

REGULATING FLEXIBLE WORKING ARRANGEMENTS (FWAs) IN MALAYSIAN PRIVATE SECTOR: ARE WE THERE YET?

Sharija binti Che Shaari
Sharifah Rahama binti Amirul, PhD

ABSTRACT

The nature of work has changed and evolved to be in tandem with the societies' advancement. Many business organisations, especially in the developed countries, have taken up the work-life balance (WLB) which can be realised through flexible working arrangements (FWAs) as they could see the benefits of FWAs upon the sustainability of their businesses and the well-being of their employees. FWAs refer to arrangements that allow employees some degree of flexibility and control over when, where, and how their work is performed. FWAs are not something new, especially in developed countries such as the United Kingdom, the United States, Australia and Germany. FWAs offer a wealth of benefits such as improve the well-being of employees by promoting work-life balance, maintaining talent pool through effective recruitment and retention; and one of the mechanisms to boost the employees' productivity. Thus, it is the objective of this study to explore whether the existing Malaysian employment law is sufficient to deal with FWAs. In achieving its aim, this study uses a doctrinal legal research methodology. It is an established traditional genre of research in the legal field which is concerned with the systematic analysis of the legal doctrine, legal rules, principles, concepts, theories and principle of all types of case, statutes and rules or a combination of some or all of them. It is interesting to note there are three main statutes in Malaysia which protect the minimum rights of employees. This legislation is segregated based on three different regions in Malaysia. First is the Malaysia Employment Act 1955 (Act 265) covers employees in Peninsular Malaysia. Next are the Sabah Labour Ordinance 1950 (Cap 67) and Sarawak Labour Ordinance 1959 (Cap 76) which cover employees in the states of Sabah and Sarawak respectively. It is submitted here that existing Malaysia's employment law is inadequate to deal with FWAs. The finding will be useful in adding to the existing literature. It will also benefit the policymakers should they intend to formulate specific legislation governing FWAs. In conclusion, it is pertinent for Malaysia to have specific legislation dealing with FWAs in place.

Keywords: Flexible working arrangements (FWAs), Legislation, Employment Law, Work-life balance, Atypical employment

INTRODUCTION

The nature of work has changed and evolved to be in tandem with the societies' advancement. The managers and/or the owners of the business organisations must identify the challenges and opportunities. Serious consideration of the business needs for the future survival of the business organisation is crucial. Many business organisations, especially in the developed countries, have taken up the work-life balance (WLB) which can be realised through flexible working arrangements (FWAs) as they could see the benefits of FWAs upon the sustainability of their businesses and the well-being of their employees. WLB provides employees with working provisions which will bring a balance in both responsibilities at work and home. The term work-life balance has now changed to encompass not only what can be described as 'family-friendly strategies' but including those strategies which take into account the extensive associations of family responsibilities. Nowadays, work-life balance relates to policies such as flexible working arrangements that impart upon the employees working requirements that will be able to accomplish a balance in both responsibilities at home and work (Redmond, Valiulis, & Drew, 2006).

Work-life balance nowadays relates to approaches such as flexible work arrangements (FWAs) that allow an employee to avail of working arrangements that provide a balance between both work and personal obligations. Flexible working arrangements (FWAs) is defined as working conditions that allowed employees to work outside the standard of regular working hours and where the work is performed. Examples of FWAs are working from home (WFH), flexitime, job sharing, compressed workweeks, telecommuting/telework, and work sharing.

1.2 BACKGROUND OF FWAs

Developed nations like the United Kingdom, Northern Ireland, Europe, the United States, Australia and New Zealand have long introduced flexibility in their workplaces. In 1967, flexible working hours started in a MesserschmittBolkow-Blohm Bolkow company at Ottobrunn, Germany. While other businesses in Germany used a flexible working time program, this company used it for a comparatively large proportion of its employees, which in the late 1960s set the stage for vigorous debate and implementation among many other German firms. It has been noted that while in 1970 there were 200 to 300 companies with flexible working hours, this number increased ten-fold to two thousand by 1971. This working arrangement spread to many European countries, and by 1975, over 30 per cent of Swiss workers had been employed under the new working structure (Subramaniam, 2011). FWA can be defined as any policies and practices, formal or informal, which permit people to vary when and where work is carried out (Maxwell et al., 2007). FWAs allow work to be carried out outside the spatial and temporal limitations of a standard working day (Anell & Hartmann, 2007). FWAs are alternatives to the conventional working arrangement which is more fixed and rigid such as conventional working day of "9-to-5," the typical work week, or the conventional work area. FWAs is capable of profoundly changing the character of the modern workplace. Employers may benefit from flex time in several ways, including improved efficiency, decreased absenteeism, improved retention of talent, and

more significant commitment to employees. Employees profit from being able to care for their families more, having more control over their work and following personal interests.

FWAs are not something new, especially in developed countries, yet FWAs are not common in the Malaysian private sector. The government's drive to promote FWAs in the private sector has received a lukewarm response. It is observed that multinational corporations (MNCs) (such as Intel, HSBC, Bosch, Shell, just to name a few) that have their operations in Malaysia are more receptive towards FWAs. Among big homegrown companies that allow FWAs are Maybank, Sunway Group, TM Group, just to name a few. Interestingly, 98.5% of all business establishments in Malaysia are Small Medium Enterprises (SME Corp, 2018), yet there is no study concerning FWAs in SMEs. Nevertheless, FWAs are very well-received in the public sector.

Malaysia is still in the developing phase of FWA implementation and enhancement, the number of local studies related to FWAs is scarce and limited. Although the FWAs are not widely practised, FWAs are starting to gain attention from the Malaysian government when it becomes part of national strategic plans for socio-economic development, as reported in the Economic Transformation Plan (Annual Report, Economic Transformation Program (ETP), 2013), as well as in the Malaysian development plans (Eleventh Malaysia Plan (11MP), 2015; Tenth Malaysia Plan (10MP), 2010). The Malaysian government, via its TalentCorp has encouraged employers to implement the FWAs to give more flexibility in terms of service duration, place and working hours at the workplace. The 2014 Malaysian Budget has announced that a double tax deduction of up to MYR 500,000 is on offer to any organisations who implement or enhance FWA practices. This initiative is to increase female participation in the labour market and to promote WLB and increase labour productivity (LP) (10MP, 2010; 11MP, 2015). In 2016, this incentive ended. Nevertheless, TalentCorp continues to render support to companies that intend to embed FWAs and work-life balance practices.

