gave parents of children under 6, or the parents of disabled children under 18, the right in law to request a flexible working arrangement from their employer (UK Department of Trade and Industry employment guidance, 2009). On 13TH November 2012, the then UK Deputy Prime Minister Nick Clegg announced plans to extend the right to request flexible working to all employees in the country. The legislation takes effect in April 2014. However, lawyers throughout the country have suggested that this will lead to "major headaches" for employers. Now being enforced by the law on 30TH June 2014, industrial reports concentrate on workers right to request for flexible working and how it is guided by Advisory, Conciliation and Arbitration Service (ACAS). They explained how this code is designed to help employers, employees and their representatives dealing with disciplinary and grievance situations in the workplace. (ACAS, 2009. Disciplinary and grievance procedures).

In United States of America alternative work arrangements such as flexible work schedules are mostly regarded as a matter of agreement between the employer and the employee (or the employee's representative or the trade union) to decide. Over the recent years, there have been several developments on this matter in the country over the issue. For example, in San Francisco, they have legislate the Family Friendly Workplace Ordinance of San Francisco which went into effect on January 1ST, 2014 where employees in San Francisco (at companies of 20 or more) now have the right to request a flexible or

predictable work arrangement to assist with care giving responsibilities. Employers must respond within three weeks of the request. In Vermont, as of January 1ST, 2014, under a new “equal pay” law, all Vermont employees have the right to request a flexible work arrangement for any reason. Employers must grant the request unless it is “inconsistent with business operations or its legal or contractual obligations”. At Federal Government level, the US President Barack Obama has signed into law the Telework Enhancement Act of 2010 which requires all federal agencies to establish telework policies for federal employees. The Act is a key factor in the US Federal Government's ability to achieve greater flexibility in managing its workforce through the use of telework. Well implemented and established telework programs provide agencies with a valuable tool to meet mission objectives while helping employees enhance work-life effectiveness. The signing of this law was the culmination of years of legislative activity to advance Federal telework.

Presently, there have been several proposal put forward to push forward a specific legislation on the issue in US for example the Flexibility for Working Families Act which was introduced by Congresswoman Carolyn B. Maloney in June 2013, with the intention of giving employees nationwide the right to request work flexibility and ensuring employers consider such requests. There was also a Schedules That Work Act which was introduced in July 2015, with the intention of giving workers the right to request a flexible, predictable, or stable schedule, without fear of retaliation. The bill is currently pending review by the US congressional committee. Several states in the US are now begin to introduced more propose bill over the issue like California and New York.

In Australia, the Fair Work Act of 2009 gives employees the right to request flexible work arrangements if they are parents of school-age children, if they are carers, if they have a disability, if they are dealing with domestic violence, or if they are 55 or older (See Section 65 of the Act 2009). In New Zealand, all employees have the statutory right to request flexible working arrangements, and all employers have a duty to consider seriously any requests. The right to request and duty to consider come under Part 6AA of the Employment Relations (Flexible Working Arrangements) Amendment Act 2007 which comes into force on 1ST July 2008. All employees in the country have a right to request a change to their working arrangements, from the first day of their employment. They must make their request in good faith. Employees can make as many requests as they wish in a year. Employers must respond to requests within 1 month, in writing. They must consider and answer requests in good faith. Employers can only refuse flexible working arrangements on the grounds listed in the Act 2007.

4. THE DEVELOPMENT OVER THE IMPLEMENTATION OF FLEXIBLE WORKING HOURS ARRANGEMENT IN MALAYSIA

The flexible working hour's arrangement allows employees to focus on multiple roles in today's competitive working environments. This arrangement has been widely practiced in order to create balance between work and family needs. Streamlining of working hour schedule and balancing between personal life and work is an essential issue in many developed countries especially in the recent years. This agenda has attracted the attention of various parties, especially among motivational experts and politicians who agreed that this issue should be discussed further in order to improve the balance between work and family. Indeed, the flexible working arrangement practices leads to balance the job responsibility and children's safety at home especially for working single mother. Flexible working hours contributed to higher job satisfaction, motivation and employee engagement. Therefore, to increase the employee motivation towards the vision and mission, each organization needs to emphasize on their staff welfare. (Jack Collis & Michael Leboeuf, 1995, pp. 193 – 202).

