

LEGAL ISSUES IN DEALING WITH STAFF: A STUDY IN SELECTED HOTELS IN MALAYSIA

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Abstract: *The tourism industry is becoming one of the major contributors to Malaysia's economy. It is evidenced by the Malaysia Tourism Transformation Plan (MTPP) which aims for the industry to generate annual revenue up to RM150 billion by 2020, compared to RM56.5 billion in 2010. In keeping up with the pace of development that this industry is experiencing, Malaysia is going through healthy growth in hotel openings. Thus, more employees are needed in the hotels. It is the objective of this study to investigate the legal issues faced by the hotels and its workforce. This socio-legal study used qualitative method. The primary data comprises of questionnaire and interview method undertaken to collect the data. This study adopted in-depth, open ended interviews to determine the legal issues. The interviews were recorded, transcribed and categorized based on interview questions. The thematic analysis was employed to identify relevant themes after examination of the data. Based on the in-depth interview held with representatives from the hotel's associations, hotel managements and the staff, it is interesting to note that these major issues have emerged, namely pertaining to terms and conditions of employment especially on non-compliance of terms and conditions, discrimination, safety and health, disciplinary, and sexual harassment. In conclusion, these findings are useful to those in hospitality industry as the hospitality industry plays major role in supporting Malaysia's tourism industry. Thus, the industry players must address these legal issues so as to create harmonious relations between the management and workforce that will eventually lead to the survival and sustainability of the respective hotel. It will also ensure that the aim of MTPP is achieved.*

Keywords: *Non-Compliance, Discrimination, Safety and Health, Disciplinary, Sexual Harassment*

Introduction

This tourism industry has shown exemplary impact on their socio-economic development of many countries such as India, Maldives, Malaysia, UAE, Thailand and others. These countries are able to change their economic fate within a very limited span of time by developing tourism and hospitality-based businesses. The importance of tourism and hospitality employment in both developed and developing countries is attested to by the World Travel and Tourism Council (WTTC), which suggests that travel- and tourism-related activities account for over 277 million jobs, or 9.8 per cent of jobs worldwide (WTTC, 2016). It is a dynamic service sector where optimal human resource management is required to ensure professionalism and efficiency in service delivery. As a result, it is challenging for the hospitality-based organisations to recruit and develop potential employees to provide better services to the domestic and international guests. As hospitality industry offers intangible services and products, effective human resource management (HRM) especially recruitment is critical to the success of the stated industry. To ensure better service delivery in this industry, appropriate human resource recruitment practices are vital to attract qualified workforce for this sector. Better service delivery can help to attract more tourists to ensure financial sustainability of the industry.

In Malaysian context, tourism industry is becoming one of the major contributors to the Malaysia's GDP. Its importance is demonstrated in the transformation drive pioneered by the then prime minister, Datuk Seri Najib Razak, known as National Key Reformation Agenda (NKRA). It is evidenced by the Malaysia Tourism Transformation Plan (MTPP) which aims for the industry to generate annual revenue up to RM150 billion by 2020, compared to RM56.5 billion in 2010. In keeping up with the pace of development that this industry is experiencing, Malaysia is going through healthy growth in hotel openings. Thus, more employees are needed in the hotels. Hotels are core component of the tourism and hospitality industry and as such one of the largest and most rapidly expanding industries worldwide. Hotels being the sub-sector can rightfully be described as a vehicle of globalization, as the hotels themselves accommodate tourists and business travellers from around the world. Hotel workplaces frequently draw workers from the most vulnerable segments of the labour market

Objectives of this Study

It is the objective of this study to investigate the legal issues faced by the hoteliers in dealing with staff. It is interesting to determine how does law affect the hoteliers? This outcome of this study will be useful for an organization to formulate their rules and regulations.