1.2.1 CATEGORIES OF FWAS

The first category is an alternative work schedule that includes staggered hours arrangement (SHA) and compressed workweek arrangement (CWA). According to International Labour Organisation – ILO (2011), SHA has different starting and finishing times are established for different groups of workers in the same establishment; however, once these starting and finishing times have been chosen (or fixed by the employer), they remain unchanged. CWA typically extend the workday beyond eight hours but reduce the number of consecutive days worked to fewer than five (ILO, 2011). The second category of FWA is flexi-time saving account (time-banking), which consists of two types of arrangement: flexi-time arrangements (to facilitate employees' work-life balance), time-saving account arrangements or time banking (permit workers to build up "credits" or to accumulate "debts" in hours worked) (ILO, 2011). The third category of FWA is workload flexibility, in which the organisation is in terms of the amount of work or the amount of working time required by the employee (Abid, 2017). Workload flexibility may consist of part-time jobs, job sharing (Armstrong, 2006) and contingent work which defined as temporary fixed-term contract Kossek and Michel (2011). The last category of FWA is the flexibility of place, and this involves work from home, home teleworking (Armstrong, 2006) and virtual working.

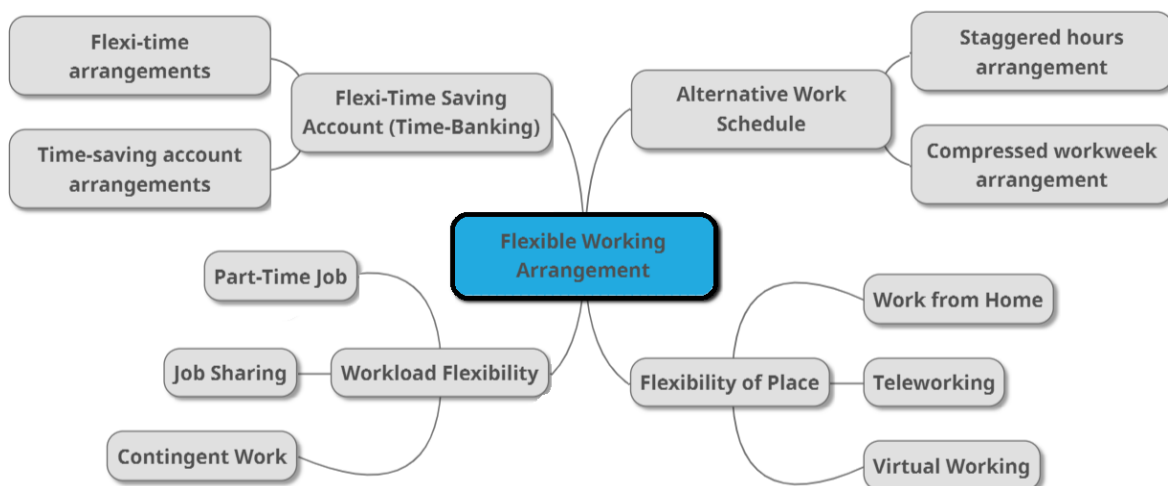


Diagram 1: Categories of FWAs as adapted from ILO (2011), Abid (2017), Armstrong (2006), Kossek & Michel (2011)

1.3 PROBLEM STATEMENT

Numerous countries that practice flexible working options have enacted specific legislation to cater for the FWAs; for example, in Australia, requests for FWA are governed by the National Employment Standard, and in New Zealand, FWAs are ruled under the Employment Relation Act 2000. Other countries with advanced FWAs also have specific regulatory bodies that cover their rights, such as the UK (Flexible Working Regulation, 2002; 2014) and Northern Ireland (Work and Families (NI) Act, 2015; Flexible Working Regulations (Northern Ireland) 2015). Business organisations are legal entities created under laws established by the government. The government can facilitate and, at the same time, complicate the policies and regulations for business

operation. It is thus beneficial to explore whether the existing Malaysian employment legislation applicable to the private sector is sufficient in dealing with FWAs. It is hoped that this study will be able to fill in the gap in the literature.

1.4 RESEARCH OBJECTIVES

Starting from the year of 2007, the Malaysian government had introduced FWAs in the form of staggered working hours in the public sector. It was followed by Flexiplace where the civil servants can perform work from home introduced in 2010. Upon seeing the success of FWAs in the public sector, the government via TalentCorp initiated a drive to promote FWAs in the private sector and offered tax incentive. However, the response from the private sector concerning FWAs is not the primary concern of this current study. The objective of this study to explore whether the employment legislation applicable to the private sector is sufficient to deal with FWAs.

1.5 SCOPE OF STUDY

FWAs are not something new, especially in developed countries, yet FWAs are not common in the Malaysian private sector. The Malaysian government acknowledges the benefits of FWAs upon the employees as FWAs will boost the employees' morale which inevitably enhanced the employees' quality of life. The government has introduced staggered working hours for civil servants (Public Service Department of Malaysia, 2007), a policy which is not applicable in private sectors. FWAs are well received in the public sector. The government in 2014 had encouraged the private sector to consider FWAs in their respective workplace. This study will be solely confined to explore the existing Malaysian employment legislation applicable to the private sector is sufficient to deal with FWAs. It is important to mention that this paper is a preliminary study before the researchers can embark a thorough study of FWAs in Malaysia. This paper sets an outline of Malaysian legislation that affect the employees in the Malaysian private sector.

2.0 LITERATURE REVIEW

The literature review aims to summarise, examine and synthesise findings derived from prior researches on issues related to FWAs. The significance of such a study must not be underestimated as it is an important tool for stakeholders such as the policymakers, employers and employees. FWAs are defined as working conditions that allow employees to work outside the standard of regular working hours and where the work is carried out (Maxwell et al., 2007; Anon, 2008; Lambert, Marler & Geutal, 2008; Masuda et al., 2012). Examples of FWAs such as working from home (WFH), flexitime, job sharing, compressed workweeks, telecommuting/telework, and work sharing. FWAs offer a wealth of benefits such as improve the well-being of employees by promoting work-life balance (Pedersen et al., 2008; Burgmann, 2012), maintaining talent pool through effective recruitment and retention (Clake, 2005; Maxwell et al, 2007), and FWAs are also as one of the mechanisms to boost productivity levels which are important for economic interest (Kauffeld et al., 2004; Pedersen et al., 2008; Nakamura et al., 2018).

Rose (2017) observed that flexible working hours allow employees to focus on multiple roles in today's competitive working environments. It also refers to special leave schemes, which provide employees with the freedom to respond to a domestic crisis or to take a career break without jeopardising their employment status. For employees, FWAs are important for their work-life balance (WLB) as they assist them to reduce work-life time conflicts as well as lessen caregiving burdens, therefore enabling employees to work more productively (Hayman, 2009; De Menezes and Kelliher, 2011).

