

DRUG ABUSE AT THE WORKPLACE: THE LAW AND PRACTICE IN MALAYSIA

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Abstract

Integrity and professionalism must be observe by all workers in a workplace. There are rules and regulations which need to be observed by all workers regardless the working sector they belong to. Every workers must not involve with any activities which will severely affect their own life, the life of other people and affects their own reputation and the reputation of the organization which they belong to like getting involve with the use of any illegal substance such as drug. The negative effects generated from drug abuse is a fact well – known by everybody due to extensive research and study which being done on such matter for many years in all countries by leading experts and institutions. Workers themselves must not get involve with drug abuse activities or worst becoming addicted to drug themselves as it can affect their mind and emotion from becoming a good worker or even a better human being. Employer as the leader in a workplace must take the issue on drug abuse at their workplace seriously. It is the object of this paper to examine closely over the issue of drug abuse at the workplace, the effects it bring, analyzing all the existing laws and practices to deal with the issue and proposing a simple guidelines to avoid the issue from approaching a workplace. This paper will adopt pure library research as its methodology. Various sources of references both in the form of primary or secondary legal sources will be adopted in this paper. Extensive reference will be made to the existing laws in the country in dealing with drugs abuse problems including rules and regulations over the drug abuse problems at the workplace. At the end of the research, this paper will able to examine the existing laws dealing with the problem on drug abuse at the workplace, identify the cause and effects over the problem concerning drug abuse at the workplace and come out with possible solutions in a form of preventive steps which can be taken to prevent drug abuse at the workplace in the country.

Keywords: *Drug, Abuse, Workplace, Workers, Mind.*

INTRODUCTION

Illegal substance abuse like drug should be avoided at all time. Such generally well – known fact has been embodied in the mind of every person through both formal and informal education which they have received in throughout their life. Formal education like schools, colleges, and universities, proper exposure has been given by teachers and lecturers over the danger of getting involve with any kind of illegal substance abuse.

Children also has be taught since small by their parent or grandparent or any close relative not to get involve with any kind of illegal substance abuse. Such teaching normally been taught to the children informally either through advice or discussion.

Due to this simple fact, it would be not only legally wrong but also morally wrong for anybody with the right mind to get involve with any illegal activities including with the activities which involve with the use of any kind of illegal substance like drug abuse. According to the World Health Organization (WHO), substance abuse is being refer to the harmful or hazardous use of “psychoactive substances”, like the use of alcohol or unlawful drugs.

According to WHO also, such psychoactive substance use can lead the abuser themselves to dependence syndrome, a cluster of behavioural, cognitive, and physiological phenomena that develop after repeated substance use and that typically include a strong desire to take the drug, difficulties in controlling its use, persisting in its use despite harmful consequences, a higher priority given to drug use than to other activities and obligations, and sometimes a physical withdrawal state. (Substance Abuse, World Health Organization (WHO), 2019).

As for drug abuse it is generally been defined as a patterned use of any illegal substance involving the use drug in which the abuser consumes the substance in amounts or with methods which are

harmful to themselves or others. Drugs which are most often been subjected to abuses includes alcohol, cannabis, barbiturates, benzodiazepines, cocaine, methaqualone, opioids and some substituted amphetamines like methamphetamine and Methylenedioxy methamphetamine (MDMA) or commonly known by many as Ecstasy.

There are various kind of drugs which have been subjected to misused or abuse by Malaysian society for the last many years. According to the Malaysian National Anti – Drugs Agency (NADA), an agency under the purview of the Malaysian Ministry of Home Affairs (MOHA) that oversees drug related issues and problems in Malaysia, there are various kind of drugs being used by drug abusers in the country.

They includes Opiate (Heroin and Morphine), Methamphetamine (Crystalline) like Syabu, Methamphetamine (Tablet) like YABA pill, & YAMA pill, Marijuana, Samphetamine – type stimulants (ATS) (Ecstasy and Amphetamine), Psychotropic pill like Benzodiazepine, Psychotropic Pill and Eramine 5, and other kinds of substances which have similar effect close to drug itself like Ketum leaves, Depressant, Dissociative, Hallucinogens, and others.

