

# MISCONDUCT INVOLVING MUSLIM EMPLOYEE AT WORKPLACE: WITH REFERENCE TO DRUG ABUSE, ALCOHOL ABUSE AND UNAUTHORISED RECEIPT OR ACCEPTANCE OF GRATIFICATION

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## Abstract

*The employment relationship is of a fiduciary character where the core obligation of an employee to the employer is one of loyalty and integrity. In the discharge of his duties and functions, the employee is obliged to 'act in good faith, not to make a profit out of his trust, not to place himself in a position where his duty and his interest may conflict and not to act for his own benefit or the benefit of a third party without the informed consent of his employer, among other things': see Attorney- General v Blake [1998] Ch. 439. Besides performing the specific duties and responsibilities, an employee is expected to foster a positive and productive working environment by acting in a professional, responsible, and courteous manner at all times. Conversely, inappropriate or unprofessional behaviour is disruptive and unproductive. Inappropriate or unprofessional conduct at the workplace or outside the workplace is cause for discipline, up to and including termination. What is inappropriate or unprofessional conduct is left in the company's hands and sole discretion. Consumption of illicit drugs and alcohol at workplace are examples of unacceptable and inappropriate conduct at the workplace as it contributes to workplace accidents and absenteeism, among others. Likewise, receiving or accepting any gratuity, emolument or payment of any kind for his own benefit from any person having or intending to have any business with the employer are examples of unacceptable and inappropriate conduct at the workplace. Accepting or receiving bribery or corruption from individuals with which the company does business is not only a serious criminal offence but can also cause significant reputational damage of the company. In light of the above, this paper discusses the inappropriate or unacceptable conduct of a Muslim employee with reference to drugs abuse, alcohol abuse and unauthorised receipt or acceptance of gratification at the workplace.*

**Keywords:** *Misconduct, Muslim Employee, Workplace*

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## 1. Drug abuse or misuse at the workplace

Drug abuse or misuse of drugs at the workplace besides affecting individual's mental and physical health, has negative impact on organisational performance. Drug addicts usually have symptoms such as sudden mood changes, unusual irritability and/or aggression, confusion, abnormal fluctuations in energy levels, poor concentration and performance of tasks, poor time keeping, repeated short term sickness absence, deterioration in relationships with friends, colleagues, managers and customers, dishonesty and theft, among others. Hence, work performance of a drug addict usually deteriorates as they are unable to concentrate in their work besides being frequently absent from the workplace: see *Malaysian Airline System Bhd v Samson Anuar Haron* [2003] 3 ILR 1407. It also compromises the employer's common law duty to ensure a reasonable safe and conducive working environment. Therefore, drug abuse among employees in the workplace as well as outside the workplace during working hours has often been viewed as acts of gross misconduct which justifies dismissal from employment. Similarly, possession of any dangerous drugs in the workplace would tantamount to serious misconduct and termination is reasonable in the interest of discipline. Even a criminal conviction for drug trafficking committed outside the workplace is a serious matter and is dealt by the company in accordance with its disciplinary procedure.

Islam insists on a righteous living and therefore, the religion prohibits Muslims to eat or drink anything which may cause them health hazards. As the Qur'an provides: 'Say: Who has forbidden the beautiful (gifts) of Allah, which He has produced for His creatures, and the things clean and pure (which he has provided)' (Quran, 7: 32); 'And do not kill yourselves; indeed, Allah is ever Merciful to you' (Quran, 4: 29); "And do not be cast into ruin by your own hands..." (Quran, 2: 195). Prophet (SAW) said: 'Do not harm yourself or others' (reported by Ahmad and Ibn Majah). Since illicit drugs have the potential of causing devastating health hazards such as nausea, diarrhoea, craving, irritability, nervous tension, anxiety or sleep disturbance, among others, its consumption has therefore been included in the prohibited category of drinking alcohol or liquor.

The prohibition of alcohol has been extended to illicit drugs by analogy. This is because drugs produce the same effect on the user's mind and cause the same public harm that led to the prohibition of alcohol. According to Ibn Taymiyyah, 'solid grass (*hashish*) is "haram" whether or not it produces intoxication. Sinful people smoke it because they find it produces rapture and delight, an effect similar to drunkenness. While wine makes the one who drinks it active and quarrelsome, hashish produces dullness and lethargy; furthermore, smoking it disturbs the mind and temperament, excites sexual desire, and leads to shameless promiscuity, and these are greater evils than those caused by drinking. The use of it has spread among the people after the coming of the Tartars. The *hadd* punishment for smoking hashish, whether a small or large amount of it, is the same as that for drinking wine, that is eighty or forty lashes'. In other words, misuse or abuse of drugs involves a sinful act which may warrant appropriate punishment, if found guilty.