FWAs are acknowledged to be a driver of economic growth (Dex and McCullough, 1995; Regus, 2012;) where government initiatives have been developed to restructure the working practices for nations (Regus, 2012; Annual Report: ETP, 2013, 10MP, 2010; 11MP, 2015). Bloom, Krestchmer and Van Reenen (2006) conducted a more extensive study of over 700 firms in the United States, United Kingdom, France, and Germany, which found a significant positive correlation between flexibility and productivity. Googa-Cooke (2012) summarised several tangible benefits within the business context includes increased employee productivity, effective virtual team, because FWAs support a more significant shift towards untethered work, meeting customer needs and expectation by enhancing business continuity and customer coverage, reduced business travel, agile infrastructure since FWAs can create tangible infrastructural savings by reducing office occupancy, increase employees' engagement and greater retention. Despite these benefits, FWAs are also capable of building good public relations and enhancing employer-employee relations because the employees are more engaged if they feel that their needs are recognised and if they have more autonomy and control over their time (Abid, 2017).

ILO (2011) emphasised that it is essential to distinguish between flexible working-hours arrangements controlled by the employer and those which permit employees to have discretion regarding their work schedules. ILO (2011) also asserted that FWAs studies based on employer-led variability tend to find negative impacts workers' health and well-being, while those based on employee-led flexibility typically show positive effects on a range of measures, not only those related to occupational safety and health but also work-life balance and organisational performance. On the other hand, when the FWAs are under the employer's discretion, the priority tends to be at organisational profitability, and the needs of employees are often overlooked. On the hand, some scholars observe that flexible scheduling, and work-life balance can generally create conflict between management and employees (Bird, 2014; Rose, 2017).

In developed countries such as the United Kingdom and Australia, the legislation allows the employer to set specific limits such as a minimum and a maximum number of hours of work every day, and the core time during which all employees must be present at their workplace. It is known as standard or typical employment arrangement. On the other hand, atypical employment such as FWAs include flexibility in the scheduling of hours worked, such as alternative work schedules (e.g., flex-time and

compressed workweeks), and arrangements regarding shift and break schedules; flexibility in the number of hours worked, such as part-time work and job shares; and flexibility in the place of work, such as working at home or other location (Leighty and Anderson, 2007).

As earlier mentioned, Malaysia is still in the developing phase of FWA implementation and enhancement, the number of local studies related to FWAs is scarce and limited. The existing research on FWAs in Malaysia is mainly in the area of human resource, industrial organisation, psychology and management, but there is limited research concerning FWAs regulations and policies. Local literature deliberates that flexibility in the timing (flex-time) and location of work (flex-place) are the most popular forms of FWAs in Malaysia (Subramaniam, 2011; TalenCorp, 2017). Nurul Nadia (2016) has given an insight to challenges in implementing FWAs in Malaysia which confirms with the studies done abroad (Burgmann, 2012; Srivastava et al., 2015; Bird, 2016; Abid, 2017). Previous local studies have highlighted that implementation FWAs policies into the workplace might be the solution to preserve graduates and talented employees from leaving the labour force due to housework and family matters (Subramaniam et al., 2014). It is a significant concern where skilled staff cannot be retained in the labour market due to inflexible working environment and the-not-so-family-friendly employment policy. Syahirah et al., (2015) argued that the policy should introduce flexitime, teleworking, e-working, part-time work, team time work, and reduced work hours, as has been suggested by the government in its initiative. The increasing demand for FWAs has put pressure on the employment system and work processes to be transformed from the more traditional and strict full-time employment plan to a more flexible system that works with the employees it governs (Redmont, 2006; Truxillo, Bauer and Erdogan, 2016; Rose, 2017).

Despite the lukewarm response from the private sector, the Malaysian government continues to offer free FWAs training and consultation support to organisations through TalentCorp to any company that plans to implement FWAs or enhance its existing FWAs. Many factors contribute to the unsuccessful implementation of FWAs in the Malaysian private sector (Subramaniam, 2011; Subramaniam et al., 2015; Nurul Nadia et al., 2016). Partly it is due to lack of awareness among the employers, trust issue, the increase in the cost to provide for the gadgets that an employee can use should he/she choose to work from home (WFH) and so forth.

It is also worth to note that there is no legislation or regulation related to FWAs in the private sector which apply to the entirety of Malaysia. For the private sector, each company has to set up its own FWA policies and procedures when deciding to implement these options within an organisation. Furthermore, the inconsistent and indistinct government policies related to FWAs in Malaysia may lead to a variation of FWAs between the public and private sectors. At the moment, there are no clear policies or legislative development in Malaysia's private sector. Except for very few studies (Hanita, 2011; Noor and Mahudin, 2015; Sharifah Hayati, 2018), there is a dearth of research on the FWAs policies and legislation in Malaysia.

Hanita (2011) pioneered a study on atypical employment focusing on part-time employees and fixed-term employment contracts in the Klang Valley. The latter was not within the ambit of this current study. Hanita has made a recommendation that the Malaysian employment law should be reviewed to accommodate the present needs of the employees and employers. However, Hanita distributed the questionnaires to 30 companies. Only 16 questionnaires with usable data were returned. Her deliberation on this issue could have improved had she incorporated a more thorough and detailed research design. Neither did she explain the methods of choosing the companies as her respondents. The small number of respondents did not warrant her to generalise her study.

A study conducted by Noor and Mahudin (2015) was so far the most comprehensive study in this area. Both authors have explained the policies and regulations concerning WLB in Malaysia. However, they have overlooked to extend the analysis to the legislation applicable in Sabah and Sarawak. They also do not deliberate on the policy and legislation concerning the occupational safety and health (OSH) of the employees.

An attempt to dwell on the policies concerning Work-Family Balance (WFB) was conducted by Syarifah Hayati (2018). As aforementioned at the beginning of this article, FWAs are part of WLB and/or WFB, the author had successfully explained the policies in the public sector. On the other hand, the author had mediocly explained the legislation related to WFB for the private sector.

In 2014, the government has taken a motivational approach to support FWAs implementation in the private sector through FWA incentive which is more likely to be an advocacy and persuasion tool. The government via TalentCorp is supporting and enabling organisations to implement FWAs rather than forcing organisations through legislation. However, to enable a drastic change into a more flexible workforce, it is time for the government to consider legislation approach to enforce FWA implementation just like what has been implemented by developed countries. As above mentioned, there is a dearth of research on the FWAs policies and legislation in Malaysia, except for very few studies (Hanita, 2011; Noor and Mahudin, 2015; Sharifah Hayati, 2018). Therefore, based on the literature discussed herein, this study will be able to fill in the gaps that exist in the literature.

