

From Able-Bodied to Disabled Worker: Legal Safeguards in Employment

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ABSTRACT: Able-bodied workers may become disabled due to the work-related accident, occupational diseases or other causes not related to employment. The disablement that includes severe illness or incapacity to work can be the reasons for the employment contract to be concluded, risking the workers of losing the jobs for being unable to execute the task as specified in the contract. Considering employment as part of human rights and essential for the living of a person, physical disablement should not be the sole reason for the termination of the existing contract. Instead, such workers must be supported to live their lives, for example, by placing them to other jobs that suitable with the types of disablement. This article explores the legislative framework and legal practices that govern the transition of individuals from able-bodied to disabled status within the employment context. It examines how disability arising during the course of employment is addressed through legal protections, with a focus on job security provisions through the social protection. The study employs the doctrinal method to analyse primary sources particularly the Employees' Social Security Act 1965 and regulatory practices in Malaysia, thus allowing for a critical interpretation of how the law conceptualizes disability and protects workers who acquire disabilities. While the legislations protect the employment through the provisions of rehabilitation and re-employment of the injured and disabled workers, other social security measures like return-to-work system is a practical programme to tap the workers' talent so as to secure, return and retain them in suitable employment. Ultimately, the study contributes to the understanding of disability rights in employment and the role of law in fostering workplace inclusion.

KEYWORDS: disabled worker, employment, return to work, social security, legislation

I. INTRODUCTION

The transition from being an able-bodied worker to one with a disability presents significant challenges, particularly in the realm of employment. The recent data from SOCSO's Annual Report (2024) shows the increasing number of accidents in 2023 with 53.6% (44,422 cases) being industrial accidents and 46.4% (38,454 cases) related to commuting, thus amounting to 86,897 (compared to 2022 with a total of 75,116). Tragically, out of 1,060 fatal accidents, the remaining victims survived, with some potentially facing long-term disabilities as a result. These incidents involve local workers, foreign workers, and self-employed individuals, and include both industrial and commuting accidents as the former accounting for a higher proportion.

While coping with the sudden onset of a disability, permanent or temporary, they also face the terrifying possibility of losing their job due to the injury or long-term illness. For example, a worker who was previously able to perform physically demanding tasks on-site may no longer be able to do so after an accident that results in the use of a wheelchair. This change in physical ability can create significant barriers to continuing in the same role, raising concerns about job security and future employment opportunities. As a result, the worker may no longer meet the job requirements and could lose their position due to being unable to carry out the duties outlined in the employment contract. This situation is one of the possible reasons an employment contract may be terminated, particularly when the circumstances such as a disability resulting from injury, are beyond the control of both the employer and the employee (Maimunah, 2020).

Workers who acquire disabilities, whether through accidents, illnesses, or age-related conditions, often face barriers to continued employment, including discrimination, lack of workplace accommodations, and limited legal protection. Considering employment or the right to work as a fundamental human right and a vital component of an individual's livelihood through which a person can earn an income thus uphold the dignity (Kaya & Yilazer, 2019) physical disablement should not be regarded as a valid sole reason for terminating an existing employment contract. Instead, employers and policymakers must recognize the inherent dignity and potential of disabled individuals by ensuring continued support and inclusion in the workforce. Workers who acquire disabilities should be assessed for their remaining capabilities and, where possible, reassigned to roles that align with their new physical conditions. This approach not only upholds their right to work but also promotes social integration and economic independence.

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This article seeks to explore the extent to which existing legal safeguards in Malaysia protect the employment rights and dignity of workers who become disabled, and to identify areas where legal reform or policy enhancement is necessary so as to ensure fair treatment and equal opportunities in the workplace. This paper is significant as it sheds light on the critical need for robust legal safeguards to support workers who become disabled during their employment. By examining existing laws, policies, and case studies, the paper aims to highlight both the strengths and shortcomings of current legal protections. It also seeks to raise awareness among employers, policymakers, and the public about the importance of inclusive employment practices and the rights of disabled workers. The expected outcome of this paper is a comprehensive understanding of the legal mechanisms that protect disabled workers, along with practical recommendations for enhancing these safeguards. The paper aims to contribute to the discourse on disability rights in employment and to advocate for more inclusive and equitable workplace environments that uphold the dignity and productivity of all workers, regardless of physical ability.

