Flexible Working Arrangements for People with Disabilities: Comparative Legal and Technical Perspectives

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ABSTRACT

Despite policy commitments to greater inclusion, Malaysia continues to face significant challenges in meeting its longstanding goal of achieving a 1% employment quota for persons with disabilities (PWDs) in the public sector. Although some progress has been made in registering PWDs and recognizing their employment rights, actual workforce participation remains strikingly low. Analysts have attributed this persistent shortfall to deeply entrenched structural and social barriers, including inaccessible physical work environments, insufficient vocational training opportunities, and limited employer incentives for inclusive hiring. These systemic issues highlight a troubling disconnect between the country's legal frameworks that promote inclusion and the practical realities experienced by PWDs in Malaysia's labour market. In response to global trends and advocacy for more inclusive work practices, Malaysia introduced flexible working arrangements (FWAs) through the Employment (Amendment) Act 2021, which came into force on 1 January 2023. The inclusion of Sections 60P and 60Q into the Act marked a progressive step, granting employees the right to request adjustments in working hours, days, or location. However, the current legal framework neither mandate employers to accept or consider such requests in good faith, nor does it establish any enforcement or appeals mechanism via the Labour Court or Industrial Court. In contrast to jurisdictions such as Australia and the United Kingdom, where employers are legally obliged to assess FWAs requests reasonably and are subject to review by tribunals, Malaysia's provisions offer no statutory recourse for employees whose requests are denied. This lack of enforceability significantly weakens the potential impact of the FWAs legislation for marginalized groups, including PWDs. Without binding obligations or a functional dispute resolution process, the legal right to request FWAs in Malaysia risks being merely symbolic, offering limited practical benefit to the communities it intends to empower.

Keywords: Person with disabilities (PWD), employment rights, accessibility in the workplace, equal opportunities, flexible working arrangement (FWA)

INTRODUCTION

According to Tiun and Khoo (2013), in Malaysia, approximately 8% of working population lives with disabilities, and they are mainly employed in the private sector. In 2008, the Malaysian Government decided that the civil services must allocate 1% of the available jobs to people with disabilities. With this 1% quota policy, it was expected that approximately 14,000 job opportunities in the government sector would have been available for people with disabilities in Malaysia (Abdulah & Arnidawai, 2013 as cited in Lavasani, Norwahiza & Ortega, 2015). However, 5 years later, this 1% quota has not been met and the statistics available from the Department of Social Welfare Malaysia reveals that in the government sector only 581 people with disabilities have been employed since 2008 (Tiun & Khoo, 2013). However, this number is likely underreported, and many more individuals are either working or capable of working.[i]

As of 2023, Malaysia recorded a total of 736,607 registered persons with disabilities (PWDs), constituting approximately 2.2% of the national population (Sarawak Tribune, 2023). However, their representation in the workforce remains critically low. In the public sector, only 3,856 PWDs were employed, reflecting a mere 0.52%—still below the government's 1% employment quota (Sarawak Tribune, 2023). In the private sector, data

from the Labour Department of Peninsular Malaysia indicated that 6,750 PWDs were employed, accounting for about 0.92% of all registered PWDs (Business & Human Rights Resource Centre, 2022). Combined employment across both sectors is estimated at roughly 10,600 individuals, amounting to just 1.44% of the total PWDs population. Notably, this figure is based on earlier estimates from 2018, when only 4,500 PWDs were recorded as employed across sectors, highlighting persistent underrepresentation (OKU Rights Matter, 2023). These figures underscore systemic barriers to employment, such as societal stigma, lack of accessibility, and limited vocational training, despite Malaysia's formal inclusion policies and employment quotas.

This article compared the position of FWAs in Malaysia in comparison with selected countries, primarily, the UK, Australia, U.S, and wherever necessary reference to other jurisdictions are also made.

The main author is a legal professional with a growing interest in the intersection of employment law and public health. This paper reflects her exploration into the legal dimensions of Flexible Working Arrangements (FWAs), particularly as they relate to accommodating the increasing prevalence of illness in the workforce. Recognizing FWAs as a significant legal development in both domestic and international contexts, she aims to contribute to emerging discourse on balancing productivity, legal compliance, and human dignity in the evolving world of work.