Literature Review

Not many people are aware of the definition of hospitality service industry. Based on the Oxford English definition, people relates hospitality to a friendly and generous reception and entertainment of the guests or visitors (Langvinien & Daunoravi, 2015; Barrows et al., 2012). The word hospitality came from a Latin word "hospitare" means "to receive a guest". It refers to the act of kindness in welcoming and entertaining guests or visitors as well as offering them food, drinks and accommodation. Meanwhile, service refers to the act of providing a respectful and friendly service to the patron or guest. Customers who experience good hospitality service will surely be happy and could become the voluntary agent to promote the place. Thus, in the context of this study, hospitality service industry would therefore be identified as the hotel sector which provides accommodation, as well as foods and drinks. Hotel sector, which is

known as accommodation (lodging) type of hospitality service industry, is one of the four sectors covered by the hospitality industry. The other three are food and beverage, recreation, and, travel and tourism (Mackenzie & Chan, 2009). Hospitality has also been closely associated to the importance of the staff in building emotional attachment to guest or visitors (Walker, 2013; Wood, 2013; Barrows et al., 2012; Crick & Spencer, 2011).

Dallas (2007) had identified that the hospitality industry is fast changing. Thus, the management needs to be kept abreast with the current development in the statutes and the changes must be brought to the employees' attention. Thus, Dallas had noted the legal issues that arose between the management and the employees were mainly due to poor communication. It is also noted that at times the statutes are too slow to react. For instance, in sexual harassment and also violence at workplace. Dallas's view gains support from Rodolovaic (2010) where he also noted that lack of commitment is also one the reason for non-performance in the hotels. Walczak (2011) had noted the importance of statutes in minimising legal issues faced by the employees at the hotels. However, Kamal Halili (2012) had further argued that not all statutes from abroad are suitable to be used in Malaysia due to complexity of the population. Kamal Halili had further contended that some issues may not be resolved despite being accorded in the Federal Constitution. Issues such as discrimination should be handled cautiously as it may further triggered social unrest which may be prejudicial to our economics.

Methodology

The research was conducted since early 2015 in which a team of researchers from Faculty of Business, Economics and Accountancy, Universiti Malaysia Sabah had interviewed employers and employees of 5-star, 4-star, and 3-star hotels in Sabah, Kuala Lumpur/Selangor, Pahang and Penang. The employees involved were from three categories; namely, managerial, supervisory, and operational. A structured questionnaire which contains the leading statement during interview was sent earlier to the HR Managers of respective hotels with an introductory letter.

Research design-Profile Accumulation Techniques (PAT)

It was a descriptive survey research design study in which the researchers reported the information received from the participants who shared their behaviour, attitude, and value on the questions asked. This survey research design is actually an attempt to collect data from an identified population for the purpose of establishing the current status of the population that may stick to the common variables or come up with the new one (Mugenda & Mugenda, 2003). The overall processes use questions derived from the profile accumulation techniques form in gathering data as the main source for analysis. The PAT's forms were distributed earlier before the interview took place.

Since the interviews were held separately based on the categorization of managerial, supervisor, operational, and staff, the researchers had divided the interview into three sessions. Full cooperation was given by the HR Managers, in which each group was gathered in specific room or area to complete the interview session without any disturbance. The questionnaire contained demographic profile of the personal background and organizational background. Items found in the questionnaire are open-ended questions. The reason for using the questionnaire is not only to get the personal and organizational background information, but also to verify the integrity of information received from what was being said and what was being written by the respondents.

The Data Analysis Procedure

Data is retrieved from two sources; namely tape-recorder, and notes. First, the researchers took time to listen to the recorded voice of the participants, and transcribed the information. Second, the retrieval of final information or data was performed by counter-checking the information received from the interview with the information from the notes. Special codes were given to each hotel and the three groups of staff (operational, supervisor and manager level). Then, the data analysis was conducted based on the five steps.

Table 1. The Steps in Analysing Data

STEP 1	Data Transcripts of Tape-Recording Information
STEP 2	Level of Staff Categories - Divide Transcript Data into 3 Categories: Manager(M), Supervisor(S) & Operation(O)
STEP 3	Key Themes: Disciplinary, Termination, Discrimination, Sexual Harassment, Safety & Health Attraction, Outsourcing
STEP 4	Compare Data Across 3 Categories (M, S, O) According to the Key Themes
STEP 5	Identify the Key Factors related to Legal Issues in HRM.