Due to these reasons, the Malaysian government's proposal to introduce the Flexible Work Arrangement (FWA) during the last 2014 Malaysian budget announcement received the thumbs up by many peoples in the country. The announcement pleased many employees, especially female's employees in the country, as they would be able to balance between career and family commitments, and the move would also ensure a more supportive working environment. It is important to note that Malaysia has a strong pool of female talent, with 68 per cent enrolment in public universities in 2013. However, female participation in the workforce is currently at 49.5 per cent, lower than the country neighbouring countries. It is highly believed that the new working arrangement will provide a better working environment and it will certainly attract more female talent into the working life.

The idea over the implementation of flexible working hour's arrangement is not something new in the country. Though, the idea has been highlighted during the last 2014 country budget announcement, the idea had been implemented in the country for nearly two decade when it was first introduced in 1998 through a public service circular which allow the public service members particularly in Federal Territory of Kuala Lumpur to adopt flexible working hour's arrangement. The rule then been extended to the Federal Territory of Putrajaya in 1999. After receiving positive feedback, in June 2007 the Public Service Department (PSD) introduced the Service Circular Number 2, Year 2007 which allows the public sectors employers throughout the country to initiate a flexible system of attendance for the civil servants. Through the second circular, employees are given three options as to when they start and complete work namely 7.30am to 4.30pm, 8.00am to 5.00pm, and 8.30am to 5.30pm with the fulfillment of a fixed number of working hours every day. In 2010, the Malaysian Ministry of Human Resources had introduced nearly a similar system through the introduction of Work Regulations (Part-Time Workers) 2010. The regulations were aimed at unlocking the economic potential of qualified housewives, retirees, university students and the disabled in the country. The rules would also ensure part-timers in the country get sufficient rest days for working more than 20 hours a week, apart from their annual and medical leave entitlements. This new set of rules, under the Employment Act 1955, are designed to better regulate and protect part-time workers, and will serve as incentives to galvanise the idle workforce estimated at 6.8 million. It would also apply to some 12 million existing workers from both the private and public sectors eyeing part-time jobs. Within the private sector, multinational companies in the country are currently on the front lines of this initiative by extending the implementation of flexible working hour's arrangement to other types of flexible arrangement besides implementing the typical flex hours within their organization.

In recent years, the country has seen many government agencies started to implement the new work arrangement by allowing the employees to be at different locations to perform their duties. The Malaysian Ministry of Works for example had launched their own "Work from Home" programme on 21ST December 2009. This programme has been carried out as a pilot project which begun from January till Mac 2010 .Besides that, this programme has been tried out towards 39 employees within the ministry itself and it is believed that the undertaken initiative had allows the government to save costs and improve productivity as well as the ministry employees quality of life. Similar initiative also been taken by then Attorney General of Malaysia Department, when they started to introduced the "Work from Home" project for the Attorney General Department employees. The project was launched on 1ST October 2012 and had successfully completed its pilot phases, the first between 1ST October 2012 to 30TH April 2013 and the second phase between 15TH May 2013 to 30TH September 2013. The third phase began on 16TH December 2013 and continued until 1ST April 2014. According to AG Department, the project has achieved its objectives, namely to increase work efficiency and effectiveness on an outcome-based basis, reduce operational costs, as well as optimize information communication technology as well as improve their employees quality of life.

In March 2015, the Malaysian Women, Family and Community Development Ministry had offered flexible working hour's arrangement for its qualified officers. The ministry staffs was given three options of flexible working hour's arrangements namely working from home, flexible working hours and a modified compressed work week system. The policy, which was effective on Sunday, was also been extended to male officers within the ministry. The arrangement which was carried out into two phase starting 16TH March until 31ST May 2015 and between 1ST June until 31ST August 2015 was said to have received positive response from the ministry staffs and are now being consider to be follow by the governmental agencies in the country. According to the ministry with the advances of technology in this new digital era have transformed the way people work, especially offer work which does not require the person to be physically present in the office. In short, the old concept of work has now change, as such working policies need also to be change in line with the current development. In order to improve the organization or company productivity as well as maintaining the employee quality of life, its time for the country to take different path when it's come to working arrangement in a workplace.