(Drug statistic, NADA, 2019). According to NADA, in general among the likely cause which give rise to the problem over drug abuse includes due to peer influence, due to curiosity, to have fun, due to stress, to relief pain, as a stimulant, aggressive, work – based, entertainment, lack of religious affiliation, financial problems, slimming, domestic violence, medical, craving for drugs, sex, betrayed, ignorance the dangers of drugs, for study purposes and so on. (Drug statistic, NADA, 2019).

Becoming a drug abuse will lead to other serious problem not only to the abuser themselves but also to other people around him. The most common effect of drug abuse is upon the abuser health. The

abuser will become addicted to the illegal substance and begin to develop some kind of dependency to the illegal substance.

Depend on the amount and types of drug being abuse by the abuser, such addiction and dependence will slowly affect their mind and emotion stability. The abuser normal attitude will also be effected. The abuser will become less focus in life and begin to exclude himself from the society. This is widely known as “Anti – Social Behaviour”. (Mohamed Ibrahim, Razak Lajis, and Mohd Isa Abdul Majid, 2004 and Ksir, Oakley Ray; Charles, 2002).

In addition to possible physical, social, and psychological harm, according to some study use of some drugs may also lead the abuser themselves to criminal charge or penalties (Mosby’s Medical, Nursing & Allied Health Dictionary, 2002). Mentioning about criminal responsibility, it is important to know that Malaysia is one of the world’s toughest countries when it comes to drugs.

For many years since gaining its independent in 1957, Malaysia has been in constant fight with drug abuse. It has been the Malaysian government long term goal to create a country where there is no drug abuse and its people is free from becoming victim to drug addiction or abuse. Such long term goal is widely known as “Drug Free Malaysia” (NADA, 2019, Afzan Ayub, 2011 and Sarina Mohamed, 2012).

The main reason why Malaysian government against drug abuse in the country is due to the fact the negative impact it can bring to its people and the country as a whole. The issue concerning drug abuse had escalated in the country since the 1970s. Such escalation not only effect the life of adult, but also has effect the life of the country youth and even young children who are still in school (Farhana Syed Nokman, 2016).

Such escalation over the abuse of drug had prompted Malaysia to declare drugs abuse as the “Nation’s Number 1 Enemy” up to this day. (NADA, 2019). Since Malaysia has declared drug abuse as

the country number one enemy, steps must be taken to ensure the Malaysian society are protected from being exposed to any kinds of illegal substance or any substance which might bring potential harm to them. For this reason, the country has enacted a very strict or harsh law to deal with drug abuse cases.

The unauthorized possession of any kind of drugs is seen as a serious offence in Malaysia. The offence over drug abuse will be deal under the Dangerous Drugs Act 1952 [Act 234]. Dangerous Drugs Act 1952 [Act 234] regulates matters on the import, export, manufacture, sale and use of opium, dangerous drugs and related materials. Under the Dangerous Drugs Act 1952 [Act 234] there are three circumstances on which might lead a person into criminal conviction and faced with harsh punishment or sentencing from the court.

The three common offences are self – administration of the drug, being in possession of a drug and drug trafficking. (Joshua Tay, 2017). Each of these come with different punishments and ways in which the court can determine whether the perpetrator is guilty or not.

Self – administration of drug or basically drug for private use is governed under Section 15 of the Dangerous Drugs Act 1952 [Act 234]. Section 15 of the Dangerous Drugs Act 1952 [Act 234] states:

(1) Any person who (a) consumes, administers to himself or suffers any other person, contrary to section 14 to administer to him any dangerous drug specified in Parts III and IV of the First Schedule; or (b) is found in any premises kept or used for any of the purposes specified in section 13 in order that any such dangerous drug may be administered to or smoked or otherwise consumed by him, shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years.