As shown in Table 1, data analysis was administered using five steps as follow; Step 1. The transcribed data were typed back into a form which consists of responses from staff in each category (operation, supervisor, and manager). These data had been thoroughly checked by comparing them with the notes taken by the researchers and assistant researchers. Step 2. Data received from staff in each category as found in Step 1 were arranged based on the key themes. There were slight differences on the key themes for each category of staff. Key themes for operation staff are attracting, retention, expectation, legal issue, competencies and skills, and experience to be shared. Meanwhile, the key themes for supervisor are attracting, recruiting, retention, career path or opportunities, human resource issues, key success factors, attracting and recruiting competent staff, changes needed, legal issues and key emerging issues. On the other hand, for manager the key themes are attracting, recruitment, current practices in retaining human resources, changes in human resource practices, issues affect human resource practices, legal issues, key factors to successful human resource, and changes to improve human resources. Step 3. Data from Step 2 were separated into three major key themes that characterize the research objectives; namely, recruitment, attraction and retention. In addition to that, the researchers also see the importance of studying the emerging legal issues in dealing with the employees in respective hotels. Step 4. Data were compared across the three categories of hotel employees according to the key themes. Step 5. The key factors related to human resource practices are identified.

Exploratory is used to discover new insights and happenings. Thus, an exploratory study is used to find and describe overall patterns and to understand relationships in certain situation (Saunders, 2009). The purpose of this study is exploratory. The objective of exploratory

research is to gather information to give insight on what is happening (Saunders, 2009). By having the semi-structured interviews, the answers might give new insights upon the employees and how the organizations use these data to enhance their HR policy.

The type of research employed for the present study is based on qualitative method. The Primary data comprises of questionnaire and interview method undertaken to collect the data from the employees. The researchers also use different types of secondary data by collecting materials from papers, books, research articles, web pages and interviews. In addition, scientific journals and university database are used to gather more concrete materials for this study.

This exploratory study adopted in-depth, open ended interviews to understand the issue that affect the hoteliers in dealing with their staff. The researchers have sought permission from the organisation to tape the interview. Since the method of collecting data was qualitative, the guidelines and principles of qualitative data analysis were followed in order to make our analysis more understandable for the reader. Firstly, we carefully read the transcribed data of the recorded interviews and did the content analysis of the transcript, then divided the data into meaningful segments. Secondly, meaningful segments were coded in in order to identify our findings more easily. Finally, participant responses were categorized and displayed in the form of the table. The thematic analysis was employed to identify relevant themes after examination of the data. The data was categorised according to the themes in order to uncover the issues faced by hoteliers in dealing with their staff. The thematic analysis was employed to identify relevant themes after examination of the data.

Personal interviews were conducted in Nov-Dec 2015. Prior to conducting this study, the researchers have to seek cooperation from MAH (Malaysia Association of Hotels). Then permission was obtained from the general manager, human resource director, or department supervisor before employees were interviewed. Each focus group interview lasted from 45 minutes to an hour and the instrument was used to guide it. Employees were encouraged to discuss any or all questions at length. Many shared more than sufficient information with the researcher as the method allows the interviewees to express the inner thoughts and experiences without limitations.

More so, it is known that qualitative researchers study matters in their natural surroundings, by seeking to make sense of, or to explain phenomena in terms of the significance people brings to them (Denzin & Lincoln, 2005). Qualitative interviews give the researcher opportunity to ask and follow up the questions and read facial expression of the interviewee as well as body language. Besides, participant has chance to ask questions in case the question is not clear.

As mentioned earlier, the research is carried with MAH's support. However, it is not easy for the researchers to get the hotels to collaborate. The low number of participants are common as the hotel have their own reason for rejecting our invitation. The research is only restricted to the states as listed below due to financial constraint. Those four states are chosen based on the high volume of tourist that they received. There are 30 hotels that participated in the research.