Despite its prohibition, it is sad to note that many Muslim employees have been involved in drug abuse at the workplace and such conduct has the potential of tarnishing the company's image. In *Petronas Carigali Sdn Bhd v Syamdun Tahir* [2014] 1 LNS 835 the respondent was dismissed by the company on a charge of misconduct of having allegedly consumed amphetamine and methamphetamine drugs at the workplace. Again, in *Malaysian Airline System Bhd v Samson Anuar Haron* [2003] 3 ILR 1407 the company terminated the services of the claimant due to his involvement in drug abuse. The Industrial Court held that it was abundantly clear that the claimant was a morphine user and this was a probable reason for his frequent absenteeism at the workplace. Similarly, in *Kamisan Abu Bakar v Allied Pickfords (M) Sdn Bhd* [2009] 1 ILR 497 the claimant's urine was found positive for cannabis and he was arrested and remanded by the police. Subsequently, the employer dismissed the claimant from his employment for his involvement in drug abuse.

Again, in *Linkedua (Malaysia) Bhd v Mohammad Shofian Shah M Shafri* [2008] 2 LNS 2101 the Industrial Court held that the company had proven that the claimant's urine contained dangerous drug during working hours, therefore the company had successfully proven that the claimant had committed misconduct that justifies his dismissal from employment. Again, in *Zulhilmi Fauzi v MISC Berhad* [2014] 1 ILR 240 the claimant's dismissal had been effected summarily on account of the nature of the misconduct ie, of being tested positive for morphine, a major misconduct. Based on the evidence adduced, the company had made out a case for the claimant's misconduct and it had been reasonable for it to dismiss him.

In *Muhd Awaidlah Abd Kadir v Perusahaan Otomobil Nasional (Proton)* [2011] 2 LNS 1511 the Industrial Court noted inter alia, that the company cannot afford to have employees who are on drugs because they are not only jeopardizing their own lives but the lives of other co-workers in the factory. As such the claimant's dismissal by the company was justified and with just cause or excuse. Lastly, in *Sukur Ahmad & 4 Ors v Okumura Metals (M) Sdn Bhd* [2009] 2 LNS 0713 the wrongful usage of drugs by the claimants in this case was against the company's policies and a serious misconduct sufficient to warrant a dismissal. In light of the evidence and facts, the Industrial Court reaffirmed its stand that the company had dismissed the 3 claimants with just cause or excuse as their urine samples tested positive for drugs.

## **2. Consuming intoxicating drinks within or outside workplace**

Similarly, the consumption of alcohol or intoxicating liquor can also lead to a range of psychological, social and medical problems. Intoxicating liquor or alcohol is defined in section 2 of the Employment Act 1955 as having same meaning as that assigned to 'intoxicating liquor' under section 2 of the Customs Act 1967 namely, 'any alcohol, or any liquid containing more than two per centum of proof spirit, which is fit or intended to be or which can by any means be converted for use as a beverage.' Science has proven the side effects of consuming liquor on the human body systems such as causing high blood pressure, disturbing a person's quality sleep, harming the digestive system, damaging the function of the human brain, heart and other cells of the body, among others For Alcohol's Effects on the Body, drr at <https://www.niaaa.nih.gov/alcohol-health/alcohols-effects-body>).

Generally, its effects on an individual vary according to the amount and the way it is consumed, gender, body size, weight, state of health, built-up tolerance and dependence, and combination with food or other drugs. Besides affecting proper performance of duties, intoxication has been found to contribute to workplace accidents and absenteeism, among others. Further, apart from endangering health and well-being of the worker, an intoxicated employee's conduct could raise issue of safety at the workplace. An intoxicant employee can present a danger to co-workers and other persons. Generally, it is the employer's duty to ensure safety, health and welfare of its employees.

Likewise, an employee has the duty to take reasonable care of his own safety and health and not to endanger the safety and health of others at the workplace. Hence, consuming intoxication while on duty or attending work intoxicated or possessing alcoholic beverages is a workplace misconduct that may lead to disciplinary action up to and including termination of service: see *Kesatuan Kebangsaan Pekerja Perusahaan Petroleum Dan Kimia Semenanjung Malaysia Lwn. Dic Epoxy (Malaysia) Sdn Bhd* [2014] 2 LNS 1069.

