



Flexible Work Arrangements and the Legal Considerations in Malaysia

Harlida Abdul Wahab,^{1,2} Hanis Wahed,¹ Siti Suraya Abd Razak³

¹ Universiti Utara Malaysia, Malaysia

² Universiti Utara Malaysia, Malaysia

³ Universiti Teknologi Malaysia, Malaysia
harlida@uum.edu.my

Abstract. This article examines the legal considerations surrounding flexible working arrangements (FWA) in Malaysia. As FWA gains traction in the modern workforce, it is crucial to assess their legal implications. The study briefly explores the models of FWA that are being practiced worldwide. Then, Malaysian labour laws and regulations regarding FWA are scrutinised to elucidate the rights and responsibilities of both employers and employees engaging in FWA. Key issues, including contract modifications, social security, health and safety, are analysed in relation to various FWA models. The article also evaluates the responsiveness of existing legal frameworks to the digital work landscape, addressing legal challenges and implications. By offering insights into how Malaysian law accommodates FWA, this article serves as a vital guide for employers, employees, policymakers, and legal practitioners navigating the evolving landscape of flexible work.

Keywords: flexible work arrangement, labour law, employment and industrial relations, legal.

1 Introduction

In some parts of the world, flexible work arrangement (FWA) has been practiced and increased for decades because of the advancement of information and communication technologies. In Malaysia, FWA is quite a new idea but becomes prevalent and widely implemented owing to the hit of the Covid-19 pandemic (Poh, Chai, Lim et al, 2022). thus changes the employment landscape. The common flexibility practice during the pandemic was remote working, specifically, working from home (WFH) due to the implementation of movement control order (MCO) by the government (Wahab, Razak & Mahmud, 2022).

FWA is a logical work design in an emerging digital economy such as Malaysia (Asmawi & Othman, 2018). Terminology of FWA should be associated with the practice of remote working or known telecommuting (Teh et al., 2013) in viewing the advancements in information and communication technologies (ICT) (Shamir & Salomon 1985; Baruch 2000). There are also other terms used to signify remote working

such as teleworking, telecommuting, homeworking, and working at home (Hassan & Nuruddin, 2011). The terminologies may have differences depending on the arrangement and the evolving models of working outside the workplace with the medium of ICT.

The concept of flexible working arrangements has emerged as a significant aspect of contemporary labour practices, warranting a comprehensive examination of its legal underpinnings. In the Malaysian context, where economic and technological advancements continue to reshape traditional employment paradigms, a comprehensive examination of the legal issues surrounding FWA is imperative. While employee demand for greater work flexibility has been steadily increasing, the extent of actual FWA implementation in Malaysia is not equally encouraging (Asmawi & Othman, 2018). In commenting WFH as part of FWA, Yogarajah (2020) and Nelson (2020) address their concern where the practice requires legal consideration as its arrangement cannot be without a legal predicament. Christopher and Lee (2020) even warned that employers may be facing labour disputes on issues regarding termination for the reason of poor performance, retrenchment, and misconduct.

Through an exploration of statutory laws, regulations and judicial decisions, this study dissects the intricate legal landscape governing FWA in Malaysia. The article investigates various FWA models such as telecommuting, compressed workweeks, and flexible scheduling, addressing the rights, obligations, and potential conflicts entailed for both employers and employees. The exploration encompasses both employer and employee perspectives, elucidating the rights, obligations, and potential conflicts for each party. Furthermore, the analysis addresses the potential impact of FWA on employment contracts, data privacy, occupational health and safety, as well as social security arising from remote work. By shedding light on the compatibility between FWA models and the existing legal framework, this study offers practical insights for stakeholders seeking to implement or engage in flexible work arrangements in Malaysia. As the modern workforce landscape continues to evolve, a comprehensive understanding of the legal considerations surrounding FWA becomes pivotal for ensuring harmonious and legally compliant employment relationships. This article analyzes the legal considerations surrounding FWA within the Malaysian context. As traditional notions of work evolve, understanding the legal implications becomes imperative.