Table 2: List of Selected Hotels Based on States

STAR	SABAH	KUALA LUMPUR/SELANGOR	PAHANG	PENANG
3-STAR	7	5	2	1
4-STAR	4	1		2
5-STAR	5	1		2
Total	16	7	2	5

The hotel star rating system in Malaysia is designed by the Ministry of Tourism and Culture Malaysia, and properties are rated every three years. Ratings are based on six criteria, with points ranging from one to 10 in each criteria. A five-star hotel has to score a minimum of nine points for each criteria, while a four-star hotel will have to score a minimum of seven points. Three-star hotels have to score a minimum of five points for each criteria. The six criteria are qualitative and aesthetic requirements, common areas, bedroom requirements, services, safety standards and hygiene, and staff. Under qualitative and aesthetic requirements for instance, the property is checked on the use of space, colour schemes, design and ambiance, among others, while the staff criteria looks at qualification, language skills, staff facilities and so forth.

The researchers interviewed mainly the human resource (HR) managers and/or training managers in each respective hotel. There were also a few general managers and/or HR directors who participated in the research as they wanted their voices to be heard as well. For ethical reason, the organisations and interviewees will remain anonymous and thus, pseudonyms are used.

Discussions

In support of the nation transformation plan to become a high developed nation by the year 2020, the hotels need to increase the number of employees. Dealing with employees are not an easy task especially in the hotels. Diverse education background and generational gaps pose challenge to the hotel managers. Based on the interviews conducted with those personnel in HR and/or training.

Non-Compliance on Terms and Conditions

The findings show that the managers are concerned on the employees' non-compliance with terms and conditions of contract of service. In Malaysia, the minimum terms and conditions of contract of service are stipulated in the Employment Act 1955, Sabah Labour Ordinance and Sarawak Labour Ordinance. Apart from the segregation based on region, a person falls within the definition of an employee if he earns RM200 (under the Employment Act) or RM2500 for those who are governed by Sabah Labour Ordinance and Sarawak Labour Ordinance. These three statutes provide minimum provisions and the employers are not prohibited to incorporate any terms that are more favourable to employees.

The issue of non-compliance arises where employees simply leave the hotel neither giving any notice nor paying the amount equivalent to the notice as prescribed by Section 12(2) of the Employment Act. The employees knew the existence of notice that they need to submit but they did not bother to adhere to it. Based on section 15 of the Employment Act, if any employees were absent without any prior notification, thus the contract of service between the employer and employees are deemed to be severed. The employers are given right to be indemnified by the employees the amount similar to the notice. Sudden disappearance will

affect the hotel operations and they need to find replacement immediately. However, it is interesting to note that hotels in Pahang do not face this problem as the hotels are in in secluded area and the employees are mainly related to one another.

Manager A: I faced many problems when the employees simply disappear.

Manager D: I could not be bothered to chase after this type of employee as it is such a waste of my time. The hotel industry is small, eventually he will come back to me for job referral...then it is pay-back time...

Manager E: The youngsters nowadays are not patient...they want easy job,,easy money....they did not see that they can climb the ladder too if they were hardworking. Simply leaving my hotel without notification will be bad on their record.

Discrimination upon Hijabis

Another issue that arises is on discrimination on the Muslim women who cover their head. Many hotels do not allow female employees to cover their head as it does not conform their uniform. Based on our findings, we noted that female employees who cover their head will not be placed at the front office in most hotels. It is also observed that all 5-star hotels that took part in this research will not allow female employees who cover their head (hijabis) are not allowed to man the front office. In fact, there is a 5-star hotel which will not employ hijabis at all. It is also interesting to note that there are two 3-star hotels are syariah compliant. Thus, there is no issue on discrimination upon hijabis at all in these two hotels. There is only a 4-star hotel (Hotel 2) which is of international brand yet this hotel employs a person regardless whether the female candidate is a hijabi or not. It is found out that the state government owns a substantial number of shares in this hotel.

Dress code at work is under the employer's discretion. The employer in principle can come up with a dress code of their own and job applicant had accepted the job offer should adhere to it, including rules on the wearing of headscarf. Although the wearing of headscarf is a religious obligation, the decision lies in the hands of the job applicant whether they could adhere to the company's policy.