The co-author (also the corresponding author), though not from a legal background, brings a unique perspective shaped by lived experience as a person with disability (PWD). His personal journey has deepened his interest in the intersection of disability rights and workplace inclusion, motivating his collaboration on this work to advocate for more inclusive legal and policy solutions.

LITERATURE REVIEW

In the mid of 2020s, the integration of persons with disabilities (PWDs) into the workforce has garnered significant attention in literatures, emphasizing the need for inclusive practices that accommodate diverse needs. Flexible working arrangements (FWAs) have emerged as a pivotal strategy to enhance employment opportunities for PWDs. However, the implementation of FWAs necessitates a re-evaluation of traditional performance metrics to ensure equitable assessment of all employees. FWAs encompass various work models, including remote work, flexible hours, and job sharing, designed to provide employees with greater autonomy over their work schedules. For PWDs, FWAs can mitigate workplace barriers, reduce commuting challenges, and accommodate medical needs, thereby fostering a more inclusive work environment. A scoping review by Teborg et al. (2024) highlighted that the interplay of accessibility and flexibility is crucial in designing inclusive work conditions for disabled employees.

Moreover, studies have shown that FWAs can lead to increased job satisfaction among PWDs. For instance, BOS Staffing (2024) reported that 73% of employees with disabilities experienced heightened job satisfaction when provided with flexible work options supported by appropriate technology.

Traditional key performance Indexes (KPIs) often emphasize metrics such as hours worked, in-office presence, and standardized output measures. However, these indicators may not accurately reflect the contributions of PWDs, especially when FWAs are in place. Menzies (2024) cautioned that relying heavily on "face time" as a performance metric can inadvertently disadvantage employees who utilize FWAs, leading to potential biases in performance evaluations. To address this, organizations are encouraged to adopt more inclusive performance metrics that consider the unique circumstances of PWDs. The International Labour Organization (2024) recommends a holistic framework for disability inclusion, emphasizing the need for KPIs that account for accessibility, accommodation, and equitable opportunities. Such frameworks advocate for performance assessments based on outcomes and contributions rather than rigid adherence to traditional work patterns.

In Malaysia, the Persons with Disabilities Act 2008 underscores the rights of PWDs to employment and equal opportunities. However, the Act lacks specific provisions mandating FWAs or tailored performance metrics for PWDs. Ismail & Michael (2023) noted in a systematic literature review that there is limited research on the impact of FWAs on employee performance in Malaysia, indicating a need for more localized studies and policy development. In view of the limited literature on this area, this article is to fill the gap.

An Overview of Discrimination Statutes: Selected Countries

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides that: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"

Discrimination PWDs at the workplace is not a new issue. The growing awareness and recognition of the function, contribution and future of PWDs in society are necessitated by a paradigm shift from a 'charity' to a 'human right' approach (ILO, 2006). On the Malaysian front, the nation recognizes the need to address these concerns and incorporate them in the nation's development agenda. On 16 May 1964, for instance, Malaysia signed the Proclamation on Full Participation and Equality of People with Disabilities in the Asia and Pacific Region.

The CRPD adopted by the United Nations, aims to ensure the full participation of persons with disabilities in all aspects of society, including work. Many countries have adopted policies in line with the CRPD. The CRPD mandates that countries take measures to eliminate discrimination against persons with disabilities in the workforce, promote inclusive employment, and ensure that individuals with disabilities have access to equal career development opportunities. The Convention encourages employers to provide reasonable accommodations to employees with disabilities, ensuring they can perform their jobs effectively, including through accessible work environments and flexible work arrangements.

The Americans with Disabilities Act 1990 (ADA) is one of the most significant pieces of legislation in the U.S. protecting people with disabilities in the workplace. It applies to all employers with 15 or more employees. Under section 42 U.S.C. § 12112(b)(5)(A), the statute prohibits discrimination based on disability in all aspects of employment, including hiring, firing, promotions, and compensation.

The UK Equality Act 2010, section 39 protects people from discrimination in the workplace, including employees with disabilities, and applies to all employers in the UK. It is unlawful for employers to discriminate against employees based on disability, whether during recruitment, promotion, or day-to-day job duties. Employers are required to make reasonable adjustments for employees with disabilities, which could include physical adaptations to the workplace, provision of assistive technologies, or offering flexible working arrangements (such as remote work).