2 Why FWA?

The concept of FWA has gained substantial prominence in recent years as an innovative approach to modern workforce management. There are many reasons for the transformation of traditional work to FWA when it becomes increasingly important in the modern workplace due to their potential to enhance employee well-being, productivity, and work-life balance. This shift is driven by changing workforce demographics, technological advancements, and evolving employee expectations. The importance of FWA, firstly, is for employee well-being and satisfaction. FWA enables employees to better manage their personal and professional responsibilities, re-

ducing stress and burnout (Kossek et al., 2019). Greater control over work schedules can lead to improved job satisfaction and higher levels of engagement (Allen et al., 2013). In the case of WFH, it supports the work-life balance policy because employees can spend quality time with their family and manage their personal matters while observing duties and responsibilities of work at the comfort of their home (Mallow, 2018; Quoquab et al., 2013) thus leading to the improvements in health and well-being (Reshma et al., 2015).

FWA allows employees to tailor their work hours to fit their personal lives, contributing to a healthier balance between work and family commitments (Greenhaus & Powell, 2006). Improved work-life balance can lead to increased loyalty and reduced turnover, benefiting both employees and employers (Allen et al., 2013). For Gen-Y, the characteristic of desiring work and career flexibility makes them associate more with the type of work that they perform rather than the organisation they are associated with, thus emphasising work-life balance (Sharma, 2012).

Moreover, flexibility can result in increased productivity as employees can work during their most productive hours and environments when research suggests that employees in flexible work arrangements often achieve the same or even higher levels of productivity compared to traditional office setups (Bloom et al., 2015). At the same time, organizations that offer FWA are more attractive to job seekers, especially among the younger generation who value work-life balance (Deloitte, 2020). Retaining skilled employees becomes easier when organizations provide flexible options to accommodate changing life stages (Allen et al., 2013).

Finally, remote work and telecommuting reduce the need for office space, leading to potential cost savings for employers while reduced commuting can contribute to lower carbon emissions and support environmental sustainability (Bailyn, 2004).

3 FWA Models

Flexible working arrangements encompass a variety of work schedules and setups that deviate from the traditional 8-to-5 office routine. These models are designed to provide employees with greater control over when, where, and how they work, while allowing employers to adapt to changing business needs. Some common FWA models include:

- a. **Telecommuting/Teleworking:** This model is particularly relevant in the age of digital connectivity. The advancement of communication technology has given the avenue for employees to work outside their working space while observing their duties and responsibilities of the organisation (Allen, Golden & Shockley, 2015). Employees work remotely, often from their homes or other locations, using technology to stay connected to the workplace. Hence, FWA is part of the Gen-Y paradigm in the information economy (Smith, 2010).
- b. **Compressed Workweeks:** Here is where the work schedule allows an employee to work a traditional 45-hour workweek in less than five workdays.

For example, a full-time employee could work four 10-hour days instead of five 8-hour days. Employees work longer hours on certain days (e.g., four 10-hour days) to compress their workweek and enjoy extended weekends. Among the benefits are the working more hours in a single day will be traded off with more days off per week thus able to provide flexibility, for example, in spending time with family and friends (Herrity, 2023).

- c. **Flexible Scheduling:** The WFH system gives employees autonomy in scheduling and organising their work (Rupietta & Beckmann, 2016). Employees have more control over their daily start and end times, as long as they fulfill the required number of hours within a defined timeframe. This could involve staggered start times, allowing employees to choose when they begin their workday.
- d. **Job Sharing:** Two or more employees share the responsibilities of a single full-time position, often dividing the work based on their respective strengths and availability. This allows more employees to share responsibilities of one full-time job, either divided by function, geography, time or workload. It has been recorded that job sharing reduces voluntary turnover by 20%, improves talent attraction, staff morale and succession management, and reduces absenteeism. Further, it increases employee productivity by up to 30%, while saving costs from hiring by up to 20% (Writer, 2019).
- e. **Shift Swapping:** Employees exchange shifts with colleagues, allowing for greater flexibility in managing personal and work commitments. It allows employees more flexibility and control over their work schedules. Shift swapping is a life-saver for those whose jobs require a lot of flexibility – like healthcare providers and restaurant workers. The range of benefits are work flexibility, reduce stress, and healthy work-life balance (Bonifacio, 2023).