II. LITERATURE REVIEW

The transition from able-bodied to disabled status in the workforce has been the subject of growing concern, particularly in the context of legal protections and inclusive employment practices. This literature review synthesizes key findings from scholarly works, legal commentaries, and policy analyses that explore the intersection of disability, employment, and legal safeguards.

A. Human rights and Rights to Work

Right to work and job security have been acknowledged as part of human rights where some relates them with the fundamental rights, human dignity, right to life, right to live as a person, a social and economic based right and so on (Kaya & Yilmazer, 2019). The right to work itself is a basic human right that supports human dignity for people of all ages and is key to achieving other rights (Guterman, 2022). International human rights standards make it clear that both governments and businesses must take action to support and protect essential labour rights. Historically, unemployment, poverty and bad working conditions have led towards the actions by introducing relevant regulations. Governments have responded to these by establishing international agreements. Clear evidence is seen in the preamble of the International Labour Organization (ILO) that states members of the League of Nations will work to ensure fair and humane labour conditions. The revised ILO Constitution further reinforced this commitment, emphasizing the need to combat poverty and unemployment, secure fair wages and humane working conditions, and promote global peace, justice, and human dignity (ILO, the Preamble). Kaya and Yilmazer (2019) discuss an extensive context of right to work as a fundamental human right where they conclude that this right is a socio-economic based right that may affect other aspect of human rights. For instance, a person who is unable to find a job may have a consequence of their right to livelihood and human dignity affected.

Rodríguez-Pinzón and Martin (2003) define the right to work as the ability to earn a livelihood under fair conditions while maintaining personal freedom and dignity. Thus, everyone should have the chance to earn a living through a job, where society is responsibility to make sure that people who want and need work can find it through creating and enforcing fair labour laws, improving working conditions, and making sure everyone involved in the workplace understands and respects workers' rights (Binaku & Ismajli, 2024).

B. Human Rights and Disability

The right to work as a universal human right protected by international law, thus applies to everyone, including people with disabilities (PWD). Two key international documents are the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—both outline important work-related rights. Article 23 of UDHR guarantees the right to work, fair working conditions, fair pay, and the freedom to join trade unions; while ICESCR Article 6 affirms the right to earn a living through work that a person freely chooses or accepts. Henceforth, PWD have the same rights to work as everyone else under these agreements. Additionally, Article 27(1) of the UN Convention on the Rights of Persons with Disabilities (CRPD) requires countries to ensure that PWD can work equally, in environments that are open, inclusive, and accessible. The rights of PWD are not isolated from the human rights principles (Tahir et al., 2023).

Since the early 1980s, the social model of disability has inspired a large amount of research and writing when scholars, activists, and professionals in areas like sociology, law, education, and healthcare have used it to understand how society can create or remove barriers for PWD. Unlike the medical model, which sees disability as a personal health issue, the social model focuses on how physical barriers like inaccessible buildings, rigid policies, or negative attitudes create challenges for people with impairments. This has helped shift the focus from seeing disability as a personal problem to recognizing it as a result of environmental and social challenges. To relate human rights and disability, nowadays, another alternative to the social model is called the human rights model of disability. It has become the most important and widely used, especially in laws and policies related to human rights. Some use these models synonymously (Kanter, 2003), some considers them contradicting (Degener, 2016; Degener, 2017), while some believes that they are complementing (Lawson & Beckett, 2020).

Numerous studies have highlighted the persistent discrimination faced by disabled individuals in the labor market. According to Barnes and Mercer (2005), societal attitudes and structural barriers often marginalize disabled workers, limiting their access to

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employment opportunities. These barriers are compounded when workers acquire disabilities during their careers, as employers may perceive them as less productive or costly to accommodate. This model, therefore, highlights the entitlement of PWD to equal rights and opportunities thus should be treated as equal members of society who deserve the same rights and opportunities as everyone else. This should guide the exploration of how legal protections can better support workers who become disabled, ensuring they are not excluded but instead accommodated and empowered. As such, employer's roles are imperative to help enhancing workers who become disabled by retaining or offering them with jobs suitable with their impairment. Moskalenko et al. (2023) highlight the rights of PWD can generally be grouped into two types: basic human rights, which apply to everyone, and specific rights that come from their legal status as PWD. While international law has long protected general human rights, it is important to emphasize the principles of equality and non-discrimination when addressing the rights of PWD.