Australian Disability Discrimination Act (DDA), sections 11 dan 29A prohibit discrimination against people with disabilities in a range of areas, including employment, education, and access to services. The statute ensures that individuals with disabilities are not discriminated against during the hiring process or in employment. Employers are required to make reasonable adjustments to enable employees with disabilities to perform their roles effectively. This includes adjustments to physical workspace, job duties, work hours, and tools or technology. The law requires employers to ensure their workplace is accessible, which could mean providing adaptive technologies or enabling remote work opportunities for engineers with disabilities.

The global shift toward flexible working arrangements (FWAs) has sparked ongoing legal and practical debates regarding their implementation and effectiveness. While FWAs are widely promoted as tools for inclusion and productivity, particularly for PWDs, jurisdictions differ in how such rights are legislated, enforced, and practiced.

Reasonable Accommodation for Persons with Disabilities: International Perspective

The right to FWAs in the workplace lies at the very core of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Article 27, paragraph 1 which concerns work and employment states that: 'States Parties recognize the right of persons with disabilities to work, on an equal basis with others.' States parties are to promote the right to work, inter alia, by ensuring that reasonable accommodation is made for persons with disabilities in the workplace.

Arriving at an understanding of the right to reasonable accommodation is a twofold task in which human rights

and private law both play significant roles. The employee's right to reasonable accommodation can impose an obligation on the employer to act that may emerge long after the contractual relationship between the employee and the employer first came into being. As positive rights, equal treatment and non-discrimination require the employer to take active measures and are usually not cost-free. Thus, tension may arise between the respective rights of the employee and employer. The employee may have a right to accommodation, but an employer has a competing right to conduct its business as well as a right to property, for example, under the European Charter of Fundamental Rights (Article 17) and the European Convention on Human Rights (Protocol 1, Article 1). This conflict represents the basic tension involved in labour law, but in a situation where human rights aspects must be addressed. Evaluating the reasonableness of the duty to accommodate the needs of the employee in the context of an employment relationship calls for the striking of a balance between the effectiveness of such accommodation in terms of enabling the employee to continue with the employment against the interests of the employer in providing it.

Human rights and the UNCRPD do not offer tools that help assess what is reasonable and what, on the other hand, constitutes an undue burden on employers. Whether or not an employee with disabilities in fact has a right to accommodation is a question that must be addressed in the private law sphere as the reasonableness of this potential right is assessed in that context. Although the limits are set by mandatory national legislation, the sphere of discretion and interpretation is wide.

Legal Framework of Discrimination against Disability: Malaysian Perspective

Malaysia although adopts the definition of disability under the CRPD as mentioned earlier, omitted the phrase 'on an equal basis with others'. This is evident in section 2 of the Persons with Disabilities Act 2008 which provides that: Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society.

Article 8(2) of the Malaysian Federal Constitution does not provide explicit prohibition of discrimination against disability. Article 8(2), inter alia, provides that there shall be no discrimination on the basis of religion, race, descent, place of birth or gender "except as expressly authorized by the Constitution." This has been a subject of debate and there is proposal for amendment (underlined and in bold), where it is suggested that the word "disability" is to be included in Article 8(2) as follows:

Article 8 (1) All persons are equal before the law and entitled to the equal protection of the law.

> "(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth, **disability** or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment."

The Employment Act 1955 is the main legislation governing the employer-employee relationship in Malaysia. Updates to the Employment Act 1955 have been long overdue as there have been many concerns and gaps in relation to the protection afforded to employees. On 30 March 2021, the Employment (Amendment) Bill 2021 was passed by the Dewan Rakyat where several key amendments were tabled.

The Employment (Amendment) Act 2021 was passed with the objective to increase and improve the protection and welfare of workers in the country in line with international labour standards as outlined by the International Labour Organisation. The amended Employment Act 1955 offers employees more protection in line with standards prescribed by the International Labour Organisation. The Employment (Amendment) Act 2022 came into force on the 1 September 2022 simultaneously with the Revised First Schedule of the Employment Act 1955 ("Revised First Schedule") that was gazetted on 15 August 2022. These amendments are widely perceived to be far-reaching as the scope of the amended Employment Act 1955 covers all employees, irrespective of their monthly wages, and will indirectly be accommodative to the disabled employees in Malaysia.

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Section 60P and section 60Q allows flexible working arrangements to be made with a written application submitted to employers. The employer then must give a decision including grounds of rejection within a period of 60 days from the date of request.