From the Islamic perspective, consuming alcohol or intoxicating liquor is not only prohibited but is also considered as one of the major sins (Imam Az-Zahabi). The strict prohibition of drinking liquor is provided in Surah *al-Maidah* (5) verse 91: 'O you who have believed! *Khamr* (all types of intoxicants), games of chance, idols, and divining arrows are all abominable works of the *Satans*; therefore, stay (far) away from these so that you may attain success. Indeed, the *Satans* seeks to sow enmity and hatred among you by means of *khamr* (intoxicants) and gambling, and to prevent you from the Remembrance of Allah and from prayer. Will you not, then, abstain from these things?' The reason for its prohibition as mentioned in the above verse is that '*Satans* plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer.' It was related that immediately upon the revelation of the above verse the people of Madinah threw all that they possessed of intoxicating liquors (Dr Anwarullah).

In light of the above, Muslims are prohibited from consuming intoxicating liquors irrespective of the quantity. It makes no difference if the quantity consumed is less or more and whether it intoxicates or otherwise. The Prophet SAW said: 'Of that which intoxicates in a large amount, a small amount is *haram* (prohibited)' (Yusuf Al-Qaradawi). Further, Muslims are also forbidden from trading or selling alcohol. Neither should they work or employ any of their family members in such prohibited environments. The salary received from selling these products is considered unlawful. In fact, Muslims have even been urged to stay away from parties or gatherings where liquor is served.

Jabir ibn Abdullah narrated that he heard Prophet SAW saying, "He who believes in Allah and the Last Day must not sit at a cloth (table or gathering) where wine is being circulated." (Al-Tirmidhi, *Hadith* 4477). Again, Abdullah Ibn Umar narrated that the Messenger of Allah (SAW)

forbade the sitting at a cloth (table or gathering) on which wine is drunk (*Sunan* of Abu-Dawood, *Hadith* 3765). In short, Muslims are expected to abstain completely from either consuming, brewing or trading intoxicating products

In Malaysia, the prohibition of manufacturing, introducing, promoting and selling of intoxicants by Muslims is governed by the Syariah criminal code of the respective states. For example, section 19(1) of the Syariah Criminal Offences (Federal Territories) Act 1997, provides: ‘Any person who in any shop or other public place, consumes any intoxicating drink shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.’ The word ‘public place’ means as every public highway, street, road, bridge, square, court, alley, lane, bridle way, footway, parade, wharf, jetty, quay, public garden or open space, and every theatre, place of public entertainment of any kind or other place of general resort to which admission is obtained by payment or to which the public have access. Further, s 19(2) provides: ‘Any person who makes, sells, offers or exhibits for sale, keeps or buys any intoxicating drink shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.’

It is noteworthy that any conduct of the employee, whether at the workplace or outside of work, which is likely to damage the reputation of the employer may constitute gross misconduct and will lead to disciplinary action up to and including dismissal. However, in deciding on dismissal as a sanction, the employer ought to take the specific circumstances of the case such as a safety or critical position held by the employee which necessitated the strict application of the rule against being intoxicated at work. The punishment meted out against the employee for consuming liquor at the workplace has to be proportionate with the nature and gravity of the misconducts committed.

As for the Muslims, since consuming any intoxicating drink is an offence pursuant to section 19(1) of the Syariah Criminal Offences (Federal Territories) Act 1997, hence, a criminal conviction and sentence against Muslim employee for consuming intoxicating drink at the workplace or outside the workplace and unconnected with work may form a basis for disciplinary action, provided that his criminal conduct has inadvertently tarnished the image and reputation of the company. For example, in *Mattel Tools Sdn Bhd v Anuar Bin Hassan*[1995] 1 ILR 783 the claimant had misbehaved himself at the company's Annual Dinner while being drunk and his conduct as above had tarnished the image of the company. His services were terminated after a domestic inquiry which found him guilty of the charges preferred against him.

The Industrial Court held *inter alia*, that the claimant's dismissal was without just or excuse as the production manager, who had misbehaved likewise during the occasion, was only issued a warning, whereas the extreme punishment of dismissal was meted out to the claimant. It is submitted that had the employer being an Islamic institution or organisation it would have

suffered damaging effects by reasons of the employee's conduct of not adhering to Islamic principles and hence, the extreme punishment of dismissal would have been warranted.