(2) For the purpose of this section, “consumes” includes eat, chew, smoke, swallow, drink, inhale or introduce into the body in any manner or by any means whatsoever.

Being in possession of a drug is governed under Section 6 or Section 12 of the Dangerous Drugs Act 1952 [Act 234] depending on the type of drug. Section 6 of the of the Dangerous Drugs Act 1952 [Act 234] states any person who keeps or has in his possession, custody or control any raw opium, coca leaves, poppy-straw or cannabis or the seeds of the plants from which they may be obtained either directly or indirectly, except under and in accordance with an authorization such as is referred to in sections 4 and 5 or with any regulation made under section 7 thereof, shall be guilty of an offence against this Act and liable on conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Section 12 of the Dangerous Drugs Act 1952 [Act 234] states:

(1) No person shall except under the authorization of the Minister (a) import into Malaysia any dangerous drug specified in Parts III, IV and V of the First Schedule; or (b) export from Malaysia any dangerous drug specified in Parts III and IV of the First Schedule.

(2) No person shall have in his possession, custody or control any dangerous drug to which this Part applies unless he is authorized to be in possession, custody or control of such drug or is deemed to be so authorized under this Act or the regulations made thereunder.

(3) Any person who contravenes subsection (2) of this section shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(4) Any person who is a public officer employed at any prison, rehabilitation centre, police lock-up or place of detention

shall, on his conviction under subsection (3) for contravening subsection (2), be liable to whipping of not more than three strokes in addition to the punishment to which he is liable under subsection (3).

The legal concept of “possession” requires three main ingredients to be proven like custody, control, and knowledge. These three ingredients form both the act (*actus reus*) and the mental element (*mens rea*) (the intention or knowledge of wrongdoing) necessary in order to find someone guilty for the crime of possession of drugs.

As stated earlier under Section 12 of the Dangerous Drugs Act 1952 [Act 234], the punishment for drug possession could vary from a mere fine to life imprisonment and whipping, depending on the weight of the drugs in question.

However, the most severe offence under the Dangerous Drugs Act 1952 [Act 234] is the offence relating to drug trafficking as it carries the mandatory death penalty. However, important to note that as of 2018, the law has now been amended to change the mandatory drug penalty to discretionary. (Joshua Tay, 2017, Denise, C. 2017, and Fernando Fong, Veena Babulal and Arfa Yunuf, 2017).

In order to prove an offence of drug trafficking, the prosecution must first prove that the perpetrator were in possession of dangerous drugs and that such possession is for the purposes of trafficking in the said drugs (Joshua Tay, 2017).

According to Section 2 of the Dangerous Drugs Act 1952 [Act 234] trafficking includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering dangerous drug. According to Section 39B of the Dangerous Drugs Act 1952 [Act 234]:

(1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia (a)

traffic in a dangerous drug; (b) offer to traffic in a dangerous drug; or (c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug. (2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, be punished with whipping of not less than fifteen strokes.

(2A) In exercising the power conferred by subsection (2), the Court in imposing the sentence of imprisonment for life and whipping of not less than fifteen strokes, may have regard only to the following circumstances: (a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested; (b) there was no involvement of agent provocateur; or (c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and (d) that the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

(3) A prosecution under this section shall not be instituted except by or with the consent of the Public Prosecutor: Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.

(4) When a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

EFFECTS OF DRUG ABUSE AT THE WORKPLACE

According to statistic released by the Malaysian National Anti – Drugs Agency (NADA), there are around 21, 431 of reported cases concerning drug abuse in a workplace throughout the country in the year 2018 alone. Out of the given number, part – time workers (8,086 reported cases), general workers (5,621 reported cases), services (1,822 reported cases), sales (1,607 reported cases), agriculture (1,457 reported cases), transportation (940 reported cases), technical (890 reported cases), manufacturing (421 reported cases), construction (303 reported cases), management (Including civil servant) (207 reported cases), clerical (58 reported cases), and entertainment (19 reported cases) (Drug statistic, NADA, 2019).