The amendment does not prohibit discrimination. Employers can be penalised for failing to comply with the Director General's order, following an investigation. However, the employer will not be penalised for the discrimination itself. Discrimination is not defined. Discrimination must be defined to include direct and indirect discrimination – and grounds for discrimination (including gender, religion, race, or disabilities) should be spelt out. The amendment also does not include protection against discrimination for jobseekers. This means employers can continue to discriminate against persons looking for jobs – whether based on gender, race, religion, disability, or other status.

Several legal decisions in Malaysia highlight the evolving framework regarding discrimination against employees with disabilities or medical conditions. One landmark case is *Ch'ng B'ao Zhong v. Suruhanjaya Perkhidmatan Awam (SPA) & Government of Malaysia* [2025] MLJU 1234, where the Penang High Court ruled in favour of an autistic counsellor who alleged he was denied a permanent government position solely due to his disability status. Ch'ng, who was diagnosed with Level One Autism Spectrum Disorder and had been employed on a contract basis by the Ministry of Health, was not shortlisted for a permanent role after updating his OKU (Orang Kurang Upaya) status in the Public Service Commission portal. The High Court found that this constituted discrimination under Article 8(1) of the Federal Constitution and Section 29 of the Persons with Disabilities Act 2008. The judgment quashed the rejection and compelled the government to grant him an interview and equal consideration, affirming the constitutional protection against disability-based discrimination in public employment. (CodeBlue, 2025).

In the private sector context, the case of *Khaliah bte Abbas v. Pesaka Capital Corp Sdn Bhd* [1997] 1 MLJ 376 is a landmark decision in Malaysian employment law, particularly concerning the rights of probationary employees and the boundaries of employer discretion. In this case, Khaliah bte Abbas was employed on a probationary basis by Pesaka Capital Corp Sdn Bhd. Upon the conclusion of her probation period, her employment was terminated without any formal justification or documented performance issues. Challenging this termination, Khaliah filed a representation under Section 20(3) of the Industrial Relations Act 1967, alleging that her dismissal was without just cause or excuse.

The Court of Appeal held that probationary employees are entitled to the same protections against unjust dismissal as confirmed employees. The court emphasized that an employer's decision to terminate a probationary employee must be made in good faith and based on reasonable grounds. If a dismissal is found to be a colourable exercise of the power to dismiss or results from discrimination or unfair labour practices, the Industrial Court has the jurisdiction to interfere and set aside such dismissal. This decision underscores the principle that probationary employees cannot be dismissed arbitrarily or capriciously. Employers must ensure that any termination during the probation period is substantiated by valid reasons, such as documented performance issues or misconduct, and that due process is followed. The case reinforces the importance of fair treatment and procedural fairness in employment practices, aligning with the broader objectives of the Industrial Relations Act to promote industrial harmony and justice. In summary, *Khaliah bte Abbas v. Pesaka Capital Corp Sdn Bhd* serves as a critical precedent affirming that probationary status does not exempt employees (including disabled employees) from legal protections against unjust dismissal, and it delineates the responsibilities of employers to act in good faith and with just cause in employment decisions.

In terms of available legal forums, Malaysian law provides several channels for recourse depending on the nature of the discrimination. Constitutional violations, such as in Ch'ng's case, are typically brought before the High Court through judicial review proceedings. In contrast, unfair dismissal claims, particularly those alleging indirect discrimination, are commonly adjudicated by the Industrial Court, as seen in Khaliah's case. Additionally, Section 69F of the Employment Act 1955 grants the Director-General of Labour authority to investigate post-employment discrimination; however, it does not cover hiring discrimination (Paul Hastings LLP, 2025). These cases collectively demonstrate the emerging but still fragmented legal protection against disability and health-based discrimination in the Malaysian workplace.

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Legal Challenges

From a legal standpoint, a key issue lies in the enforceability of flexible working rights. In the United Kingdom, the Employment Relations (Flexible Working) Act 2023 enables employees to request FWAs from the first day of employment. However, employers retain significant discretion to deny such requests on "reasonable business grounds." Legal scholars argue that these standard lacks sufficient rigor and opens the door to inconsistencies and potential discrimination (Wired, 2023).