### **3. Demanding, offering or accepting bribery or any illegal gratification**

As stated earlier, the employer-employee relationship is fiduciary in nature, involving good faith, trust and confidence where the company expects absolute loyalty and honesty from their employees. In the performance of official duties, the fiduciary relationship may be affected when an employee accept for his own benefit any gratuity, emolument, or payment of any kind from any person having or intending to have any business with the employer. Accepting or receiving bribery or corruption is not only forbidden by the explicit texts of Islamic law but is also a serious criminal offence under the Malaysian Anti-Corruption Commission Act 2009 where section 24(1) of the said Act provides that the sentence is imprisonment for a term not exceeding twenty years and a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

Demanding, offering or accepting bribery or any illegal gratification has been described in *Public Prosecutor v Ismail bin Mohd Azmi and another appeal* [2010] 1 MLJ 108 as 'a most despicable crime'. According to Murray-Aynsley CJ in *R v Teo Cheng Lian* [1949] MLJ 170 at 171, 'bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body...I do not think that the mere imposition of a fine is likely to act as a deterrent in this class of offence'. In *Sim Kwang Liang & Anor v Public Prosecutor* [2008] 1 LNS 855 Yew Jen Kie JC said: 'Corruption is a sinister thing which has been likened to cancer which, if left undeterred, will destroy the healthy fabric of the society resulting in dissipation of the nation's wealth and compromise of the well-being of the people. It is sad to say that the crime of corruption has not abated and judging from the number of cases registered in courts there is a worrying trend of increase.'

Again, in *Haironyzam Mohtar v Public Prosecutor* [2009] 1 LNS 982 Yew Jen Kie JC said: 'The destructive nature of corruption is aptly likened to that of "cancer". It has a way of infiltrating and destroying the healthy fabric of a society. People suffer and progress is impeded where corruption is tolerated and accepted as a norm of getting things done. Corrupt practice by public officers is abhorrent because, they who are vested with such power, authority and influence should be expected by the public to discharge their duties honourably with the highest degree of integrity. The accused, as a public officer, is charged with the duty to enforce law and order and to protect the public, not to be on the prowl for vulnerable victims to pander his greed. Due the very serious nature of the crime of corruption, the fact that the amount of gratification involved is "small" must take the back seat. Nor is the fact that the offender has committed the offence for the first time or has been very cooperative with during the investigation. Our legislature recognizes the gravity of the crime of corruption; hence the new Anti-Corruption Act 1997 was enacted to introduce more severe penalties for such offenders.'

In context of employment law, demanding, offering or accepting bribery or any illegal gratification is a gross misconduct i.e. conduct which is sufficiently serious as to undermine the



relationship of trust and confidence. Such conduct can also cause significant reputational damage to the company. Serious misconduct that makes a continued employment relationship intolerable may warrant dismissal from employment. In *Hj Lamang Donggoh v Pertubuhan Anak-Anak Yatim Selangor* [2006] 2 ILR 1109 the claimant, in the course of administering and managing the Orphanage, committed misconduct designed to confer ill-gotten material gain to himself at the expense of the Orphanage, some of which borders on criminal culpability. In holding that the misconduct committed by the claimant constituted dismissal with just cause or excuse, YA Ahmadi Asnawi stated:

‘It seems to me that the basic requirement for employees in any vocation to possess key characteristics such as honesty, integrity, loyalty and willingness to work diligently for the betterment of the organisation appears to be on anathema to the claimant. What more when the claimant was in a position of high authority (within the orphanage) wielding immense power, influence and responsibly. It is only to be expected that he should have been above board. All the more so when the Pertubuhan literally gave him all the space and allowance to run the orphanage in the manner he considered best, with little or no control at all. All he needed to do was to be honest with himself and leave the rest to God. However it was not to be. The claimant had indeed committed a series of very serious acts of misconduct, perfected by the weaknesses inherent in the system itself all the way up and down. The higher ups appeared to be sleeping all the way and went deeper and deeper into their comfort zones not realizing the demon happily causing untold damage in their midst. Instead of improving the system, the claimant galvanised and took maximum advantage of the same and finally ran the orphanage as though it was his personal fiefdom. On the facts and evidence I am of the view that the claimant had, by his conduct breached an implied condition of his service so badly that it had damaged the very root of the employment contract governing his relationship with the Pertubuhan. In his position the claimant obviously owed the Pertubuhan both a contractual and fiduciary duty of trust in carrying out his functions. By abusing the trust in the manner enumerated earlier, the claimant had clearly breached a vital element required of an employer - employee relationship, thereby destroying the very root of the employment contract. Such blatant display of dishonesty and self serving interests deserves the most serious form of punishment and constitutes justification of a summary dismissal of the same.’

