



**A LEGAL ANALYSIS PERTAINING TO
STATUTORY EMPLOYMENT RIGHTS AND
PROTECTION IN THE WORKPLACE**

BY

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degree of Doctor of Philosophy**

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ABSTRACT

The primary objective of this study is to examine precisely the working of selected provisions of the Employment Act 1955, primarily focusing on the legislated employees' rights at the workplace governing wages, hours of work, rest day, public holidays, annual leave, sick leave and maternity protection. Legalistic method of identifying legal problems was performed to accomplish the primary objective of the research. This method involved the process of identifying the legal issues, selection of the rule of law that governs the issues, application of the law to the facts and formulation of conclusions of law. In conducting the legal analysis, references were made to both primary and secondary legal authorities. The primary legal authorities covered legislative sources, executive sources and judicial sources whilst the secondary legal authorities involved a wide range of materials such as law reports, academic law journals, digests and law books. The comprehensive legal analysis provided a critical insight into the exact meaning, correct interpretation and right application of the law that prescribe the statutory rights at the workplace. The analysis and findings are discussed thoroughly under separate topics and presented systematically in chapter three to chapter nine of the thesis. These chapters also discussed the lacunas in the law and recommended a series of measures that address some aspects of employees' rights which aim to provide some improvement to the legal document. The study also measures the levels of basic knowledge of these rights among HR practitioners, the provision of law which is the greatest concern to them; the key sources utilised for obtaining advice and their level of concern in making legally sound decisions. It also attempts to identify the difference in the levels of knowledge across the demographic characteristics of the respondents; and examine the relationship between the levels of knowledge and the size of companies; and the levels of concern in making legal decision, respectively. The level of basic knowledge was measured by calculating the mean score of the variables. The data concerning the demographic characteristics, the provision of law of greatest concern, the sources of legal knowledge and the level of concern in making legal decisions were analysed using descriptive statistics and presented using frequency distributions and percentages. Kruskal-Wallis Test was used to compare mean differences in knowledge levels across age, education, tenure groups and size of companies. Spearman Correlation analysis was utilised to examine the nature of the relationship between knowledge scores and the size of companies as well as the level of concern in making legal decisions. The results reveal that the respondents possessed a moderate level of basic knowledge concerning statutory employment rights. The most important source of advice was via the Department of Labour followed via lawyers and colleagues. Statutory rights to wages were reported as the main concern followed by working time and rest breaks provision. Majority of the respondents were concerned, to some degree, about their ability in making legally sound decisions. There was no significant difference in knowledge levels across the different age, education and tenure groups; but there was a statistically significant difference in the knowledge levels across different size of companies. There was a strong, positive correlation between the levels of knowledge and size of companies; and a moderate positive significant correlation with the level of concern in making legal decisions.