These FWA models provide employees with greater autonomy and the ability to balance their work and personal lives more effectively. However, they also present challenges for employers in terms of communication, coordination, and ensuring productivity. Legal considerations, as well as technological infrastructure, play a significant role in implementing successful flexible work arrangements.

4 Legal Considerations – Malaysian Labour Law

Labour laws play a crucial role in shaping the implementation of FWA within workplaces. These laws often define the rights and responsibilities of both employers and employees in relation to various aspects of FWA.

Recently, by virtue of the Employment (Amendment) Act 2022 (“the Amendment Act”), which come into force on 1 January 2023, employees in Malaysia are entitled to apply to their employer for an FWA. This is the avenue where for the first time that

FWA have been formally recognised in Malaysia through two new provisions of sections 60P and 60Q.

Subject to the terms in contract of service, Section 60P provides the option for employee to apply to employer for a flexible working arrangement to vary any of the 3 features in relation to the employment – i. hours of work; ii. days of work; or iii. place of work.

Section 60Q sets out the application process which states that:

- a) The employee's application for FWA must be in writing in the form and manner as may be determined by the Director General.
- b) The employer must approve or refuse the application within 60 days from the date the application is received.
- c) The employer must inform the employee in writing of the decision.
- d) If the event where an application is refused, the employer must state the ground of such refusal.

It is to note however that the FWA provisions are simple thus require further essential points and considerations necessary for its implementation. Referring to section 60P, it is not all-encompassing but subject to the terms and conditions of the employment contract. The section is also suggesting FWA as an option only that is subject to the approval of an employer when the words used are “for employee to apply to employer”. In other words, FWA is not an employee's right. Looking at this provision, the features that fulfilling this flexibility are the aspects of hours, days or place of work.

In terms of its application and process, the Director General is yet to determine the form and manner of the employee's application. Despite this, the application must be made in writing. It is nevertheless the right of the employer, whether to approve or refuse the application. Time given to the employer to decide is 60 days. From the wordings, although the employer is having discretion whether to approve or not to approve, the reason/s for such refusal must be explained. On this account, it is questionable on the actions against the employer for such refusal. Furthermore, on such discretion and consideration of an employer, together with the understanding that FWA is not the right of an employee, the issue would be how possible if the employee is to claim FWA application.

Additionally, here are some brief deliberations regarding legal considerations connected to FWA:

- a. Contractual Agreements: Labour laws typically require employment contracts to outline terms and conditions of employment, including work hours, compensation, and benefits. When implementing FWA, these contracts may need to be modified to reflect the new arrangement, ensuring legal compliance. In this context, unless stipulated in the employment contract or mutually agreed between parties, employers should identify who can qualify for the WFH and how things should go (Christopher & Lee, 2020).