5. FORMULATING REGULATIVE FRAMEWORK ON FLEXIBLE WORKING HOURS ARRANGEMENT IN MALAYSIA

It is crucial to note that, there is no specific legislation which properly addressing or regulating the issue concerning flexible working hour's arrangement in the country. The adoption and implementation of the new scheme only be made based on the circular and encouragement given by the government which carry no legal force. Though there are many labours statutes in the country which protect the rights and interests of

the workers in the country like (i) Employment Act 1955 (the law applicable in the States of Sabah and Sarawak are the Labour Ordinance Chapter 67 and Chapter 76, respectively); (ii) Employment (Termination and Lay-Off Benefits) Regulation 1980 (iii) Employee's Provident Fund Act 1991; (iv) Employee's Social Security Act 1969; (v) Industrial Relations Act 1967; (vi) Trade Unions Act 1959 (Revised 1981); (vii) Factories and Machinery Act 1967; (viii) Occupational Safety and Health Act 1994; and (ix) Workmen's Compensation Act 1952 (Siti Zaharah Jamaluddin, 2000, pp. 153 – 177, Sharifah Suhanah Syed Ahmad, 2012, pp. 179 – 196, & Ashgar Ali Ali Mohamed, 2014, pp. 35 – 74) non having the structured that can regulate flexible working hour's arrangement scheme properly and effectively as each of the mentioned statutes above have their own weaknesses and limitations either in terms of its jurisdictions enforcement or category of employee.

As such having a specific legislation is the only best option to carry out the idea over the new working arrangement in the country with efficiency and effectively. Any formulating process to regulate a framework on the idea of flexible working arrangement in the country must consider following elements namely provide a statutory right to all employees whether in public or private sectors who have meet specified criteria to request a variation of certain terms and conditions of their working arrangements and place certain duties on employers who receive those requests to consider the request reasonably with reasonable period of time. It should also provide that an employer may refuse a request only if it cannot be accommodated on certain grounds clearly provided under the propose legislation and must state clearly the reason for any rejection over the application submitted to the employee. If an employer does not reasonably deal with a request in accordance with the process specified under the propose legislation, reference can be made to mediation process, to any special unit created to deal with the matter specifically or directly refer the issue to Labour Court as well subjecting the employer to any reasonable amount of penalty and as well providing some relief or compensation for the employees if the court later found the employer guilty as charge. Similar penalty must also be imposed towards the employees if they were found guilty of being dishonest when making over the request for having the flexible working hour's arrangement to the employers. The proposed legislation must also make mandatory for all workplace in the country to have flexible working hours policy in their workplace. It is highly recommended for the government to create special unit or department to deal and regulate the running process of this new working arrangement in the country.

6. CONCLUSION

Despite the fact that the Malaysian government, including public and private sectors seem have started encouraging, adopting and implementing this new working arrangement scheme within their organizations and companies, however it is still early to see any clear outcome from the new scheme. As being mentioned above, this new scheme are being adopted and implemented in few government agencies and only selected peoples are been invited to join the pilot project. Though many private sectors keen to follow the idea, it is still restricted to big cooperation which has huge monetary and human resources to carry out the new scheme. There are also concerns being raised over the issue of honesty and trust by the employers over the implementation of new scheme. Many the government agencies and private companies only able to produce general policies and guidelines for the scheme without detail out the necessary process or procedure which need to be follow by the employee.

As highlighted above, many of the developed countries are beginning to proposed proper legislation to address the issue, as such the time has come for Malaysia which aim itself to become develop nation by year 2020 to come forward for a legislation to properly regulate the new scheme in order to encourage more employers in the country to fully adopt and implement the new scheme as well as ascertain the right of all employee in the country over the issue. By having a proper legislation on this issue also would allow the process and procedure pertaining to the implementation of the new scheme being put in place and been regulated properly and closing the door from any possible abuse.

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