Again, in *Matsushita Electronic Motor (M) Sdn Bhd v Md Satar Md Saad* [2004] 1 ILR 1211 the claimant who was attached with the corporate affairs department was dismissed when he was found guilty for taking money from the contractor to secure the contract. The company dismissed the claimant after the domestic inquiry panel found him guilty of the charge of causing embarrassment and jeopardy to the company's image. In *Mustafa Kamal Maughani v Suruhanjaya Komunikasi & Multimedia Malaysia* [2006] 5 CLJ 297 the plaintiff, holding a senior position, was arrested and subsequently charged in the Sessions Court for three counts of corruption under the former Anti-Corruption Act 1997, s. 10(a)(aa).

In the meantime, the defendant terminated his services on grounds of public interest so as to preserve its standing as a public body. In dismissing the plaintiff's application to declare his dismissal unfair, Kang Hwee Gee J held that the charge of corruption in court was sufficient to bring the image of the Commission into odium and disrepute. It was therefore legitimate for the

defendant to terminate his services on grounds of public interest so as to preserve its standing as a public body. In particular, his Lordship stated:

‘[G]iven that the plaintiff was holding a position of responsibility there could be little doubt that his continued employment with the Commission would have the tendency to put the image of the Commission into odium and disrepute in the minds of right thinking members of society. Accordingly, the defendant need not wait until the sessions court decides on the guilt of the plaintiff. The very fact that the plaintiff had been charged in court with the corruption charges mentioned hereinbefore was sufficient to bring the image of the Commission into odium and disrepute.’

Last but not least, in *Rosli Abdul Aziz & Ors v Puspakom Sdn Bhd* [2014] 2 ILR 100 the claimants who were employed as vehicle examiners of the company were dismissed after they were arrested by the Anti-Corruption Agency and remanded for questioning on allegations of accepting bribes. The claimants were alleged to have accepted bribes in order to approve vehicles sent to the company for inspection. The company contended that the claimants’ termination was warranted because they had tarnished the image of the company. In upholding the claimants’ dismissal to be with just cause and excuse, YA Anna Ng Fui Choo stated:

‘The claimants were arrested and detained by the ACA in January 2008 and they had admitted to accepting bribes. Their assets were seized and forfeited. Their integrity was highly questionable and the public perception of the company was very negative when the ACA made many arrests from within the employees of the company for that period of time. The company found that it could no longer repose any trust and confidence in the claimants. The misconduct by the claimants was very serious and had fallen short of the high standard of integrity and skill expected of them and which they had abused for monetary gains. Accepting bribes to approve vehicles which were not roadworthy and safe and which had not met the criteria and standard set by law was a very serious offence as those vehicles pose a danger to other road users. Given the circumstances, it was only natural that the company had viewed this case very seriously. It cannot be considered anything less but a grave misconduct by this court.’

#### **4. Conclusion**

In the discharge of his duties and responsibilities, an employee is expected to render loyal and faithful service to the employer. Untrustworthiness, lack of integrity and dishonesty, among others, are examples of conducts which are abhorred in such relationship. Allegations of drugs abuse and alcohol abuse in the workplace is a serious matter as it compromises the safety at the workplace besides affecting the employee’s productivity and damaging the organisational image and reputation. Taking, selling, supplying or being in the possession of drugs or alcohol at work will be disciplined according to the company’s disciplinary procedure and the punishment for such offences, if established, will be up to and including dismissal from employment. Likewise, accepting bribes from the contractor to secure the contract or to approve vehicles sent to the company for inspection, among others things, are grounds that justifies disciplinary action because the employee’s misconduct has brought, or has the potential to bring, the company into disrepute or caused embarrassment and jeopardy to the company's image.



As noted in this article, despite the fact that the above mentioned misconducts has been prohibited in Islam, nevertheless many Muslim employees are observed to have violated the Islamic injunctions and had been dismissed from employment ensuing from their wrongful conduct at the workplace. Not only had they lost their job consequence from their wrongful conducts at the workplace but had also incurred sin. Hence, repentance from all sins is obligatory on every adult Muslim. This is emphasised by Allah (SWT) is His saying: “And turn to Allah in repentance, all of you, O believers, that you may be successful’: *Surah An-Noor* (Chapter 24): verse 31 On a final note, in a *hadith qudsi* on the authority of Anas (may Allah be pleased with him), who said: ‘Allah the Almighty said: O son of Adam, so long as you call upon Me and ask of Me, I shall forgive you for what you have done, and I shall not mind. O son of Adam, were your sins to reach the clouds of the sky and were you then to ask forgiveness of Me, I would forgive you. O son of Adam, were you to come to Me with sins nearly as great as the earth and were you then to face Me, ascribing no partner to Me, I would bring you forgiveness nearly as great as it (It was related by At-Tirmidhi and by Ahmad Ibn Hanbal)).

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