Manager M: "If one is offered a job but unable to follow the dress code, then he or she can always choose not to accept the offer. If they accept it, then they are bound to the company's policy,"

Manager S: It can't be described as discrimination because the person still has a choice to accept or refuse the job offer.

It is tricky to handle issue on discrimination upon hijabis in Malaysia. The Federal Constitution upholds that it is a citizen's right to practice his/her religious belief. The Federal Constitution also provides that Islam is the official religion for the country. However, the employers believe that the dress code is solely their managerial prerogative. Thus, striking the balance between the employers and employees is a challenge to HR manager.

Safety and Health

Working conditions in hotels are often challenging. According to Eurofound, much of the work in hotels and restaurants is of a strenuous nature and may involve long periods of

standing, a lot of walking (often in uncomfortable shoes for women), carrying (heavy) loads, repetitive movements, working in painful positions and walking up/down stairs. There is thus a heavy workload coupled with high levels of stress resulting from time pressure and constant customer contact. Furthermore, constant contact with water and cleansing products is a key risk. This situation is further exacerbated with a significant risk factor of violence and harassment from customers, colleagues or management. It is noted that the hoteliers are facing challenges in implementing OSH especially in 3-star hotels. Mainly the comments made were on the lack of cooperation in using personal protective equipment (PPE).

Manager E: We have provided PPEs in the form of gloves and masks to our housekeeping staff. But many of them do not use gloves while performing cleaning tasks. They claimed that they are not comfortable.

Manager T: I faced similar situation. My housekeeping staff complaint that the gloves make their fingers itchy.

Manager D: The front office staff complained that they have to stand on their feet. They complained of fatigue and back ache. It is worsen as they cannot put on flat/pump shoes.

The above statements indicate that there are health issues at the hotel. The health problems will only appear after prolonged suffering and it takes years to appear. The health issues are not to be neglected as it will affect a company's finance if the employee sue the employer for failure to observe the requirements on safety and health (Pfeffer, 2000). It is also submitted that it may affect the employer's reputation as well (Radolovic, 2010).

Sexual Harassment

According to Worsfold and McCann, (2000), Biswas and Cassell (1999) and Eller (1990), it is commonly agreed that sexual harassment is pervasive in the services industry, particularly in the hospitality industry. This might due to the uncertainty of communication during the service delivery, extraordinary working hours and conditions, high extend of human interface, the need of the employees to look attractive, the perceptions of customers towards the services where they can take a moral holiday and the sexuality is part of the job (Hall, 1993; MacKinnon, 1979; Prus & Vasilakoppoulos, 1997; Purcell, 1996; Wood & Kavanagh, 1994) Sexual harassment is defined as a condition where the undesirable sexual behaviour of a co-worker or supervisor affects employee's performance at work or creates unpleasant or threatening working environment. This might happen when the victims denied request for sexual favours from the perpetrator and probably consequence in retribution which affect the victim's working condition. A study by Sabitha (2008) describes sexual harassment as an unwelcome behaviour or sexual nature which is offensive, embarrassing, intimidating or humiliating and may be affect an employee's work performance, health, career or livelihood. This definition applies to both gender and addressed the effects of sexual harassment on the victims. This might happen when the victims denied request for sexual favours from the perpetrator and probably consequence in retribution which affect the victim's working condition.

Prior to the inclusion of the new provisions into the Employment Act 1955, the guidelines for sexual harassment were in the form of a Code of Practices. The Employment Act 1955 provides for the provisions concerning sexual harassment in Part XVA which is enforced with

effect from 1 April 2012. Complaint of sexual harassment means any complaint relating to sexual harassment made, as listed below,

- i. by an employee against another employee;
- ii. by an employee against any employer; or
- iii. by an employer against an employee.