C. Law and Disabled Workers

In terms of legal protection, international human rights instruments have played a crucial role in shaping domestic laws that guarantee the right to work and recognize the rights of PWD. These global standards, such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD), are often adopted into national legislation, resulting in widespread legal recognition of employment rights for PWD across nearly all countries. Examples of such legislation include the Americans with Disabilities Act (ADA) in the United States, the Equality Act 2010 in the United Kingdom, the Persons with Disabilities Act 2008 in Malaysia, and similar laws in other jurisdictions. While the existence of these laws marks significant progress, their actual impact remains questionable, as many PWD continue to face substantial barriers in employment. Sharma and others (2025) in a study about ableism and employment found out that disabled workers are affected due to barriers in the workplace, discouraging disability disclosure, limited accommodations, and discrimination where the challenges are even more severe for people with intersecting identities, such as women, and those with invisible disabilities. Studies, including those by Schur et al. (2009), have shown that although these legal frameworks have helped raise awareness and reduce overt discrimination, enforcement is often inconsistent, and employers frequently lack a clear understanding of their responsibilities. This gap between legal provisions and real-world outcomes highlights the need for stronger implementation and more inclusive workplace practices. While these legal frameworks have made progress in promoting inclusion, PWD continue to face challenges such as lower pay, fewer benefits, limited opportunities for advancement, and negative workplace attitudes. The effectiveness of these laws often depends on how well companies implement inclusive practices and foster supportive workplace culture. In the Malaysian context, scholars like Harun and Abdullah (2017) have critiqued the PWD Act 2008 for its lack of enforceability. The Act's failure to impose legal obligations on employers has limited its effectiveness in protecting disabled workers, especially those who become disabled during employment.

Other than the legislation that protects those with disabilities, social protection systems play a crucial role in supporting disabled workers. Social security as a basic human right, should be available to everyone, at any stage of life, including for PWD, where this right has been supported through various international human rights and labour law frameworks (Shamil, 2024). Research on Malaysia's SOCSO Return to Work (RTW) program by Ismail and others (2020) indicate that structured rehabilitation and job placement services can effectively reintegrate injured workers into the labor market. However, the success of such programs hinges on inter-agency coordination and employer cooperation. Reasonable accommodation is another crucial subject in retaining disabled workers. In exploring the working conditions of the disabled workers, accessibility is essential. According to Teborg, Hunefeld and Gerdes (2024), this should cover organizational structures, training, health programs, the physical workspace, and available tool of technology and equipment. Employers can support this by assigning contact persons for disabled staff and setting up clear accommodation processes.

They should also consider flexible hours, remote work, or task adjustments. Most importantly, fostering an inclusive culture that values disabled employees and addresses bias is indispensable. However, the implementation of such accommodations often depends on employer willingness rather than legal compulsion, particularly in jurisdictions with weak enforcement mechanisms. In evaluating the social security measures for the disabled persons in India, Reddy (2024) recommends adopting a more inclusive, rights-based approach that aligns with international standards, so as to improve its social security system, promote the independence and dignity of persons with disabilities, and help build a fairer and more equal society.

While there is substantial research on disability rights and employment, there is limited empirical work focusing specifically on workers who acquire disabilities during their employment. This group faces unique challenges, including sudden loss of income, identity shifts, and the need for rapid workplace adaptation. More localized studies in Malaysia are needed to assess the real-world impact of existing legal frameworks and to identify areas for reform. This paper is focusing on the non-disabled workers who have later become disabled due to the occupational accident or other illnesses that threatening them of the possibility of losing their job. As a measure to support the social security of the victim employees and the workforce, the legislative framework that protects their employment is deliberated, particularly the legislations and policies that support the injured and disabled workers through the rehabilitation and re-employment provisions. Additionally, other social security systems and initiatives by SOCSO, like return-to-work programme is considered for the disabled workers to secure, return and retain in suitable employment.