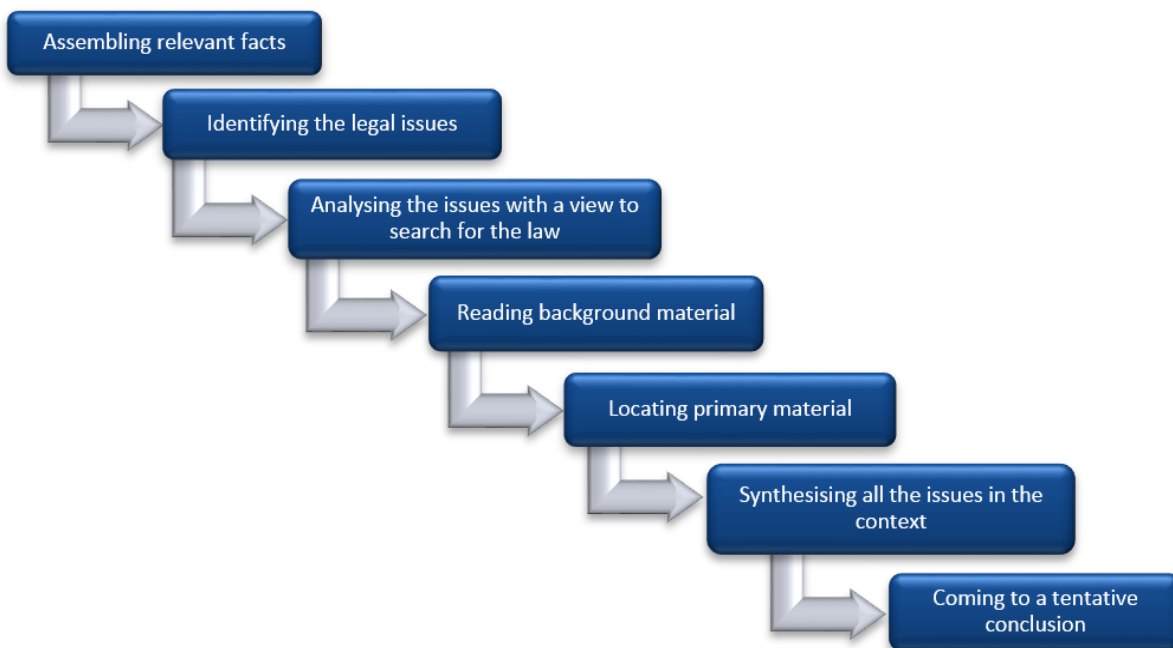
3.0 METHODOLOGY

This article is based on doctrinal legal research methodology. The word doctrinal is derived from the word "doctrine," which is Latin for the word "doctrina," which means education, knowledge or learning (Hutchinson and Duncan, 2012). Doctrinal legal research is an established traditional genre of research in the legal field. It is research into the legal concept and principle of all types of case, statutes and rules. The doctrinal research is concerned with the analysis of the legal doctrine and how it has been developed and applied. Doctrinal research which involves any systematic study of legal rules, principles, concepts, theories,

doctrines, decided cases, legal institutions, legal problems, issues or questions or a combination of some or all of them (Anwarul Yaqin: 2007). The doctrinal research thus involves a systematic analysis of statutory provision and legal principles and rational ordering of the legal propositions and principles. The legal researchers also give the more emphasis on substantive law rules, doctrines, concept and judicial pronouncements; however the doctrinal research based on the legal proposition and judicial precedents and other conventional legal material such as parliamentary debates, revealing the legislative intent, policy and history of the rule or doctrine (Ali, 2017). This is purely theoretical research that consists of either simple research aimed at finding a specific statement of the law, or it is legal analysis with more complex logic and depth. In short, this methodology aims to make specific inquiries to identify specific pieces of information. The outcome varies according to the expertise of the individual scholar and cannot be replicated exactly by another researcher. Doctrinal legal research requires a specific language, extensive knowledge and a specific set of skills involving precise judgment, detailed description, depth of thought and accuracy (Jain, 1982; Hutchinson, 2018; Kharel, 2018).

Doctrinal legal research is always based on secondary data that come from authorities. Though data can be retrieved from both primary and secondary authorities, doctrinal research never deals with the primary data of social facts collected first-hand from surveys, field study or any other empirical means (Jain, 1982; Anwarul Yaqin, 2007). Doctrinal researcher analyses available secondary data from authoritative sources which have already been collected and processed by other else than the researcher. In doctrinal research, usually researcher analyses secondary available data, which come from statutes, laws, judicial decisions and other legal texts, to verify the legal proposition and reach to a conclusion. Doctrinal legal research gets its data basically from primary or secondary authoritative sources, either from the law itself or legal texts having some sense of sovereign or authority in it. Primary authorities include the actual rules or statements of law created by authentic governmental bodies such as constitutions, legislation and judicial decisions, and even regulations, rulings of the administrative agencies. Secondary authorities include materials that explain or comment on areas of law such as law review articles, treatises, books, restatements of the law, legal encyclopedias and so forth (Vibhute and Aynalem, 2009:71).

In solving a specific legal problem by using a doctrinal legal research methodology, as described by Hutchinson and Duncan (2012) normally includes the following steps:



To carry out the preliminary study on the laws affecting the employees in the Malaysian private sector, the researchers have carried out an “armchair research” to identify the relevant legislation. It is noted that the legislation affecting the terms and conditions of an employee’s contract of service, there are three main statutes which protect the minimum rights of employees. This legislation is segregated based on three different regions in Malaysia. First is the Malaysia Employment Act 1955 (Act 265) covers employees in Peninsular Malaysia. Next are the Sabah Labour Ordinance 1950 (Cap 67) and Sarawak Labour Ordinance 1959 (Cap 76) which cover employees in the states of Sabah and Sarawak respectively. Thus the researchers have to identify the similarities and dissimilarities in the three statutes. The researchers have to determine whether there is any statutory provision in these three statutes that provide FWAs.

Apart from the statutes affecting terms and conditions of an employee’s contract of service, the researchers have also referred to the Occupational Safety and Health Act 1995 (Act 514) (hereinafter referred to as OSHA 1994). The law has imposed a legal duty upon the employers to ensure the employees’ safety in performing their work. The researchers have to examine the Employees Social Security Act 1969 (ESSA 1969) which is administered by the Social Security Organisation (SOCSO). The researchers have to examine whether both Acts are empowered to deal with any accidents and/or injuries associated with FWAs.