Sexual harassment has often been mentioned as a key issue in the hotel industry. Working in the hospitality industry often involves an employee with a number of different people in the course of delivering service (Eller, 1990). The close rapport between employees and customers as well as between employees working in close physical proximity was discovered to be a trait towards the act. However, the industry's passion with physical satisfaction (Matthews, 2010; Ministry of Human Resource, Code of Practice, 1999) and the transient nature of its customers (its employees) provides opportunities for sexual behaviours that are not always welcome. Therefore, employees in the hospitality industry are experiencing more sexual interaction in their workplaces than workers in society-at-large. This situation happens perhaps given certain of its characteristics for instance uncertainty of hospitality service, surroundings of work itself, the unusual hours and the interaction of persons in the delivery service. Employees in this industry often work long, irregular hours with alternating peak and slack times which involve night, evening and even holiday shifts. In such working conditions, the line between appropriate and inappropriate familiarity may be crossed more easily than in an office setting (Eller, 1990). However, study on sexual harassment in the hotel and resort industry in Malaysia is insufficient.

Based on the findings, there is only a hotel that admit the occurrence of sexual harassment between staff. The employees accused of sexually harassed a colleague was terminated after the panel of domestic inquiry found him guilty of the act,

The non-admittance of the occurrence of sexual harassment may not mean that sexual harassment did not arise at all. It may occur but it is not reported to the management. Thus, the management is encouraged to enhance awareness of what amounts to sexual harassment and the grievance procedure should it occur.

Disciplinary Matters

A disciplinary procedure is the means by which rules are observed and standards are maintained. The procedure should be used in order to help and encourage employees to improve rather than just as a way of imposing punishment. Each hotel has its own disciplinary procedure.

However, it is interesting to note that the disciplinary procedure and grievance procedure are not being followed despite it being quite an old and outdated policy. Managers have the tendency to address basic issues and devolve major issues to the HR Manager. While it is important to seek advice from the HR department, it is crucial for the Line Manager to take an integral part in managing employees' behaviour/conduct and performance at work as they are the one who are more in touch with the issues faced within their departments. Managers may find that disciplining employees can be an embarrassing aspect of their role which causes them to avoid their responsibility (Rees & Porter, 2005). Inconsistencies in treatment, especially within a department, can create considerable resentment which confirms that managers may have a biased attitude towards disciplinary which could cause adverse reactions

of employee's relations issues to be perceived as unfair by disgruntled employees towards their manager. The above statement is supported by a few hotel managers as seen below:

Manager G: "I believe that the line managers should be empowered to handle discipline matters of those who are within his department, yet they simply push it to HR"

Manager N: "I want all employees to understand the importance to uphold their discipline. However, there are times whereby their immediate superiors are not serious about the disciplinary matters. Thus, I have many reports on absenteeism, questionable emergency leave, habitual late to work and so forth".

Manager W: "I am new in the industry...I am not sure what is supposed to be done in disciplinary matters".

Based on the interview, it is observed that the hotels face disciplinary issues mainly on absenteeism. The problem is more prevalent in 3-star hotels. Disciplinary issue is one area that many in the hospitality industry have fallen foul of by making rash decisions and firing the employee only to find themselves being subjected to litigation.

Conclusion

In conclusion, the study was mooted to understand the legal issues faced by the selected hotels that took part in our study. The issues are identified and discussed in this article. An observation is made that 5-star hotels have better means compared to 3-star hotels. Thus 5-star hotels can afford to engage managers of high expertise. It is recommended for the hospitality industry include appointment policy, children at the workplace, customer/employee relationships, code of conduct, computer user policy, anti-discrimination prevention, drugs and alcohol, employee dress and grooming, laptop computers and equipment, leave, use of mobile phones, motor vehicles, privacy and freedom of information, sexual harassment prevention, stress prevention, termination of employment and employee discipline, workplace harassment and workplace health and safety. In short, these findings are useful to those in hospitality industry as the hospitality industry plays major role in supporting Malaysia's tourism industry. Thus, the industry players must address these legal issues so as to create harmonious relations between the management and workforce that will eventually lead to the survival and sustainability of the respective hotel. It will also ensure that the aim of MTPP is achieved

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