III. DISCUSSION

In the context of this discussion, 'workers who have become disabled' refers to individuals who, due to accidents or illnesses sustained while still employed, become unfit or unable to perform their job duties, experience a weakening of their capabilities, or become incapacitated. Major accidents or certain types of illness that are categorized as serious may cause impracticality for the workers to continue working particularly when they become incapacitated or when the medical specialist determines him/her unfit for work. In some cases, the recovery period may extend beyond initial expectations, while in others, the worker may be left with no capacity to return to work. In consequence, the accident may have affected their employment contract and put them at risk of losing jobs. The disablement that has caused inability for the worker to execute the work and unable to fulfil the job specification in accordance with the contract may result in a valid termination of the service. Therefore, this discussion focuses on how the law protects the employment of workers who have become disabled and are at risk of losing their jobs. The Legislative frameworks to discuss here include the international legal instruments and Malaysian legislation.

A. International Legal Instruments

In addition to the main international instruments that uphold the principles of equality and non-discrimination—such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—a key treaty specifically addressing the rights of persons with disabilities is the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Article 27 specifically addresses the right of persons with disabilities to work on an equal basis with others. Malaysia is a signatory to the CRPD, which obligates member states to promote, protect, and ensure the full and equal enjoyment of all human rights by persons with disabilities.

B. Malaysian Legal Frameworks

The discussion for the legislative framework that protects the employment rights of workers with disabilities are focused on five key pieces of legislation namely the Employment Act 1955 (EA 1955), the Industrial Relations Act 1967 (IRA 1967), the Employees' Social Security Act 1969 (ESSA 1969), and the Persons with Disabilities Act 2008 (PWDA 2008).

- i. *Employment Act 1955*: The Employment Act 1955 of Malaysia serves as the primary legislation governing employment relationships in the country. Its main function is to regulate the terms and conditions of employment for workers, particularly those earning below a specified wage threshold. The Act outlines key provisions related to wages, working hours, rest days, holidays, termination, maternity protection, and other employment benefits (Harahap et al., 2024; Mahyut et al., 2023). Its purpose is to ensure fair treatment and protection of employees while providing a legal framework for employers to manage their workforce. The scope of the Act primarily covers employees in Peninsular Malaysia and Labuan, with separate regulations applicable to Sabah and Sarawak. While not specifically focused on disability, it governs employment practices and can be interpreted in conjunction with other laws to ensure fair treatment.
- ii. *Industrial Relations Act 1967*: The Industrial Relations Act 1967 of Malaysia serves to promote and maintain harmonious industrial relations between employers, employees, and trade unions. Its primary function is to provide a legal framework for the regulation of collective bargaining, the recognition of trade unions, and the resolution of industrial disputes. The Act outlines procedures for handling grievances, strikes, lockouts, and unfair labor practices, and empowers the Industrial Court to adjudicate disputes. Its scope covers both the private and public sectors, ensuring that industrial harmony is preserved through structured negotiation and legal recourse. Although the Act does not specifically mention persons with disabilities, its provisions on industrial disputes, unfair labour practices, and trade union rights can be applied to cases involving discrimination or unfair treatment of disabled employees (Wahab & Ayub, 2016). For example, in cases of unfair dismissal or discrimination against disabled workers, denial of reasonable accommodation, or exclusion from collective bargaining, they can seek redress through the mechanisms provided under the Act. Trade unions can also play a vital role in advocating for the rights of disabled workers, negotiating inclusive workplace policies, and ensuring that employers comply with broader equality principles, including those outlined in the Persons with Disabilities Act 2008 and international standards like the CRPD.

The IRA can be used to challenge employment termination due to acquired disability. In essence, it complements other disability-specific laws by offering procedural and institutional support for resolving workplace issues and promoting inclusive labour practices.