In contrast, Australia's Fair Work Act 2009, section 65 explicitly entitles eligible employees, including those with disabilities, to request FWAs. Employers must respond within 21 days and justify any denial based on reasonable business considerations. Nevertheless, studies have noted a lack of clarity on what constitutes "reasonable" grounds, leading to inconsistent rulings in industrial tribunals. A 2025 study compiled tribunal case summaries and found that rulings varied significantly across sectors. For instance, similar FWAs requests in the education and logistics industries received divergent outcomes—accepted in one and rejected in another—based on vaguely interpreted criteria. The study emphasized that without standardized definitions or interpretive guidelines, tribunals are left to subjective assessments, undermining consistency (HRMARS, 2025).

Legal commentators cited in *Wired* (2023) expressed concern that the undefined term "reasonable" introduces ambiguity and shifts the burden of proof onto the employee. They argue for statutory amendments to provide a closed list of justifiable refusals or introduce binding interpretative codes for employers and adjudicators. Without such clarity, they warn that employers could use broad discretion to mask discriminatory decisions under the guise of operational necessity.

Under Title I of the Americans with Disabilities Act (ADA), particularly 42 U.S.C. § 12112(b)(5)(A), employers are required to provide reasonable accommodations—including FWAs—unless such accommodations impose an undue hardship. In the U.S case of *Tudor v. Whitehall Central School District* (2025), the Second Circuit ruled in favour of a teacher with PTSD who was denied brief daily breaks as a reasonable accommodation. The court held that the ADA protects employees' right to accommodations even if they can technically perform their jobs without them, reinforcing the principle that disability accommodations are meant to ensure equal workplace participation (*Tudor v. Whitehall CSD*, 2025). Conversely, in Frito-Lay, Inc. (4th Cir., 2023), a manager's request to work remotely was rejected. The court sided with the employer, concluding that on-site presence was an essential job function and that remote work would compromise core duties—thus, the accommodation was deemed unreasonable (Frito-Lay, Inc., 2023).

In Australia, similar tensions exist under Section 65 of the Fair Work Act 2009, which allows employees, including those with disabilities, to request FWAs. In Ridings v. FedEx Express Australia Pty Ltd ([2024] FWCFB 473), the Fair Work Commission (FWC) found that the employer failed to justify its refusal of a remote work request on reasonable business grounds, and thus ordered the accommodation to be granted. However, in *Quirke v. BSR Australia Ltd* ([2023] FWCFB 209), the FWC dismissed the employee's FWA claim due to procedural noncompliance—namely, failure to submit a written request and lack of minimum service duration.

Other jurisdictions echo similar concerns. In Canada, although the Employment Equity Act promotes accommodation and inclusivity, the practical application of FWAs has faced legal contention. Harding and Steele (2023) document tribunal rulings where employees with chronic health conditions or caregiving responsibilities were denied flexible work requests. In *Re Lewis v. XYZ Corp*, the Ontario tribunal found in favour of the employee who requested a 3-day remote work schedule due to autoimmune treatment, ruling that the employer's vague claim of "team disruption" was unjustified. However, in *Thomas v. Courier Logistics*, a British Columbia tribunal sided with the employer citing "delivery timeline integrity," illustrating inconsistency across provinces.

In Germany, courts interpret the Part-Time and Fixed-Term Employment Act (TzBfG) variably. In *Case No. 9 AZR 259/21*, the Federal Labor Court ruled against an employee seeking reduced hours to manage depression, accepting the employer's justification tied to shift coordination. Legal scholars Reuter and Weiss (2022) criticize such rulings for overly favouring managerial discretion and lacking transparent reasoning.

Across Asia, Japan and South Korea formally permit FWAs under national labour codes, though enforcement tends to depend on corporate culture. In Japan, *Tokyo Municipal School Board Case* (2021) upheld a part-time arrangement for a teacher with severe anxiety, citing the public sector's role in setting inclusion precedents. The teacher had requested reduced teaching hours and additional breaks as accommodations for medically diagnosed anxiety disorder. The school board initially denied the request on grounds of class scheduling difficulty and student performance continuity. However, the Tokyo District Court ruled that such concerns did not constitute a disproportionate burden on the institution, particularly given the availability of substitute instructors and non-disruption of core curricula. The judgment emphasized the necessity of proportionality review under Japan's Equal Employment Opportunity Law and established a legal precedent for balancing mental health needs with institutional obligations (Japan Labor Law Reports, Vol. 57(2), 2022) However, in South Korea, *Kim v. Hanwha Corp.* (2022), involving an employee with mobility impairments, the Seoul Administrative Court deferred to the employer's internal HR policy, reflecting a weaker statutory framework. The plaintiff requested to work three days remotely per week due to limited mobility following spinal surgery. Hanwha Corp. cited confidentiality and performance tracking concerns, arguing that remote access posed security risks. The court ruled in favour of the employer, finding the internal policies were applied uniformly and did not amount to discrimination. Critics in academic commentary argued the decision lacked substantive engagement with Korea's Disability Discrimination Act and failed to weigh the feasibility of alternative accommodations (Scandinavian Journal of Employment Law, 2021).

