



Shariffullah Majeed  
Partner  
**Employment &  
Industrial Relations**  
E: [sha@lh-ag.com](mailto:sha@lh-ag.com)



Summer Chong Yue Han  
Associate  
**Employment &  
Industrial Relations**  
E: [yhc@lh-ag.com](mailto:yhc@lh-ag.com)

23 OCTOBER 2024

## HEALTH-RELATED DISCRIMINATION IN THE WORKPLACE

In recent years, workplace discrimination related to health conditions has become an increasingly pressing issue. A recent news article<sup>1</sup> by *The Star* highlighted a sharp rise in cases of bias against individuals with health conditions, particularly those living with HIV. Many of these individuals have experienced job offer revocations, forced resignations, or dismissal based on their health status. The absence of comprehensive legal frameworks leaves many workers vulnerable to discrimination, highlighting the need for reforms in employment law to protect their rights and well-being.

Thus, it is vital to address discrimination against employees with chronic conditions, disabilities, and mental health challenges. Ensuring workplace inclusivity and legal protections for individuals with health issues is essential for creating fairer employment practices that allow all workers to thrive.

### Current Legal Protections

In Malaysia, the Employment Act 1955 (“**EA 1955**”) serves as the primary legislation governing employment matters, but its scope in protecting individuals with health-related conditions is limited. Section **69F** of the EA 1955 addresses discrimination, whereby the Director-General of Labour is allowed to investigate and address complaints of workplace discrimination. Under Section **69F**, an employer found guilty of discrimination may be fined up to

<sup>1</sup><https://www.thestar.com.my/news/nation/2024/09/09/workplace-bias-highest-in-five-years>

RM50,000, with an additional RM1,000 penalty per day if the offence continues.

However, it remains unclear how effectively the EA 1955 covers health-related biases, leaving individuals with chronic illnesses, disabilities, or mental health concerns vulnerable. For instance, while the **Code of Practice for the Management of HIV/AIDS in the Workplace** encourages non-discriminatory policies for employees with HIV, it is not mandatory and has not been widely adopted by companies in Malaysia. Additionally, there is no equivalent code or comprehensive legal protection for other health conditions.

Countries like the United Kingdom have implemented stronger legal frameworks. The United Kingdom's Equality Act 2010 protects employees from discrimination on health-related grounds and places a duty on employers to make reasonable adjustments. This provides more robust and detailed protection compared to the general discrimination provision under Malaysia's EA 1955.

In Malaysia, legislative frameworks that directly address health-related discrimination could be implemented to offer broader protection. Such reforms would empower employees to seek redress for any unfair treatment stemming from their health conditions while encouraging employers to adopt more inclusive practices.

### **Employer Responsibilities and Best Practices**

Employers play a pivotal role in preventing health-related discrimination and fostering an inclusive workplace environment. Beyond complying with legal obligations, employers should actively support employees dealing with various health conditions. The first step is to implement health-inclusive workplace policies that provide clear guidelines for reasonable accommodations and non-discrimination. A proactive approach in addressing potential gaps in policy and practice can mitigate the risk of legal disputes while also enhancing the company's reputation as an inclusive and supportive employer.

Employers can start by promoting awareness and education about health-related issues within the company. This can be achieved through regular training programmes for both management and employees, emphasising the importance of understanding health conditions and reducing stigma. Creating a safe and open dialogue around health issues can help employees feel more comfortable disclosing their needs without the fear of reprisal.

Furthermore, employers can offer reasonable accommodations. These may include flexible work hours, remote work options, additional sick leave, or adjustments to physical workspaces. Section **60P** of the EA 1955 grants employees the right to request flexible working arrangements. Under this provision, employees

**Head Office**

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia  
Tel: +603 6208 5888  
Fax: +603 6201 0122

**Johor Office**

Suite 21.01  
21st Floor, Public Bank Tower  
No.19, Jalan Wong Ah Fook  
80000 Johor Bahru, Johor  
Tel: +607 278 3833  
Fax: +607 278 2833

**Penang Office**

51-12-E, Menara BHL Bank,  
Jalan Sultan Ahmad Shah,  
10050  
Penang  
Tel: +604 299 9668  
Fax: +604 299 9628

**Email**

[enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)

**Website**

[www.lh-ag.com](http://www.lh-ag.com)

can formally apply to alter their work hours, days, or location to better manage their personal or health needs. While employers are not obligated to approve every request, they must provide a written response and justification if a request is denied.

For employees with health conditions, flexible working arrangements serve as a reasonable accommodation, allowing them to continue contributing productively without compromising their well-being. For instance, employees with chronic illnesses may require flexibility for medical appointments or rest periods. Similarly, individuals with mental health challenges might benefit from remote working options or adjusted hours to manage stress.

Creating a health-supportive culture can boost employee morale, productivity, and retention. Offering additional health benefits, such as mental health support and wellness programmes, shows the company's commitment to employee well-being. Employers can also establish confidential reporting mechanisms where employees can report health-related discrimination without fear of retaliation. By adopting best practices that prioritise health, employers set a standard for workplace inclusivity, benefiting both the individual and the company.

**Conclusion**

Addressing health-related discrimination is essential for fostering an inclusive workplace. While Malaysia has made progress with the EA 1955, particularly in allowing flexible working arrangements and having an avenue to report discrimination, there remains a critical need for comprehensive legal protections for employees facing health challenges. Employers are encouraged to adopt proactive measures, including reasonable accommodations and health-inclusive policies, to support their workforce. By prioritising employee well-being, employers can cultivate a culture of respect and inclusivity.

If you have any queries, please contact Associate, **Summer Chong Yue Han** ([yhc@lh-ag.com](mailto:yhc@lh-ag.com)), or her team Partner, **Shariffullah Majeed** ([sha@lh-ag.com](mailto:sha@lh-ag.com)).