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THE IMPLEMENTATION OF EMPLOYEE ASSISTANCE PROGRAM IN MALAYSIA, THE UNITED KINGDOM AND AUSTRALIA IN DEALING WITH MENTAL HEALTH ISSUES AT WORKPLACE: AN OVERVIEW

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Abstract:

Workers are currently struggling to cope with assigned tasks. As the workload increases and improperly managed, workers are certainly exposed to work-related stress, which will not only affect their performance, but also their mental health. Employers may implement Employee Assistance Program (EAP) that offers counselling sessions, workshops, support group and others, as a preventive and proactive measure to help their employees to overcome issues associated with work-related stress. Nevertheless, EAP is subject to limitations in terms of its effectiveness, such as its implementation is not optimized by organisations adapting it, and less effective EAP sessions that barely resulted in improvement of workers' mental health. Malaysian law does not stipulate the implementation of EAP in organizations. However, Section 15 (2) of the Occupational Safety and Health Act 1994 impliedly supports the introduction of EAP in Malaysia. The purpose of this paper is therefore to explain how employers in Malaysia should implement EAP to help their workers' mental health well-being, as well as to compare how EAP is implemented in the United Kingdom and Australia. This paper applies qualitative method, which consist of doctrinal legal research approach to understand the program dealing with mental health. Comparative method will also be employed in order to compare the legal frameworks and programs

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related to mental health well-being in the developed countries such as the United Kingdom and Australia and this involves examination of the similarities and dissimilarities between situations within the same legal system. This paper concludes that the implementation of EAP in an organization will be able to promote the mental health well being of employees.

Keywords:

Employee Assistance Program, Mental Health, Work-related Stress

Introduction

An employee assistance program (EAP) is an employer intervention program to help employees deal with personal issues that may be interfering with their professional performance (Attridge, 2008, Banks, 2021 and Gething, 2021). Generally, the objectives of EAP focus mainly on giving professional advice and consultation in assisting both employers and employees dealing with problems such as mental health issues relating to work that may affect the employee's performance. It is submitted that the introduction of EAP should act as a prevention and intervention mechanism for employees who are dealing with work-related stress (Bernama, 2019). Mental health awareness training, mental health counselling, counselling for marriage, family, and/or financial struggles, substance abuse treatment, workplace conflict resolution, childcare and eldercare navigation, wellness programs, legal guidance, and an emergency hotline are all possible resources and services of EAP (Roche, Kostadinov, Cameron, Pidd, McEntee, and Duraisingam (2018) and Banks (2021).

Mental Health and The Employee Assistance Program (EAP)

Millions of employees suffer from various mental health issues, which can further lead to issues regarding productivity, well-being, burnout, and turnover, among other things. Employees who are coping with a mental health condition are more likely to be disengaged from the task at hand because their mind is preoccupied with their personal struggle (Bhui, Dinos, Galant-Miecznikowska, de Jongh, and Stansfeld, 2016).

According to a WHO analysis published in My Psychology (2022), 29 percent of employees, or one out of every three, have poor mental health, which can contribute to higher absenteeism, lower productivity, and even significant staff turnover. In Malaysia a company with 1,000 employees, approximately 300 of them will be affected with depression, anxiety, or stress, indeed in a recent analysis provided by Relate Malaysia, a company could face up to RM283,800 per year of mental health costs, with an estimated cost of RM946 per worker. Apparently, 76% of employees believe employers should be doing more to support mental health (Naluri HQ, 2022). Fundamentally, when dealing with employees whose personal issues interfere with their ability to perform their duties in the workplace, employers must use the services embedded under EAP with caution and empathy.

It is important to note that previously known as Occupational Alcohol Programme, EAP was introduced by the American employers with a specific aim to cater alcohol abuse among the workers. At present, the implementation of EAP widely covers various occupational issues, among others include work-related stress problems in a workplace. The implementation of EAP is in line with the provision of Article 27 of Charter of United Nation in relation to Work and

Employment, which provides protection to the employee to have a just and favourable condition at work for safe and healthy working condition.

The importance to have an EAP can be seen in the introduction of Employee Assistance Professionals Association (EAPA). EAPA later issued EAP Standard Framework to secure the effective implementation of EAP itself. In ensuring the employees mental health well being, Malaysia, the United Kingdom (the UK) and Australia have adopted EAP, each with its own different mechanism. Accordingly, this paper seeks to explain on the implementation of EAP in Malaysia, the UK and Australia as well as the limitations of its implementation.