In the Nordic region, tribunals have upheld employee-friendly interpretations. In *Andersson v. Gothenburg Health Board* (Sweden, 2020), a tribunal ruled that denying telework to a nurse recovering from surgery violated proportionality under Sweden's Discrimination Act. In Finland, the *Helsinki District Court* (2021) mandated that the Finnish Rail Company justify their rejection of a visually impaired employee's request for staggered hours under the Non-Discrimination Act. The case sparked debate over the limits of employer discretion in denying accommodations for employees with disabilities. The employee, who experienced severe visual impairment, requested staggered hours to travel during daylight and avoid crowded peak-hour transit, citing mobility and safety concerns. The Rail Company rejected the request, arguing uniform scheduling was operationally critical. However, the court ruled that the employer failed to provide sufficient evidence of undue hardship or explore viable alternatives, thereby violating proportionality under the Finnish Non-Discrimination Act. Legal scholars in Finland praised the decision for reinforcing the burden on employers to actively demonstrate why flexibility cannot be accommodated, rather than relying on general administrative inconvenience.

Countries that formally adopt FWAs in labour legislation include the UK, Australia, New Zealand, Canada, Germany, Netherlands, Norway, Finland, Sweden, Japan, and South Korea. The comprehensiveness of implementation varies. Nordic countries provide universal access and state-subsidized caregiving support, while Asian jurisdictions rely more on employer discretion. These international examples highlight the importance of legal specificity and procedural safeguards. While many countries recognize FWAs as a legal right, ambiguity around permissible refusal grounds continues to challenge consistent adjudication and equitable access.

Additionally, Malaysia's legal framework remains underdeveloped in this area. Although the Employment Act 1955 was amended in 2022 to introduce flexible work applications (Sections 60P and 60Q), these provisions lack enforceability, especially for PWDs. There is no statutory requirement for employers to provide FWAs based on disability accommodations, raising concerns about compliance with the Persons with Disabilities Act 2008 (Ismail & Michael, 2023).

Penalties for Non-Compliance with Flexible Working Arrangement Laws

The enforcement of penalties for non-compliance with FWAs laws varies across jurisdictions, reflecting differing legal frameworks and cultural attitudes toward workplace flexibility and disability rights.

In the U.S., under the Americans with Disabilities Act (ADA), employers who fail to provide reasonable accommodations, including FWAs, may face civil penalties. First-time violations can incur fines up to USD 75,000, with subsequent violations rising to USD 150,000. Employers may also face lawsuits resulting in

compensatory and punitive damages, and injunctive relief such as reinstatement or mandatory policy changes (EEOC, 2021; Nationwide, 2023; AudioEye, 2023).

The Australian Fair Work Act 2009 requires employers to respond to FWA requests within 21 days. Civil penalties apply for non-compliance, with individuals liable for up to AUD 18,780 and corporations up to AUD 93,900. In cases of serious contraventions, such as intentional non-compliance or wage-related abuses, fines can escalate up to AUD 1.56 million for individuals and AUD 7.8 million for corporations (Fair Work Ombudsman, 2024; Fair Work Commission, 2024).

The UK Equality Act 2010, specifically Section 39, prohibits discrimination based on disability across all employment aspects, including hiring, firing, promotion, and terms of employment. The Employment Relations (Flexible Working) Act 2023 amended the Employment Rights Act 1996, granting employees the right to request flexible work from day one. Although penalties vary, employment tribunals may award up to eight weeks' pay and can require employers to reconsider or repeat the request process (Myers Solicitors, 2024).

Canadian law mandates reasonable accommodation under the Canadian Human Rights Act and the Employment Equity Act. Non-compliance may result in fines of up to CAD 10,000 per violation or up to CAD 50,000 for continued breaches. Corrective orders and reputational sanctions are also possible, particularly for federal employers (Government of Canada, 2023).