ملخص البحث

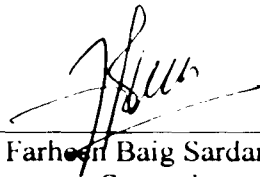
الهدف الرئيس من هذه الدراسة هو الفحص الدقيق لعمل أحكام مختارة من قانون العمل لعام 1955م، بالتركيز على حقوق العمال في أماكن العمل المنصوص عليها قانوناً ذات الصلة بسياسة الأجور، وساعات العمل، ويوم الراحة، والإجازات العامة، والإجازة السنوية، والإجازة المرضية، وحماية الأمومة. تم استخدام المنهج القانوني لتحديد المشكلات القانونية لتحقيق أهداف هذا البحث. هذا المنهج تضمن عملية تحديد المسائل القانونية، واختيار القاعدة القانونية التي تحكم هذه المسائل، وتطبيق القانون على الوقائع، وصياغة النتائج القانونية. وعند إجراء التحليل القانوني تم الاستناد على كلاً من المراجع القانونية الأولية والثانوية. وغطت المراجع القانونية الأولية المصادر التشريعية، والتنفيذية، والقضائية، بينما شملت المصادر القانونية الثانوية عدد وافر من المراجع مثل مجلات الاحكام القضائية، والمجلات القانونية الاكاديمية، والمختصات والكتب القانونية. قدم التحليل القانوني الشامل نظرة نقدية للمعنى الحقيقي، والتفسير الصحيح، والتطبيق السليم للقانون الذي يصف الحقوق القانونية في أماكن العمل. نوقش التحليل والنتائج بشكل مفصل تحت عناوين مختلفة وعرضت النتائج بشكل منظم ابتداءً من الفصل الثالث وحتى الفصل التاسع من هذه الرسالة. كما ناقشت هذه الفصول الثغرات القانونية واوصت بسلسلة من الاجراءات التي تعالج بعض جوانب حقوق العمال والتي تهدف الى توفير بعض التحسينات للوثيقة القانونية. كما أجرت الدراسة قياس لمستويات المعرفة الأساسية لهذه الحقوق بين العاملين في مجال الموارد البشرية، والأحكام القانونية التي تمهم بشكل كبير، والمصادر الأساسية المستخدمة للحصول على الإستشارة ومستوى اهتمامهم في اتخاذ القرارات القانونية الصائبة. كما حاولت الدراسة معرفة الفروق في مستويات المعرفة من خلال معرفة الخصائص الديمغرافية للمستجيبين، كما اختبرت العلاقة بين مستويات المعرفة وحجم الشركات، كما استقصت الدراسة على حد سواء مستويات الاهتمام في اتخاذ القرارات القانونية. وتم قياس مستويات المعرفة الأساسية بحساب معدل وسط المتغيرات. حللت البيانات المتعلقة بالخصائص الديمغرافية والاحكام القانونية الأكثر أهمية ومصادر المعرفة القانونية ومستوى الاهتمام في اتخاذ القرارات القانونية باستخدام الاحصاءات الوصفية، وعرضت باستخدام الجداول التكرارية والنسب المئوية. واستخدم اختبار كروسكال وليز لمقارنة فروقات معدل الوسط في مستويات المعرفة من خلال العمر، ومستوى التعليم، وجماعات العمل وحجم الشركات. واستخدم تحليل الارتباط لسيرمان لاختبار طبيعة العلاقة بين نتائج المعرفة وحجم الشركات، اضافة الى مستوى الاهتمام في اتخاذ القرارات القانونية. واطهرت نتائج الدراسة أن للمستجيبين مستوى متوسط من المعرفة الأساسية بحقوق العمل المنصوص عليها قانوناً. كان اهم مصدر استشاري هو قسم العمال يليه المحامون ثم الزملاء. واعتبرت النصوص القانونية المتعلقة بالأجور هي الأكثر أهمية يليها النصوص المتعلقة بوقت العمل ثم تلك المتعلقة بالاستراحات. اهدى معظم المستجيبين بعض القلق بشأن مدى تمكنهم من اتخاذ القرارات القانونية الصائبة. ليس هناك فرق معتبر في مستويات المعرفة باعتبار العمر ومستوى التعليم، وجماعات العمل، ولكن اظهرت النتائج ان هناك فرق احصائي دال في مستويات المعرفة بالنظر الى حجم الشركات المختلفة. وجد أن هناك ارتباط ايجابي وقوى بين مستويات المعرفة وحجم الشركات، وكما وجد ارتباط دال ايجابي متوسط بين مستويات المعرفة ومستوى الاهتمام باتخاذ القرارات القانونية.

APPROVAL PAGE


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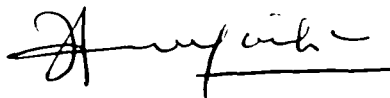


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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Hapriza binti Ashari

Signature.....

Date.....*16/8/2013*

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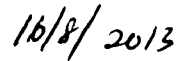
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*To my parents, Allahyarham Haji Ashari bin Haji Awang
and Hajah Zainah binti Haji Lamdin;
my beloved late husband, Allahyarham Haji Sazali bin Haji Yaacob;
my lovely daughter, Syafiah Suraya
I dedicate this work with much love and appreciation*

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