The Implementation of EAP in Malaysia

There is no specific requirement under Malaysian legal provisions mandating for EAP. However, Section 15 (2) of the Occupational Safety and Health Act 1994 has impliedly support the introduction of EAP in Malaysia, stating that every employer is required to ensure their employees' safety, health and welfare at work.

The EAP affiliates in Malaysia include The Mind, My Psychology, Bosh, Workplace Options, Naluri and Solace Wellness. Among the available EAP models applicable in Malaysia are In-House Program, Fixed-Fee Contracts, Fee-For-Service Contracts and Hybrid Model. The In-House Program is a type of EAP that hires professionals to be attached to an organization in which the confidentiality of employees is claimed to be protected. Fixed-Fee Contracts deals with external consultant wherein their fees are paid based on the total number of employees of the company, regardless of whether the employees were consulted or not. On the contrary, in Fee-For-Service Contracts, fees are paid based on the total number of the consultation sessions provided. Alternatively, employers may apply the Hybrid Model which utilizes the combination of all EAP models.

Leading and outstanding companies in Malaysia such as Shell Malaysia has adopted EAP by providing counselling support services in the form of preventive and proactive intervention to its employees facing mental health problems which may affect their work performance. Similarly, TM Malaysia has also adopted EAP in the form of counselling services to cater its employee's personal or work-related problems.

In relation to this, a survey entitled 'What Working Parents Want 2020' has awarded 10 Malaysian companies as 'family-friendly companies', including Shell Malaysia that offers counselling services for its employees. Such counselling services are considered as an important element of EAP being a support program for the employee in ensuring their mental health well-being. Interestingly, the said counselling sessions are conducted in different languages to cater the need of the multi-racial employees that speak diverse languages for instance Malay, English, Mandarin, Tamil, Cantonese and Hokkien (Ranstad, 2021).

The Implementation of EAP in the UK

As compared to Malaysia, EAP is widely applied and implemented in the UK as a mechanism for employers to help the workers in dealing with work-related and non work-related stress. In order to ensure the distinguished services and quality of EAP, a standard framework has been introduced by EAPA, although it is not legally binding. The standard framework requires, among others, that the purchaser of EAP which is usually an organization, to be supplied with

implementation plan, promotion, report, complaint procedures, record keeping, confidentiality, EAP specialist and many more (EAPA, 2015).

EAP in the UK can be applied in different types, which include external, internal and embedded model. Under the external model, employees will be given advice by a counselor or psychologist at a location away from the workplace, which provides more ease and comfort to the related employee, as the colleagues are not able to notice the session. On the contrary, internal EAP is held through counselling session given by a therapist within the workplace surrounding. In relation to the embedded EAP model, it is carried out free of charge for the employee, usually provided through telephone helpline, as part of the insurance bought by the employer.

Despite the different types of EAP, it is recommended that the ideal and good EAP should mandatorily consist of the employment of in-house counselor, managers' continuous monitoring and preventive approach (Simpson, 2020). A research conducted by Dr Bajorek under EAPA has pointed out that the implementation of EAP could improve employee's productivity by reducing absenteeism rate in an organization (Bajorek, 2016). The findings of the research, among others, claimed that there is indeed positive feedback from employees towards EAP, as being captured from interview sessions with them as the following:

"Sometimes staffs do not want to discuss their personal matters internally, so the EAP gives them that service, that place to go, where they can be anonymous and discuss their problems." (Participant 10)

"I think EAP is of great importance and great value, obviously, because I am in charge of well-being. However, whether the rest of the organisation sees it the same way, well, I think it is now of those things that is like an insurance policy. You never know that you really need it until the time comes that you need it...It is probably one of the best well-being programmes that we have, but whether anybody else feel like that depends on whether they have needed to use it I guess." (Participant 1)

In addition, it is submitted that EAP can be used as a mechanism or tool for employer to assist employee whereby the assistance will contribute to happier and healthier employees since they feel the employer appreciate them (Simpson, 2020).

However, it is submitted that the evaluation on the effectiveness of EAP in the UK is not reliable, since it is carried out through informal ways, for example, staff rating, the number of closed cases and sickness absence other than quarterly meeting between provider of EAP and the employer which is less evidenced (UK EAPA, 2014). Moreover, there are constraints or limitation for effective implementation of EAP due to many reasons, such as:

Firstly, the sessions are limited sessions as it is based on the employers' income stability (Roche et al, 2018). The more income of the employers, the more number of counselling sessions can be attended by the employees. Basically, therapy services for employees are accessible for only nine days, on the average which involves four to six sessions at most (Mellor-Clark, 2012).