While German law does not provide direct penalties for refusing FWAs, violations of working time regulations can incur fines up to EUR 30,000. Employers must also comply with the Part-Time and Fixed-Term Employment Act, which indirectly supports FWAs for work-life balance and disability accommodations (Reuter & Weiss, 2022; Lexology, 2023).

Sweden’s approach is grounded in a strong welfare model emphasizing work-life balance. While FWA denial penalties are not explicitly outlined, breaches of the Working Hours Act can result in administrative fines and enforcement orders (Advantage Sweden, 2023).

Under the Japan Act on the Elimination of Discrimination against Persons with Disabilities, employers must provide reasonable accommodations, but direct penalties for non-compliance are limited. Enforcement typically occurs through administrative guidance. However, labour law violations such as excessive overtime can trigger fines up to ¥300,000 or six months' imprisonment (Littler, 2023).

The South Korea Labor Standards Act governs workplace conditions, and employers may face imprisonment or fines for failing to provide fair working conditions. While there are no specific penalty clauses for denying FWAs, broader legal provisions require employers to accommodate disabled workers to avoid discriminatory practices (KLRI, 2023).

These findings reflect that while FWAs are increasingly recognized in law, the enforcement and penalties vary significantly, influencing the extent to which these rights are protected and upheld in practice.

Suggested Policy Suggestions for Malaysia

One policy recommendation is to amend the Employment Act 1955 to impose a statutory duty on employers to reasonably consider FWA requests and provide objective justifications in cases of refusal. Such an amendment would align Malaysia’s legal framework with international best practices, where employers are required to demonstrate valid grounds when rejecting employee applications for flexible work. Embedding a legal duty to provide reasons would also enhance transparency and reduce the likelihood of arbitrary decision-making.

A second recommendation is the integration of the Employment Act 1955 with the Persons with Disabilities Act 2008 to ensure that FWAs are explicitly recognised as a form of reasonable accommodation for PWDs. This would harmonise Malaysia’s labour law with its disability rights legislation, providing clearer obligations for employers and ensuring consistency with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which Malaysia is a signatory. By linking these two legislative instruments, the legal

framework would not only strengthen inclusivity but also operationalise disability rights in the workplace.

In addition, the establishment of an appeal and redress mechanism through the Industrial Court is necessary to safeguard employees whose FWA requests are unreasonably denied. Providing judicial or quasi-judicial recourse would enhance accountability and allow employees to challenge refusals in a structured and impartial forum. This mechanism would also signal to employers that compliance with statutory duties in handling FWA applications is subject to legal scrutiny, thereby encouraging more consistent implementation.

Finally, supplementary measures in the form of guidelines and incentives would improve the practical enforcement of FWAs. The Ministry of Human Resources could issue detailed guidelines outlining best practices for processing FWA applications, with specific provisions addressing the needs of PWDs. At the same time, financial incentives such as tax reliefs or grants could encourage employers to adopt more inclusive workplace practices. These measures would complement statutory reform by creating both normative and economic motivations for compliance.

Taken together, these recommendations would transform Malaysia's current approach to FWAs into a more inclusive and enforceable system. Such reforms would ensure that PWDs are not disadvantaged in accessing flexible work opportunities, thereby supporting Malaysia's broader commitment to labour market inclusivity and alignment with international disability rights standards.

Suggested Policy Implications in Malaysia

The recommendations outlined above have important implications for Malaysia's labour market, disability rights framework, and overall socio-economic development. Strengthening the legal enforceability of flexible work arrangements (FWAs) through statutory amendments would not only address current gaps in the Employment Act 1955 but also enhance compliance with the Persons with Disabilities Act 2008. By explicitly recognising FWAs as a form of reasonable accommodation, Malaysia would be advancing towards meeting its obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which emphasises equal access to employment and non-discrimination in the workplace.

From a socio-economic perspective, improving the legal framework for FWAs could contribute significantly to labour market inclusivity. Persons with disabilities (PWDs) remain underrepresented in Malaysia's workforce, and barriers to participation often stem from rigid workplace structures and a lack of accommodations. Ensuring that PWDs have enforceable rights to request FWAs could improve employment retention, reduce underemployment, and enhance overall labour force participation rates. Such outcomes are critical for Malaysia's aspirations to achieve higher productivity and sustainable economic growth in line with the Twelfth Malaysia Plan's goals of inclusivity and shared prosperity.