- b. **Working Hours and Overtime:** Labour laws often prescribe standard working hours and regulations regarding overtime. FWA can impact how working hours are calculated, especially in cases where compressed workweeks or flexible scheduling are adopted. Here, employers are expected to adhere to the maximum statutory working hours which is eight hours per day and 12 hours for overtime, as stated in the Employment Act 1955 (Wahab, Razak & Mahmud, 2022).
- c. **Health and safety:** Section 15 of the Occupational Safety and Health Act 1994 (OSHA) establishes the employer's obligation to ensure, to the extent feasible, the safety, health, and well-being of all employees within the workplace. Additionally, OSHA mandates that employers undertake comprehensive risk assessments for all tasks executed by their staff, identifying potential hazards and proposing corrective actions. A pivotal inquiry arises regarding the extension of this responsibility to encompass FWA employees. The prevailing consensus contends that safety and health considerations should encompass the remote work environment, upholding the principle of FWA. Hence, employers should deliberate on implementing practical measures (Christopher & Lee, 2020) and motivate employees to assess their workspace to pre-emptively mitigate recognizable hazards (Akin, 2020).
- d. **Social security issues:** The complexity of work arrangements and the increasing debate on the new world of work nowadays has resulted in the issue of whether social security protection adapts to the current changes. According to the International Labour Organisation (2020), the employer has to care for the employees as it is reasonably practicable to assess, control, and mitigate risks in locations other than the employer's workplace. According to Section 24 of the Employees' Social Security Act 1969, the employee would have the right to claim compensation if the accidents occurred when he or she travels to and from work or on a journey for any reason related to the work. In the case of FWA while working at home, although the provision does not explicitly mention the compensation for accidents at home, the words "in the course of his employment" is deemed to be inclusive provided that the employee abides by the directive of the employer and on consent (Wahab, Razak & Mahmud, 2022).

5 Conclusion

In conclusion, the adoption of FWA has emerged as a transformative force within the Malaysian workforce, reshaping traditional employment dynamics and offering a myriad of benefits to both employers and employees. The legal landscape plays an integral role in ensuring the successful integration of FWA, providing the necessary framework to protect the rights of all stakeholders involved. As Malaysia's labour laws continue to evolve to accommodate the changing nature of work, it becomes

increasingly important for employers to navigate the intricate web of legal considerations surrounding FWA. From compliance with working hours and compensation regulations to upholding health and safety standards, employers must be attuned to the legal responsibilities associated with offering flexible work options.

Considering the ongoing global shift towards remote and flexible work, it is imperative for organizations to remain vigilant in their adherence to labour laws and regulations. This involves proactive measures such as comprehensive risk assessments for remote work environments, documentation of revised employment contracts, and the establishment of clear communication channels for both remote and on-site employees. As a closing note, it is highly recommended for employers to set out clear guidelines, rules and/or regulations prior to introducing the FWA to employees.

6 Acknowledgment

This work is supported by the Ministry of Higher Education (MoHE) of Malaysia through the Fundamental Research Grant Scheme (Ref: FRGS/1/2021/SSI0/UUM/02/8).

References

1. Akin G. (2020). Work-from-home legal issues checklist. Strauss Hauer & Feld L. L.P. Available at <https://www.akingump.com/en/news-insights/work-from-home-legal-issues-checklist.html>
2. Allen, T. D., Golden, T. D. & Shockley, K. M. (2015). How Effective Is Telecommuting? Assessing the Status of Our Scientific Findings. *Psychological Science in the Public Interest*, 16(2), 40-68.
3. Allen, T. D., Johnson, R. C., Kiburz, K. M. & Shockley, K. M. (2013). Work–Family Conflict and Flexible Work Arrangements: Deconstructing Flexibility. *Personnel Psychology*, 66(2), 345-376.
4. Asmawi, A. & Othman, N. S. (2018). Barriers to Flexible Work Arrangements (FWA) in Malaysian Knowledge-based Industries. *IEEE International Conference on Industrial Engineering and Engineering Management (IEEM)*, Bangkok, Thailand, 2018, pp. 163-167, doi: 10.1109/IEEM.2018.8607349.
5. Baruch, Y. (2000). Teleworking: Benefits and pitfalls as perceived by professionals and managers. *New Technology, Work and Employment*, 15(1), 34-49.
6. Bloom, N., Liang, J., Roberts, J. & Ying, Z. J. (2015). Does Working from Home-Work? Evidence from a Chinese Experiment. *The Quarterly Journal of Economics*, 130(1), 165-218.
7. Bonifacio, R. (2023). Shift Swapping Explained: An Essential in Modern Work Culture. *Shiftbase*. Available at <https://www.shiftbase.com/glossary/shift-swapping>
8. Christopher & Lee. (2020). Going Remote – Challenges employers face in work from home arrangements. *Rajah & Tann Asia*. Available at https://www.christopherleeong.com/media/4009/clo_employment_update_going_remote_v5.pdf2020