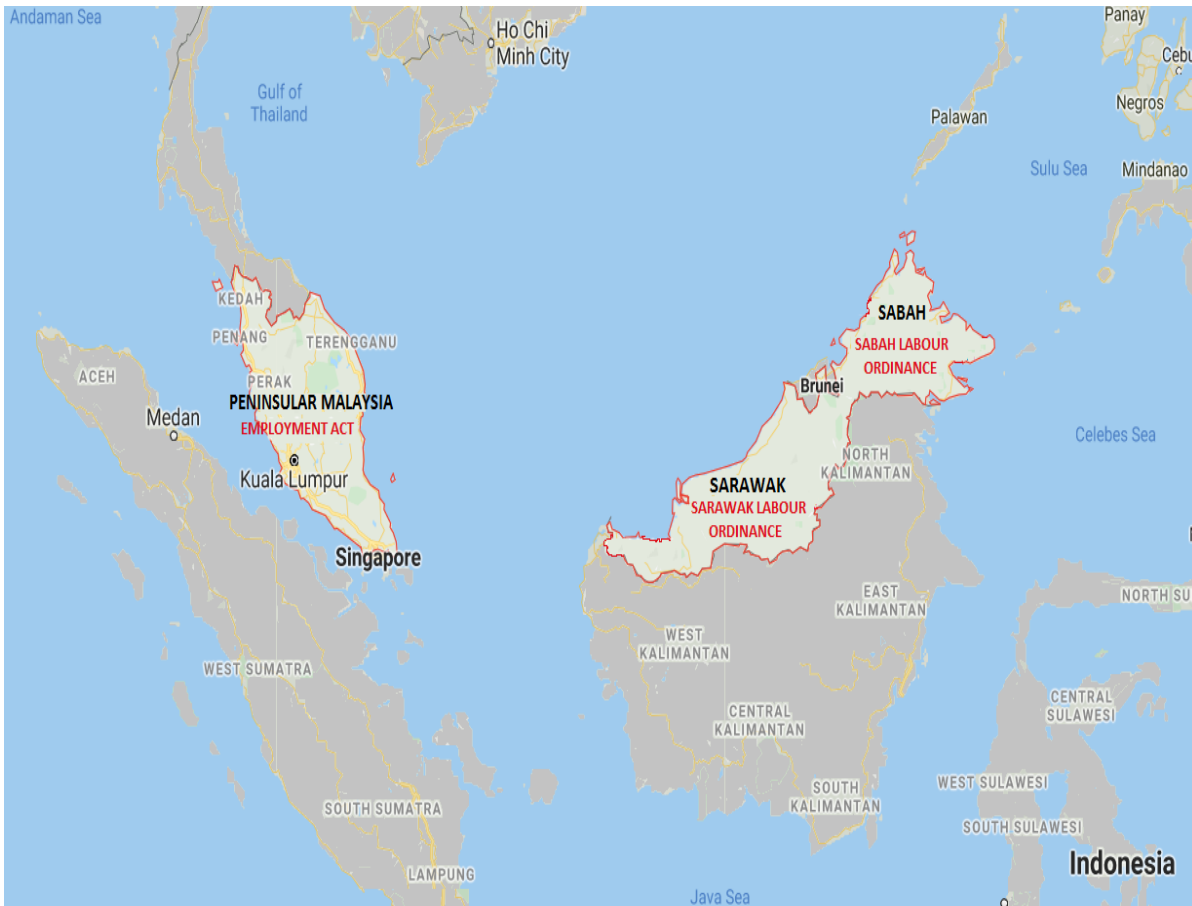
4.0 LEGAL ANALYSIS AND FINDINGS

It has been recognised that the FWAs seem to have replaced the old concept of work arrangement in many parts of developed countries. FWA 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 require employees to work at a standard period from 8 am to 5 pm, Monday until Friday or usual workplace. Nowadays, many tasks could be carried out by employees without their presence at their workplace had they have the means to today's modern technologies.

In Malaysia, the rules and regulations of FWAs in the public sector are in place. In Malaysia, there is a variation of FWAs practices between the public and private sectors. For the public sector, there are only two types of FWAs available for civil servants which are; staggered working hours, and flexi-place (a work-from-home programme). Staggered working hours were established in June 2007 in accordance with the Service Circular Number 2 (Public Service Department of Malaysia, 2007), which allows the public sector to introduce a flexible system of attendance for civil servants. Employees are given three options as to when they start and complete work (i.e., 7:30 am to 4:30 pm, 8:00 am to 5:00 pm, or 8:30 am to 5:30 pm) with the fulfilment of a fixed number of working hours every day. Noraini and Mahudin (2015) and Sharifah Hayati (2018) had explained extensively on the policies and regulations of FWAs in the public sector. Nevertheless, this paper covers the legislation governing FWAs in the private sector only.

4.1.1 EMPLOYMENT LEGISLATION APPLICABLE IN PRIVATE SECTOR

In Malaysia, there are three main statutes which protect the minimum rights of employees. This legislation is segregated based on three different regions in Malaysia. First is the Malaysia Employment Act 1955 (Act 265) covers employees in Peninsular Malaysia. Next are the Sabah Labour Ordinance 1950 (Cap 67) and Sarawak Labour Ordinance 1959 (Cap 76) which cover employees in the states of Sabah and Sarawak respectively.



Map of Malaysia*

*not the exact scale

First and foremost, it is interesting to note that the underlying principles of the Employment Act 1955, Sabah Labour Ordinance and Sarawak Labour Ordinance is that the provisions contained therein are minimum terms and conditions of employees. However, the law does not prohibit employers from providing terms and conditions that are more favourable to employees. Nevertheless, less favourable terms than the provisions in these Statutes shall be null and void, and the terms provided by these Statutes shall be substitute thereof.

The Statutes apply to "employees". Who are the employees? The employees are defined in the First Schedule of the Employment Act 1955, Sabah Labour Ordinance and Sarawak Labour Ordinance, respectively. Employees can be categorised into two. The first category, any person who has a contract of service with the employer and irrespective of the job title, earn RM2000 and below in Peninsular Malaysia (RM2500 and below in Sabah and Sarawak). The second category is any person who has a contract of service with the employer and irrespective of their salary, by the nature of their work they are manual workers, supervisors to the manual workers, domestic workers, those who work in a vessel registered in Malaysia and those who are engaged in the operation or maintenance of a mechanically propelled vehicle.

For those who governed by the Employment Act 1955, Sabah Labour Ordinance and Sarawak Labour Ordinance, their terms and conditions are listed below.