Secondly, the fees charged for every session are costly despite some of the sessions are only conducted over the phone. In relation to this, it is argued that by taking into consideration the restricted movement during COVID-19 pandemic whereby the affiliate did not need to pay for transportation and accommodation, the fees must be revised and reduced (Banning, 2020). Approximately, the cost of an EAP is £5 - £15 per head, depending on which service is provided by the affiliate, whether it is online or face-to-face session.

Thirdly, the ranges of issues handled by the affiliates are limited only to the problems that are encountered by individual employees, or are particularly subjected just to the training or competency of the counsellors (Bajorek, 2016). Thus, conflict and concerns of employees regarding the negative stigma on the confidentiality of EAP will not be entertained by the affiliates. In addition, advice given by non-competent advisor regarding the issues faced by the employee might also affect the effectiveness of EAP.

Fourthly, EAP is less effective when the factors contributed to the employees' work-related stress discussed with the EAP providers were reported to the top management of the organization. Such factors may be caused by the surrounding of the workplace or the employee's personal life. However, this might be inaccurate due to the wrong perception or misunderstanding of the employee towards the issues happening at the workplace.

Finally, the acceptance and stigma of the employees towards EAP may also contribute to the less effectiveness of EAP. Employees are anxious regarding the possibilities that the issues they discussed and reported to EAP might lead to workplace discrimination against them, apart from embarrassments and denial towards the issue (Gething, 2021).

The Implementation of EAP in Australia

EAP in Australia started in 1977 and was funded by the Australian government to tackle the drug and alcohol abuse among employees. It was managed by a professional of personnel management and industrial relation prior to EAP's private provider entering the market in 1990's (Kirk and Brown, 2003). Accordingly, EAP in Australia is offered in two ways, either by internal or external provider, both differing in terms of its intervention services such as intervention session, and training delivered inside or outside the organisation respectively (Kirk and Brown, 2003).

Along with the implementation of the EAP in Australia, several recommendations have been made and included, among others are;

- a. The introduction of Psychological Health and Safety in Workplace Health and Safety laws (WHS laws) since psychological aspect is less clear and vague in the WHS laws (EAPA, 2019).
- b. Codes of Practice on Employer Duty of Care was developed, particularly relating to psychological risks towards employees which include child protection social workers and those in high-risk jobs such as police officers.
- c. Intervention offers should be in the form of self-referred; follow-up sessions and mental health check-ups on semi-annual basis.

The rising of the implementation of EAP in Australia is claimed to be the evidence of exercising duty of care by the employer to their employees, other than assisting the employer to meet their obligations under the Occupational Health and Safety Act 2000 (afterward was repealed by Workplace Health and Safety Act 2011) (Kirk and Brown, 2003).

In *M v Winslow Constructors (VIC) Pty Lts [2015] VSC 728*, an employee who is a female labour was awarded \$1.36 million for psychiatric injuries suffered by her due to abuse, bullying and sexual harassment in her workplace. Her complaints made to the Human Resource Department were ignored. The court held that the employer was in fact in breach of duty of care by allowing its worker to face with extensive bullying and harassment.

Further, in *Keegan v Sussan Corporation (Aust.) Pty Ltd [2014] Qsc 64*, the employer was held to be in breach of its duty of care and liable for psychiatric injuries suffered by its employee after the latter being bullied and harassed by her store manager. The employee had in fact lodged several complaints to the State Business Manager and unfortunately, was asked to “work it out herself”.

EAP and Employer’s Duty of Care

The implementation of EAP can be considered as a way to support the employer in dealing with employee’s mental health issue. Accordingly, it is the employer’s duty of care to cater its employee’s mental health issue, which should consist of safe working environment by avoiding issues pertaining to work-related illness. Breach of duty to conduct risk assessment and to provide consultation may contribute to legal implications, as it is a statutory obligation reflected under the UK Health and Safety at Work etc. Act of 1974 (HSWA 1974).