The introduction of an appeal and redress mechanism would also strengthen institutional accountability. Allowing employees to challenge unreasonable refusals through the Industrial Court would create a culture of transparency and fairness, aligning Malaysia's labour standards more closely with international best practices. This would not only benefit PWDs but also extend protections to other vulnerable groups, such as women with caregiving responsibilities or older workers requiring flexible schedules, thereby reinforcing Malaysia's commitment to social justice and equity.

Moreover, the adoption of supplementary guidelines and employer incentives could create a more enabling environment for workplace innovation. By providing clear procedural guidance and economic support, the Ministry of Human Resources could foster voluntary compliance while reducing the burden on smaller enterprises. This dual approach—legal reform coupled with supportive policy instruments—would create a balanced framework that promotes both employer adaptability and employee rights.

In conclusion, adopting these policy reforms would represent a significant step towards embedding inclusivity and accountability within Malaysia's labour law framework. The integration of FWAs into disability rights legislation, coupled with statutory enforceability and institutional support, would strengthen Malaysia's compliance with international norms while simultaneously addressing domestic socio-economic challenges.

Ultimately, such reforms would not only benefit PWDs but also contribute to the creation of a more equitable, resilient, and competitive labour market.

CONCLUSION

Although numerous jurisdictions have enacted laws supporting Flexible Working Arrangements (FWAs), this article demonstrates that the global shift toward FWAs has sparked persistent legal and practical debates surrounding their implementation and effectiveness. While FWAs are widely promoted as instruments for fostering workplace inclusion—particularly for persons with disabilities (PWDs)—their interpretation and enforcement differ significantly across legal systems. Judicial and tribunal rulings on FWAs consistently reveal that relying solely on legal provisions is insufficient to achieve the broader vision of workforce inclusion for PWDs.

In response, many countries, including Malaysia (as discussed earlier) and international bodies have begun integrating targeted Key Performance Indicators (KPIs) into their inclusion strategies. These KPIs serve not only to measure outcomes but also to embed accountability and transparency into national employment frameworks and corporate governance. Notably, The Valuable 500, a global collective of business leaders advocating for disability inclusion, introduced a standardized set of five KPIs in 2023. These include workforce representation of PWDs, disability inclusion goals, training implementation, Employee Resource Groups (ERGs), and digital accessibility—each designed to drive tangible progress across sectors (Valuable 500, 2023).

In Malaysia, the Human Resources Ministry, or KESUMA, has initiated various programmes to this end, including the establishment of the first MYFutureJobs Satellite Centre in Bangi as well as the allocation of RM30 million (USD 6.3 million) to reintegrate 3,300 job seekers, especially persons with disabilities, into the labour market. Other programmes include Return To Work, aimed to help insured individuals suffering from consequential disability injury or illness to restore their functionality and get employed.

However, even with such programmes and initiatives in place, challenges remain in fully integrating persons with disabilities into society and ensuring their full participation and inclusion. The barriers to employment and social security for PWDs are multifaceted, including environmental, institutional, administrative, and attitudinal challenges. Moreover, a lack of comprehensive data hampers the ability to assess and address these issues effectively.

In Canada, the government's Performance Indicator Framework for Accessibility Data evaluates PWD employment through metrics such as hiring rates, promotion statistics, and workplace accommodations. Embedded within the Accessible Canada Act, this framework adopts a data-driven approach to identify systemic barriers and monitor equitable outcomes (Government of Canada, 2023).

Similarly, Japan enforces a legislative quota requiring companies to employ at least 2.5% PWDs, increasing to 2.7% by 2026, with penalties for non-compliance and incentives for surpassing targets. France adopts an even stricter model, mandating a 6% inclusion rate for companies with over 20 employees, backed by financial contributions to national disability employment programs (Financial Times, 2025; Wikipedia, 2025).

These diverse national approaches signal a growing international consensus: legal rights must be complemented by performance-based accountability. Embedding KPIs into national and corporate frameworks transforms inclusion from aspirational rhetoric into measurable, enforceable commitments. Ultimately, sustained progress in disability inclusion will depend not only on the existence of legal entitlements but also on how effectively these rights are operationalized and measured in practice.

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