Table 1: Statutory Minimum Terms and Condition

| | Employment Act 1955 | Sabah Labour Ordinance | Sarawak Labour Ordinance |
|--------------------------------------|---|--|--|
| Work Hours | a maximum of 48 hours a week is permissible, with daily working hours not exceeding eight | Similar to EA | Similar to EA |
| Annual leave | Between 8 to 16 days per annum depending on the length of service | Similar to EA | Similar to EA |
| Sick leave | Between 14 to 22 days per annum depending on the length of service (non-hospitalisation) | Similar to EA | Similar to EA |
| Paid public holiday | Section 60D: 11 paid public per annum, 5 of which shall be: -King's birthday -Sultan or Tuan Yang Terutama's birthday -Labour Day -Merdeka Day -Malaysia Day | Section 103: 14 paid public per annum, 5 of which shall be: -King's birthday -Birthday of Tuan Yang Terutama -Labour Day -Merdeka Day -Malaysia Day | Section 104: 16 paid public per annum, 5 of which shall be: -King's birthday -Birthday of Tuan Yang Terutama -Labour Day -Merdeka Day -Malaysia Day |
| Maternity leave | 60 days | Similar to EA | Similar to EA |
| Prohibition against women employment | - Women are prohibited to work underground - Women are prohibited to work in any industrial/agricultural undertaking between 10 pm to 5 am | Similar to EA | Similar to EA |

It is noted that the above Statutes provide only for the minimum working conditions, work-life balance practices (that comprises of FWAs as well) are not part of the typical employment package. The above Statutes are silent on FWAs. There is no provision which grants the employee to request flexible working arrangements can be found in these statutes, unlike the legislation in Australia, New Zealand and the United Kingdom to name a few. The Flexible Working Regulations of the United Kingdom provides that employees have the right to request a change in the number of hours, times, or days in their work schedule. Law will protect employees who are requesting FWAs. Employers must consider these requests by consulting the employee in good faith, propose alternatives where appropriate, and consider whether the request can be granted. The employer is therefore prohibited to discriminate against the employee for requesting FWAs. (Bird, 2016).

Ironically, the employees in Malaysia are at the mercy and discretion their employers should they request for FWAs. There is no transparency in processing the FWAs request. Whether the request is granted or not will depend on the employer's understanding of the importance of WLB. An understanding employer will discuss with the employee and try to find a win-win solution for both parties. However, an employer who does not have empathy will decline the request as he is not under any legal obligation to entertain such a request because the law is silent. To add salt to injury, the employer might victimise the employee for making such a request. The employee whose request for FWAS has been turned down and/or suffer from victimisation and/or discrimination may resign from the company.

In 2012, the maternity leave for a civil servant is enhanced to 90 days per childbirth for a maximum of five children (total maternity leave shall not exceed 300 days throughout her service). The civil servant enjoys a 7-days' paternity leave. Unfortunately, paternity leave is not mandatory in the private sector. Again, it varies from one company to another. Until to date, the maternity leave provided by Employment Act 1955, Sabah Labour Ordinance and Sarawak Labour Ordinance remains at 60 days. It has been eight years since the maternity leave in the public is increased to 90 days, but there is no amendment made to these three Statutes that are entrusted to protect the minimum rights of employees. These are examples of discrepancies between the protection of employees in the public and private sector in Malaysia. The gap gets widen year by year unless the government intervenes.

Malaysia's labour laws, beginning with the Employment Act 1955 (including Sabah Labour Ordinance and Sarawak Labour Ordinance) to date, have not been motivated by concerted attempts to meet the current workplace demands. It goes a long way to

show that the Malaysian private sector has shown little sense of dynamism when it comes to adopting measures to align new workplace arrangements. This situation might change if the government were to introduce policy initiatives and/or to revise the existing statutory provisions to accommodate more flexibility for employees to choose their work arrangements. The policies and/or new regulations will enable the employees to strike a balance between work demands and their well-being. This paper argues that the initiation of a flexible workplace arrangement policy that creates the enabling condition as well as the environment for private sector organisations to adopt in the workplace, mostly on a full-time basis, has still a long way to go.

4.1.2 THE EMPLOYMENT (PART-TIME) REGULATIONS 2010

The Employment (Part-Time Employees) Regulations 2010 (Regulations) came into effect in Malaysia on 1 October 2010, and apply to employees who are covered by the Employment Act 1955 and who works part-time. A part-time employee's average hours of work per week are more than 30% but do not exceed 70% of the normal hours of work per week of a full-time employee employed in a similar capacity by the same employer. The Regulations may also be an incentive for those who may not wish to work full-time to enter the workforce. However, the Regulations do not apply to casual employees. It is submitted that the Regulations do not well-capture the terms of FWAs as the Regulations do not cover home working employee who performs work for an employer within his own residence, irrespective of occupation. It is beyond comprehension the reason for such exclusion. If the legislators understand the notion of the Malaysian government in encouraging FWAs, hence the Regulations could pave the way for better legislation to regulate FWAs because part-time is one of the categories of FWAs. Another salient point to be highlighted, Sabah Labour Ordinance and Sarawak Labour Ordinance have yet to enact subsidiary legislation similar to the Regulations. Why the legislators have yet to establish similar Regulations to protect the part-timers in Sabah and Sarawak despite the establishment of the Regulations in Peninsular Malaysia 10 years ago? Why are the part-timers in Sabah and Sarawak being shortchanged?

4.1.3 THE EMPLOYEES WHO ARE OUTSIDE THE SCOPE OF THE EMPLOYMENT ACT 1955, SABAH LABOUR ORDINANCE AND SARAWAK LABOUR ORDINANCE

What about the employees who are not governed by those Statutes because their salary is above the wage threshold? For those who are not governed by the above Statutes, they are left to fend for themselves. They are required to discuss any matters concerning their terms and conditions of their service with their employers. It may not look as simple as it sounds as many factors may affect employer-employee relations. It may depend upon the workplace culture, the employer's leadership and so forth.

4.1.4 DUTY TO ENSURE EMPLOYEE'S SAFETY

The common law and also section 15 of the Occupational Safety and Health Act 1994 (Act 514) provides that it is the employer's duty so far as practicable to ensure that employee is being trained to perform his work safely. Changes in the work arrangements may pose an unknown OSH hazard to the employees. It may later affect the employee's claim for compensation out of the occupational accident when the accident occurs at home (for those working from home). The researchers have to examine the Employees Social Security Act 1969 (ESSA 1969) which is administered by the Social Security Organisation (SOCSO). The researchers have to examine whether both Acts are empowered to deal with any accidents and/or injuries associated with FWAs. Hence, social security scheme would also need to be realigned to accommodate those who fall outside the typical employment contract. It suffices to say that Malaysia still has a long way to go when it comes to regulating the FWAs.

4.2 IMPLICATION FOR EXISTING KNOWLEDGE

This study makes three major contributions to the existing knowledge. First, this study provides new literature on the need to regulate FWAs. Secondly, this study provides an insight into the differences in Employment legislation between Peninsular Malaysia and Sabah and Sarawak. Thirdly, this study tries to briefly bring to light the inter-relationship of FWAs and OSH, which has yet to be explored by local academics.