Additionally, in *Walker v. Northumberland City Council ([1995] IRLR 35)* it was held that employers owed duty of care towards employees of which were extended to psychiatric injury, and work-related stress as regards to the volume of work. In this case, the employee, due to overwork and stress, had reported the problem to the council as his employer. Despite the employer’s promise to look into the problems, nothing was done to solve the issues. The council’s failure to provide resources to reduce the pressure and further caused the employee unable to provide the necessary services had driven him to despair. While the employee’s first nervous breakdown could not have been foreseen, the employer should have anticipate that the same workload was likely to lead to a further breakdown and subsequently put an end to the employee’s career. The standard of care required to be provided by the council was support should have been forthcoming, but it did not. The court ruled that the council was in breach of its duty of care, with liability for damages were to be assessed.

Despite being a method to support employer’s duty of care, the effectiveness of EAP is disputed as it is claimed that such program is unable to proactively provide preventive measure to the employers to deal with employees’ mental health problems due to the reason that EAP usually deals only at reactive level (Paviour, 2020).

In the case of *Barber v Somerset County Council ([2004] IRLR 475 HL)*, Mr Barber was employed by Somerset County Council as a teacher. As a result of a restructuring process, in September 1995, Mr Barber had to take on further responsibilities and had to work between 61 and 70 hours weekly. In February 1996, he complained of “work overload” to the school's Deputy Headteacher. Consequently, in May 1996, he was absent from work for three weeks due to stress and depression. On his return to work, Mr Barber met with members of the school's senior management team and said he was not coping with his workload and his health was affected. No steps were taken to assist him. In November 1996, after losing control and shaking a pupil, he left the school and did not return. Since then Mr Barber had been unable to work as a teacher, or do any work other than undemanding part-time job. He claimed damages for

psychiatric illness. After the judgement was in favour of Mr Barber at the County Court, Sommerset City Council appealed to the Court of Appeal. Eventually, it was further brought to the the House of Lords (HOL) wherein the HOL stated that the overall test in determining whether an employer was in breach of the duty of care owed to an employee was the conduct of a reasonable and prudent employer taking positive thought for the safety of its workers in the light of what it knows or ought to know. Every case depended on its own facts. The HOL held that the employer's duty to take some action arose when Mr Barber returned to work after a three-week absence due to stress and depression and met with the school's senior management team. It continued so long and nothing was done to help him. The HOL restored the County Court decision as the case was concluded that Mr Barber's depressive illness was caused by stress at work. He was awarded damages of over £100,000.

It can be seen from this judgment that in exercising the duty of care, an employer should be very proactive rather than implementing the wait and see approach. Proactive steps must be taken by the employer to assist employees who are suffering stress from the workplace.

Accordingly, the implementation of EAP towards successful employees mental health well being in supporting employer's duty of care should encompass at preventive level and not only at reactive level, and such support mechanism should cover the right person in the right way and right time and accessibility (Deloitte, 2020).

Recommendations

EAPs are potentially beneficial for the employees' mental health well-being. Employers may in one way or another, benefit from such effective prevention and problem-solving strategies, as well as empowering their employees with skills in managing work-related stress, improving work performance, and increasing business productivity.

As the employer applies EAP at the workplace, it should also be efficiently promoted among the employees. An organization should convince the employees to obtain consultation from the EAP counselors and assure that there will be no work discrimination posed on the employees by the employers since the problems shared are strictly confidential. Additionally, the evaluation method to prove the cost-effectiveness must be developed in ensuring the efficacy of EAP. However, this should not be the prime concern in assessing the effectiveness of EAP but rather, the employees mental health well being must be prioritized. Further, the accomplishment of EAP should not be justified by considering the lower rate of employee's absenteeism only but other elements as well. Other than implementing EAP, employees' mental health well-being may alternatively be supported by several other mechanisms to ensure that it does not only act at the reactive level, but also at the preventive level.

Employers providing EAP must be mindful of legal considerations surrounding such services due to the reason that EAPs frequently deal with mental health, organizational punishment to the employees, and confidentiality. A formal, compulsory referral to an EAP should most commonly be carried out with the employee's prior approval (as opposed to a voluntary referral in which the employee chooses to seek help from the EAP by himself). In such cases where a formal referral is required, employers must establish that the employee has a documented performance problem in addition to the employee being melancholy, suicidal, or potentially aggressive (SHRM, 2022).

Conclusion

The implementation of EAP in an organization has proven effective in promoting the well-being of the employees' mental health. In order to achieve this result, employers should actively advocate the advantages and benefits of utilizing EAP in assisting their employees who are experiencing work-related stress issues. Furthermore, functional EAP does not only benefit the employees, but may also contribute to the increase in the organization's Return on Investment (ROI). Essentially, companies with the best practice of EAP may act as a reference point in guiding other companies implementing similar program.

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