- iii. *Persons with Disabilities Act 2008 (PWDA 2008)*: The PWDA 2008 provides for the registration, protection, rehabilitation, and development of persons with disabilities. The Act came into force in 2008 as reflections to the requirement of the CRPD. Essentially, PWDA 2008 is a new chapter that recognise the rights of PWD. The most relevant provision dealing with access to employment is Section 29 with the assurance through its subsection (1) that PWD shall not be discriminated and shall have the right of access to employment on equal basis with person without disabilities. To relate this with the workers who have become disabled due to the industrial accident, this provision gives protection and work security in term of assuring their right to access to employment. Moreover, subsection (2) mandates that employers protect the rights of PWD in the workplace, ensuring they have equal access to just and favorable conditions of work, including equal opportunities and

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remuneration for work of equal value. This means employers must provide a fair and supportive work environment for PWDs, like their non-disabled counterparts.

PWD shall be evaluated by their employer based on their abilities in order to promote stable employment. This includes providing them suitable places of employment and proper employment management (Section 29(3)). These provision pledges the PWD of their right to employment. Although PWDA 2008 is specifically meant for the PWD, workers who have become disabled and incapacitated hold the same status of PWD are covered under the same legislation, provided they “have long term physical, mental, intellectual or sensory impairments” (section 2 PWDA 2008). As such, while the SOCSO ensures their benefits as the insured persons, PWDA 2008 addresses the explicit right of employment to PWD in general.

Moreover, reasonable accommodations—such as modified workstations, flexible hours, or assistive technologies—should be provided to enable disabled employees to perform their duties effectively. Employers should collaborate with rehabilitation professionals and social security institutions to facilitate smooth transitions and ensure that affected workers are not left behind. By adopting inclusive employment practices, organizations can foster a more equitable and compassionate work environment, while also benefiting from the diverse perspectives and resilience that disabled workers often bring. Furthermore, the National Council for PWD which is set up under the PWDA 2008 shall formulate appropriate policies and measures in order to promote employment for PWD in the private sector (Section 29(4)), promote opportunities for training in the labour market, self-employment, entrepreneurship, development of cooperative, starting one’s own business and work from home (Section 29(5)). In other words, the government has initiated a set-up of a body to oversee the issue of PWD for the purpose of enhancing and supporting their lives to ensure inclusiveness.

PWDA has initiated a new phase that outlines rights of PWD, yet claimed to be lacking strong enforcement mechanisms, which is a point of critique and discussion (Suberi et al., 2025; Tahir et al., 2023; Abdullah, 2017).

- iv. *Social Security Organization (SOCSO) and the Employees’ Social Security Act 1969 (ESSA 1969)*: The Social Security Organization (SOCSO), was established under the Employees’ Social Security Act 1969 (ESSA 1969) to provide social protection to Malaysian workers. The Act serves as the legal foundation for SOCSO’s operations, outlining the types of benefits, coverage, and responsibilities of both employers and employees. Its main purpose is to offer financial assistance and rehabilitation services to workers who suffer from employment-related injuries, illnesses, disabilities, or death. Under the Act, SOCSO is administering two main schemes: the Employment Injury Scheme, which covers accidents and occupational diseases arising during work, and the Invalidity Scheme, which provides benefits for non-work-related disabilities or death before retirement age. Through these schemes, SOCSO ensures that workers, including those who become disabled, receive income support, medical care, and vocational rehabilitation to help them return to work and maintain their livelihood.

In essence, ESSA 1969 empowers SOCSO to act as a safety net for workers, reinforcing the country’s commitment to social justice and inclusive employment protection. In the context of ESSA 1969, insured persons—i.e., workers who have contributed to the country’s social insurance scheme—are entitled to benefits provided under the scheme should they become involved in an accident, whether work-related or otherwise. It is understood among all contributors that their contributions not only secure their own protection but also support fellow employees who suffer from disabilities or invalidity, as well as assist the families of deceased workers.

The disabled workers that contributed to SOCSO i.e., the insured person, are also eligible for the benefits of the schemes. In terms of employment security, section 53 of ESSA 1969 provides that an employer cannot dismiss, punish, or reduce the wages of an employee while the employee is receiving disablement benefits. This means that any action to terminate or penalize an employee during their period of disablement is considered invalid under Malaysian law.