4.3 PRACTICAL IMPLICATION

The insights derived from this study can have various profound policy implication for employees, employers and the society in general. The findings shall also be useful to the policymakers in regulating FWAs. Due to the lack of legislation or policy on resources or workplace programmes to assist employees who are interested in FWAs, it is evident that there will be a lack of choices for employees to meet domestic and employment needs, which will greatly influence their decision to stay at the workplace. The government must provide an enabling environment for FWA. How government policy and regulation enforcement on FWAs may influence the FWAs implementation or enhancement in Malaysia? Regulating FWAs is a green area that needs to be explored and this may also contribute to government policy implication for further FWAs enhancement in Malaysia. A change in mindset is very crucial for an effective policy to be successful. The policies for FWAs are meant to create a balance between domestic commitments and employment which is beneficial to both employees and business organisations (Redmond, Valiulis & Drew, 2006).

5.0 CONCLUSION AND RECOMMENDATION

Malaysian legislation concerning the minimum rights of employees is outdated as it does not cater to the need of the employees that it ought to protect from the outset. They cover normal working patterns. These Statutes are very rigid in terms of working

hours. It is therefore concluded that the failure of legislation to reconcile the needs of employers and employees hinders the advancement of FWAs in Malaysian private sector. Legislative measures to improve work-life balance (which include FWAs) will only work if they are promoted through a supportive workplace environment. The government has started the ball rolling by initiating the incentive. The government has also shown unwavering and continuous support to FWAs practice in Malaysia. Hence, it is pertinent for the government to reinforce FWAs into Malaysian legislation. Regulating FWAs would improve the working conditions and protect the rights of the employees, especially those who are outside employment protection legislation. As Malaysia is on the road to becoming a fully developed country, it is timely for the stakeholders (employer-employee-government) to take similar measures to protect the welfare and interest of the employees. It is therefore recommended that legal reforms are urgently needed to enable employees better to have access to FWAs, especially for women, to preserve their work-life balance better.

REFERENCES

- Abid, S., & Barech, D. K. (2017) The Impact of Flexible Working Hours on the Employees Performance, *International Journal of Economics, Commerce and Management (IJECM)*, 5(7), 450-466
- Ali, S. I., Mohamed Yusoff, Z. & Ayub, Z. A. (2017) Legal Research of Doctrinal and Non-Doctrinal. *International Journal of Trend in Research and Development(IJTRD)*, 4(1), 493-495
- Anderson, L., (2003) Sound Bite Legislation: The Employment Act 2002 and New Flexible Working 'Rights' for Parents, *Industrial Law Journal*, 32(1), 37-42
- Anell, K. & Hartmann, D. (2007) *Flexible Work Arrangements in Asia: What Companies are Doing, Why They are Doing It and What Lies Ahead*. Boston:Boston College Global Workforce Roundtable. Available at <http://www.bc.edu/content/dam/files/centers/cwf/research/publications/researchreports/Flexible%20Work%20Arrangements%20in%20Asia>
- Anon. (2008). Flexible Working as Human Resources Strategy: Benefits to the Organization and its Personnel. *Strategic Direction*, 24(8):9-11. Available at <http://doi.org/10.1108/02580540810884584>
- Anwarul Yaqin (2007) *Legal Research and Writing*, Kelana Jaya: LexisNexis
- Armstrong, M. (2006). *A Handbook of Human Resource Management Practice*, 10th ed, London: Kogan Page Ltd.
- Bird, R. C., (2014) The Promise and Peril of Flexible Working Time, Available at: <https://ssrn.com/abstract=2413129> or <http://dx.doi.org/10.2139/ssrn.2413129>
- Bird, R. C., (2016) Precarious Work: The Need for Flextime Employment Rights and Proposals for Reform, *Berkeley J. Emp. & Lab. L.*, 37.
- Bloom, N., Kretschmer, T. & van Reenen, J. M., (2006) Work-Life Balance, *Management Practices and Productivity*. Available <https://ssrn.com/abstract=1012387>
- Burgmann, L. (2012) *Managing in a Flexible work Environment*. Australian Institute of Management. Available at <https://www.wgea.gov.au/sites/default/files/AIM-Managing-in-a-Flexible-Work-Environment.pdf>
- Clake, R. (2005). Flexible Working: The Implementation Challenge. *CIPD*, 3–60. Available at <http://www.cipd.co.uk/NR/rdonlyres/C3B8BDF1-3979-4B95-BF90-A3C19521560D/0/flexwrkimpman1105.pdf>
- De Menezes, L. M., & Kelliher, C. (2011) Flexible Working and Performance: A Systematic Review of the Evidence for a Business Case. *International Journal of Management Reviews*, 13(4), 452-474.
- Dex, S. & McCullough, A. (1995) *Flexible Employment in Britain: A Statistical Analysis*, Manchester: Equal Opportunities Commission.
- Economic Transformation Programme (2013) Economic Transformation Programme: *Annual Report*. 3,347.
- Goga-Cooke, J. (2012) *The Benefits of Flexible Working Arrangements*, Future Work Institute. Available at <https://www.bc.edu/content/dam/files/centers/cwf/individuals/pdf/benefitsCEOFlex.pdf>
- Hanita Sarah Saad (2011), Regulating Atypical Employment in the Malaysian Private Sector: Balancing Flexibility and Security, *Journal of Global Management*, 3(1), 59-73
- Hayman, J. R. (2009). Flexible Work Arrangements: Exploring the Linkages Between Perceived Usability of Flexible Work Schedules and Work/Life Balance. *Community, Work & Family*, 12,327–338. <http://doi.org/10.1080/13668800902966331>
- Hutchinson, T. C. M., (2018) *Researching and Writing in Law-4th ed.*, Pyrmont, NSW: Thomson Reuters/Lawbook Co
- Hutchinson, T., & Duncan, N., (2012) Defining and Describing What We Do: Doctrinal Legal Research, *Deakin L. Rev*, 17(1), 84
- International Labour Organization. (2011). *Working Time In The Twenty-First Century*. Report for Discussion at the Tripartite Meeting of Experts on Working-time Arrangements (17–21 October 2011). Geneva.
- Jain, S. N., (1982) Doctrinal and Non-Doctrinal Legal Research. *Journal of the Indian Law Institute*, 24(2/3), 341-361. Available at www.jstor.org/stable/43952212
- Kauffeld, S., Jonas, E., & Frey, D. (2004). Effects of A Flexible Work-Time Design on Employee and Company-Related Aims. *European Journal of Work and Organizational Psychology*. 13(1), 79-100.
- Kharel, A., (2018) Doctrinal Legal Research. Available at <http://dx.doi.org/10.2139/ssrn.3120525>
- Kossek, E. E., & Michel, J. (2010). Flexible Work Schedules. *Handbook of industrial-organisational psychology*, 1.535-72.
- Lambert, A. D., Marler, J. H., & Gueutal, H. G. (2008). Individual Differences: Factors Affecting Employee Utilisation of Flexible Work Arrangements. *Journal of Vocational Behavior*, 73,107–117.
- Liechty, J. M., & Anderson, E. A. (2007) Flexible Workplace Policies: Lessons from the Federal Alternative Work Schedules Act, *Family Relations*, 56, 304-317
- Masuda, A. D., Poelmans, S. A. Y., Allen, T. D., Spector, P. E., Lapierre, L. M., Cooper, C. L., Moreno-Velazquez, I. (2012) Flexible Work Arrangements Availability and their Relationship with Work-to-Family Conflict, Job Satisfaction, and