Workers who has become drug abuser will affect their working performance and the organization reputation which they belong to. Besides facing personal problem, they will also started to have bad relationship with their own colleagues at the workplace, with their own superior or employer and with third party namely the client or customer (Nova Recovery Center, 2018).

Everybody also know the negative impact which drug can bring to the abuser especially when it been take beyond prescription or under unauthorized circumstances. Such illegal substance can potentially affect the mind of a person, disturb the stability of his emotion and the ability to do any work.

Once this problems have occur to any worker, they will find difficulty in performing their working duty and responsibilities. At the end, it will lead to diminished job performance, lowered productivity, absenteeism, indiscipline, misconduct and others. On extreme case, it might also lead to workplace violence like harassment and assault (Addiction Center, 2019).

The impact over addiction on drug will also spill over to other people in the workplace particularly among the co-workers.

Due to potential rise of workplace violence and harassment being committed by the worker who is under the heavy influence of drug, the co-worker will find it to be difficult to give their full focus and commitment to their job.

The working environment will become hostile which can also lead to immediate resignation by some worker who are unable to cope with such hostile working environment.

Such immediate resignation due to hostile working environment may also give rise to legal action been taken against the employer who fail to prevent the working place from become hostile due to drug abuse problem among their own worker by the resigned worker.

The impact over the drug abuse by the worker will also lead to unnecessary problem to third party like client or customer. The reputation of the organization will also be effected. The surrounding public will started to disregard the problematic organization upon knowing the fact that the organization worker has been involve with illegal substance abuse.

Once the reputation of the organization has been effected, the organization will start to suffer loss of income and eventually will also lead to bankruptcy or closing or shutting down permanently (Tomo Drug Testing, 2016).

EXISTING LAW AND PRACTICE IN MALAYSIA

There are various kind of legislations which can be used not only to deal with the problem concerning drug abuse among worker in a workplace but also as a prevention in order to prevent such problem from becoming an issue in any workplace in the country.

Though we already have strong law in place like the Dangerous Drugs Act

1952 [Act 234] to deal with the issue concerning self-administration of the drug, being in possession of a drug and drug trafficking in the country we also have other criminal statute which be used against the drug abuser in the workplace like the Penal Code [Act 574] and Poisons Act 1952 [Act 366].

Besides these criminal provision, there is also many administrative rules, regulations and even circular which can be used to ensure the workers are not drug abuser. It is crucial to note that besides committing a crime, the worker who have been subjected themselves to drug abuse has also committed a very serious misconduct which might lead to immediate dismissal from the organization.

There are various employment laws in the country which discussed about this matter. (Ashgar Ali Ali Mohamed, 2014, Sharifah Suhanah Syed Ahmad, 2012 and Marilyn Aminuddin, 1990). Under employment, misconduct can be regarded as a conduct which is improper and wrong (M. N. D'Cruz, 2003 at p. 26) and refer also to the case of *Syarikat Kenderaan Melayu Kelantan Sdn Bhd v Transport Workers Union* (1990) 1 MLJ 5).

There are various kind of misconduct which can take place in a workplace. Those types of misconduct can fall under the category of minor misconduct as well as major misconduct. There is no hard and fast rule on what constitutes major misconduct or minor misconduct.

The existing countries legislations are also silent to this regard. Companies generally like to differentiate major and minor misconduct by identifying different types of punishments for both categories of misconduct.

In fact, the list of minor and major misconduct is subjective and might vary depending on the nature of each business. For example, the act of smoking might not be a major misconduct in a legal firm but it might be deemed as major misconduct in

an oil and gas plant. As such, what really constitute a misconduct at workplace is very subjective in nature are subjected to various circumstances. All issue on misconducts and acts of indiscipline must be investigated to identify whether they are minor or major in nature.

The handling of misconduct and some of the related clauses is regulated under Section 12, 13, 14 and 15 of the Employment Act 1955 [Act 265] and also in Section 20 of the Industrial Relations Act 1967 [Act 177].