9. Dagher, G. K. & Itani, T. (2019). Workplace flexibility and inclusion for women. In *The Oxford Handbook of Diversity in Organizations* (pp. 487-504). Oxford University Press.
10. Deloitte. (2020). Global Millennial Survey 2020. Available at <https://www2.deloitte.com/global/en/pages/about-deloitte/articles/millennialsurvey.html>
11. Greenhaus, J. H. & Powell, G. N. (2006). When work and family are allies: A theory of work–family enrichment. *Academy of Management Review*, 31(1), 72-92.
12. Herrity, J. (2023). Compressed Workweek: Advantages and Disadvantages. Indeed. Available at <https://www.indeed.com/career-advice/career-development/compressed-workweek>
13. International Labour Organisation. (2020). An employer’s guide on working from home in response to the outbreak of COVID-19. International Labour Organization. Available at https://www.ilo.org/actemp/publications/WCMS_745024/lang-en/index.htm
14. Kossek, E. E., Baltes, B. B., & Matthews, R. A. (2011). How Work–Family Research Can Finally Have an Impact in Organizations. *Industrial and Organizational Psychology*, 4(3), 352–369.
15. Poh, T.E., Chai, S., Lim, Y.P., Wong, C.Y., Heng, F.E.K. & Wong, J.S.Y. (2022). Implementation of Flexible Work Arrangement among Healthcare Workers in Miri Hospital-Assessment of the Validity and Reliability of Flexible Work Arrangement Perceived Benefits and Barriers Scale, and the Exploratory Study. *Malays J Med Sci*. 2022 Dec;29(6):89-103. doi: 10.21315/mjms2022.29.6.9. Epub 2022. PMID: 36818909; PMCID: PMC9910372.
16. Rupiatta, K. & Beckmann, M. (2016). Working from home: What is the effect on employees’ effort? WWZ Working Paper, No. 2016/07. University of Basel, Center of Business and Economics (WWZ), Basel. Available at <https://www.econstor.eu/bitstream/10419/162183/1/889498229.pdf>
17. Shamir, B. & Salomon, I. (1985). Work-at-home and the quality of working life. *Academy of Management Review*, 10(3), 455-464. Sharma, L. (2012). Generation Y at workplace. *Human Resource Management*, 5, 74-78.
18. Smith, K. T. (2010). Work-life balance perspectives of marketing professionals in generation Y. *Services Marketing Quarterly*, 31(4), 434-447.
19. Teh, B. H., Soh, P. C. H., Loh, Y. L. & Hong, Y. H. (2013). Enhancing the Implementation of Telecommuting (Work from Home) in Malaysia. *Asian Social Science*, 9(7), 1-11.
20. Wahab, H. A., Razak, S. S. A., & Mahmud, N. A. K. N. (2022). Legal issues in working from home amid Covid-19 pandemic in Malaysia. *UUM Journal of Legal Studies*, 13 (2), 163-186. //doi.org/10.32890/uumjls2022.13.2.7
21. Writer, S. (2019). How-to: Implement job sharing in your organisation. *Human Resources Online*. Available at <https://www.humanresourcesonline.net/how-to-implement-job-sharing-in-your-organisation>
22. Yogarajah, A. (2020). Do your employees work from home? Legal Issues to Consider. *Sprintlaw*. Available at <https://sprintlaw.com.au/working-from-home-legal-issues>

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