- Turnover Intentions: A Comparison of Three Country Clusters. *Applied Psychology*, 61(1), 1–29. Available at <http://doi.org/10.1111/j.1464-0597.2011.00453.x>
- Maxwell, G., Rankine, L., Bell, S., & MacVicar, A. (2007) The Incidence and Impact of Flexible Working Arrangements in Smaller Businesses, *Employee Relations*, 29(2), 138–161.
- Nakamura, K., Kaihatsu, S., & Yagi, T. (2018) Productivity Improvement and Economic Growth. *IDEAS Working Paper Series from RePEc*.
- Noor, Noraini M. And Mohd Mahudin, Nor Diana (2015) Work-Life Balance Policies in Malaysia: Theory and Practice. In: Lu and Cooper (eds)(2015) *Handbook of Research on Work-Life balance in Asia. New Horizons in Management*. Cheltenham, UK: Edward Edgar Publishing, pp. 207-235
- Nurul Nadia Nordin, Maizatul Fateha Mohd Baidzowi and Ruzanna Ab Razak (2016) Understanding the Work at Home Concept, Its Benefits and Challenges towards Employees, *e-Proceeding of the Social Sciences Research ICSSR 2016*. 18 - 19 July 2016, Kuala Lumpur, Malaysia. Available at <http://worldconferences.net/home>
- Pedersen, D. E., Minnote, K. L., Kiger, G., and Mannon, S. E. (2009) Workplace Policy and Environment, Family Role Quality, and Positive Family-To-Work Spillover. *Journal of Family and Economic Issues*, 30:80-89.
- Public Service Department of Malaysia. (2007). Putrajaya, Malaysia: Government of Malaysia.
- Quinlan, M (2003) Flexible Work and Organisational Arrangements - Regulatory Problems and Responses, Working Paper No. 16, *Conference on Australian OHS Regulation for the 21st Century*, July 20-22, 2003, Gold Coast, organised by National Research Centre for Occupational Health and Safety Regulation & National Occupational Health and Safety Commission. Available at http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/WorkingPaper_16_0.pdf
- Redmond, J. L., Valiulis, M. G., & Drew, E., (2006). Literature Review of Issues Related to Work-Life Balance, Workplace Culture and Maternity/Childcare Issues, *Crisis Pregnancy Agency Report no. 16*, Dublin: Crisis Pregnancy Agency. Available at <http://hdl.handle.net/10147/305205>
- Regus. (2012). Flexibility Drives Productivity, Retrieved from [http://www.regus.com/images/Flexibility Drives Productivity_tcm8-49367.pdf](http://www.regus.com/images/Flexibility_Drives_Productivity_tcm8-49367.pdf)
- Rose, E. (2017) Workplace Temporalities: A Time-Based Critique of the Flexible Working Provisions, *Industrial Law Journal*, 46(2), 245-267
- Sharifah Hayaati Syed Ismail al-Qudsy (2018) Women Leadership Performance and Work-Family Balance: Policy and Religious Concern. *International Conference Islam in Modern Secular State II*, 15-16 November 2018, Bishkek the Kyrgyz Republic. Available at https://umexpert.um.edu.my/public_view.php?type=publication&row=NzczMzc%3D
- Srivastava, K., Sethumadhavan, A., Raghupathy, H., Agarwal, S., & Rawat, S. R. (2015) To Study the Indian Perspective on the Concept of Work from Home. *Indian Journal of Science and Technology*, 8(S4), 212-220
- Subramaniam, G., Overton, B. J., & Maniam, C. B. (2015) Flexible Working Arrangements, Work-Life Balance and Women in Malaysia. *International Journal of Social Science and Humanity*, 5(1), 34–38. Available at <http://doi.org/10.7763/IJSSH.2015.V5.417>
- Subramaniam, G. (2011) Flexible Working Arrangements in Malaysia and the Participation of Women in the Labour Force. *Unpublished PhD thesis*, Victoria University of Wellington.
- Subramaniam, G., Peck-Leong Tan, Nurul Ainun Ahmad Atory & Ruzita Baah (2014) Impact of Workplace Flexibility on Women and the Labour Market, *Australian Journal of Basic and Applied Sciences*, 8(5), 184-191
- Syahirah, S. S. S.; Norfarhanis, M. S.; Arif, M. F. M.(2015) Quality of Life of Women Middle Decision Makers in The Malaysian Public Sector. *Adv Sci Lett.*; 21(6),1952–5.
- The Tenth Malaysia Plan 2011–2015 (2010). Kuala Lumpur: The Prime Ministry Department
- The Eleventh Malaysia Plan 2016–2020 (2015). Kuala Lumpur: The Prime Ministry Department
- Truxillo, D., Bauer, T., & Erdogan, B. (2016). *Psychology and Work Perspectives on Industrial and Organisational Psychology*. London: Routledge.
- Vibhute, K., & Aynalem, F., (2009) *Legal Research Methods, Teaching Material*, Justice and Legal System Research Institute, Ethiopia
- Wilthagen, T., (2002) The Flexibility-Security Nexus- New Approaches to Regulating Employment and Labour Markets, *OSA-Working paper WP2002-18*
- Zapf, I., & Weber, E., (2017) The Role of Employer, Job and Employee Characteristics for Flexible Working Time: An Empirical Analysis of Overtime Work and Flexible Working Hours' Arrangements, *IAB-Discussion Paper, No. 4/2017*, Institut für Arbeitsmarkt- und Berufsforschung (IAB), Nürnberg

Sharija binti Che Shaari
Senior Lecturer (Law)
Faculty of Business, Economics and Accountancy
Universiti Malaysia Sabah
Email: sharija@ums.edu.my

Sharifah Rahama binti Amirul, PhD
Lecturer
Faculty of Business, Economics and Accountancy
Universiti Malaysia Sabah
Email: sra@ums.edu.my