Under Section 14 of the Employment Act 1955 [Act 265] clearly states:

(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry (a) dismiss without notice the employee; (b) downgrade the employee; or (c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

(2) For the purposes of an inquiry under subsection (1), the employer may suspend the employee from work for a period not exceeding two weeks but shall pay him not less than half his wages for such period: Provided that if inquiry does not disclose any misconduct on the part of the employee the employer shall forthwith restore to the employee the full amount of wages so withheld.

(3) An employee may terminate his contract of service with his employer without notice where he or his dependants are immediately threatened by danger to the person by violence or disease such as such employee did not by his contract of service undertake to run.

From this particular section, it is clear to us that, it is very important for the employer to investigate all the allegation being submitted to him before the employer take final decision on the future of the worker and this is normally been

carry out by way of having an inquiry or domestic inquiry. Such inquiry being carry out in order to investigate further all the allegation been put forward against the accused namely the worker and this include the allegation pertaining to drug abuse committed by the accused worker.

If the domestic inquiry panel finds that the accused worker in question has been at fault, it will impose appropriate punishment which will commensurate with the magnitude of the fault and circumstances of the case.

Further reference can be made to the following case of *Mohd Zaihan Mohd Zain v Island & Peninsular Berhad* [2008] 4 ILR 155 and *Malaysian Airlines v Teo Chui Ping* [2005] 2 ILR 15. As the domestic inquiry is a purely internal process run by the organization, whether the worker can appeal against the decision made by the domestic inquiry would depend purely on the organization's policies and procedures.

If there is an appeal procedure set out in the organization's policies, the organization must comply with it to avoid any perception that they are acting unfairly or prejudicial to the worker. If the worker feels they were unfairly terminated based on the finding of the domestic inquiry, the worker may lodge a complaint for unfair dismissal pursuant to Section 20 of the Industrial Relations Act 1967 [Act 177].

PREVENTIVE STEPS TO BE TAKEN

Drug abuse problem among workers must be taken seriously by all parties especially those entities belonging to the organization like co-workers, employer, and top management. Everybody must play their role to prevent any of the workers to get involve with any illegal substance which can destroyed their own life and the life of other people.

Organization must not permit their workplace to become drug addict hot spot. Organization cannot simply ignore such problem. Action must be taken in any

way against any worker who have been subjected to drug abuse. Drug abuse in a workplace can jeopardize the working environment and tarnish the reputation of the organization.

Such action is not only something which is morally obliged to everybody to do and perform but also a legal duty which has been stated clearly under existing law in the country.

A simple reference can be made to the Occupational Safety and Health Act 1994 [Act 514] where the statute has lay down many duties and responsibilities on the part of both employer and employee to ensure the safety and health at the workplace. Section 15 of the Occupational Safety and Health Act 1994 [Act 514] clearly states:

“It shall be the duty of every employer and every self – employed person to ensure, so far as is practicable, the safety, health and welfare at work of all his employees”.

Such duty also include a duty to prepare a clear policy to ensure worker safety and health at the workplace. A person who contravenes the provisions of Section 15 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both (Section 19 of the Occupational Safety and Health Act 1994 [Act 514]).

Similar duties has been formulated under the Occupational Safety and Health Act 1994 [Act 514] for the employee. Section 24 of the Occupational Safety and Health Act 1994 [Act 514] states:

(1) It shall be the duty of every employee while at work (a) to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work; (b) to co-operate with his employer or any other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any regulation made thereunder; (c) to wear or use at all times any protective

equipment or clothing provided by the employer for the purpose of preventing risks to his safety and health; and (d) to comply with any instruction or measure on occupational safety and health instituted by his employer or any other person by or under this Act or any regulation made thereunder.

(2) A person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not-exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both. Based on above explanation, it is clear to us that both employer and employee must play active roles to ensure the organization is not being use for any illegal activities. Everybody in the organization must constantly alert over their surrounding and take immediate action to deal with such problem before it goes out of control.

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