The Act also stresses out for the organizations (employers) to promote measures with existing institutions for the improvement of the health, occupational safety and welfare of the insured person (Section 40). This may include the rehabilitation and re-employment of person who have been disabled or injured. Moreover, free-of-charge facilities for physical or vocational rehabilitation shall be provided to insured person who is suffering and claiming to suffer from invalidity or permanent disablement. The renewable facilities are also provided which may include prosthetic, orthotic or other appropriate appliances as may be determined by the organization (Section 57). All the benefits by SOCSO and the provisions of the ESSA 1969 protect the workers from losing their job although they might have gone through a critical period of illness.

- *Return to Work Program*: SOCSO has been running the Return to Work (RTW) program since 2007 to support the reintegration of injured or ill workers into the workforce. The program was established for the purposes of helping Insured Persons who have been disabled due to accidents and diseases to achieve optimum levels of functionality prior to returning to work. Aiming to enhance employee productivity and morale, reduce employers’ costs, and prevent the loss of skilled workers due to prolonged absence, the program aligns with organizational strategies to lower disability-related compensation expenses (EARN, 2018). RTW provides a proactive platform that helps insured individuals return to safe and productive work as soon as they are medically fit (Johari et al., 2019). The program’s success reflected in the

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increasing return-to-work rates — 75% in 2022 and 77% in 2023 – involving those returned to work by case hierarchy: (1) same job, same employer; (2) similar job, same employer; (3) self-employed; and (4) different job, different employer (SOCSCO Report, 2023). The success of RTW is also evident through the documented literature and study (Abdullah & Ng, 2024; Johari et al., 2019; Awang, Shahabudin & Mansor, 2016).

- *Employment Insurance System (EIS)*: Offers temporary financial assistance and job placement services to the workers, including those affected by disability. In the case of *Moorthi Patchai v. Sigma Water Engineering (M) Sdn Bhd* (2024) 1 ILR 686, an employee received temporary disablement benefits from SOCSCO after a workplace accident. The question was whether the employer still needed to pay his salary during this period. The court held that employees cannot receive both salary and SOCSCO benefits simultaneously, as it would result in unjust enrichment. Employers are not obligated to pay wages during the disablement period, and if they do, they can deduct the amount equivalent to the SOCSCO benefits.

CONCLUSION

In conclusion, this article highlights the critical importance of establishing and strengthening legal safeguards to protect the employment rights and dignity of workers who become disabled during the course of their careers. While Malaysia has made commendable progress through legislation such as the Persons with Disabilities Act 2008, the Employees' Social Security Act 1969, and the Industrial Relations Act 1967, gaps remain in ensuring that these laws are effectively implemented and truly inclusive. The analysis reveals that although legal frameworks exist, enforcement is often inconsistent, and awareness among employers and even employees about their rights and obligations is limited.

This paper emphasizes that disability should not be a barrier to meaningful employment, career advancement, or workplace participation. It calls for a shift toward a rights-based, inclusive approach that aligns with international standards such as the UN CRPD. By examining current laws, policies, and real-world challenges faced by disabled workers, the article identifies areas where legal reform, policy enhancement, and stronger institutional support are urgently needed. Moreover, the paper seeks to raise awareness among key stakeholders, including employers, policymakers, legal practitioners, and the general public, about the importance of creating equitable and accessible work environments. It advocates for proactive measures such as reasonable accommodations, inclusive hiring practices, and vocational rehabilitation programs that empower disabled individuals to contribute fully to the workforce.

It is pertinent to have a comprehensive understanding of the legal mechanisms, along with practical and actionable recommendations for improving these protections. Ultimately, the legislative frameworks offer and ensure security of employment for the disabled workers through numerous benefits. The interventions include the government support towards rehabilitation and assistive devices including financial support, dismissal protection, physical and vocational rehabilitation, and relevant incentives. With an extensive coverage of the provisions that supporting rehabilitation and re-employment of the injured and disabled workers, their employment is assured. A return-to-work system is another practical platform to support and motivate the injured workers so that they are secured and ready to return and retain in suitable employment. At the same time, the issue of enforcement of the Acts needs to be persistently carried out. At this point, the article may contribute meaningfully to the ongoing discourse on disability rights in employment, and to support the development of a more inclusive society where all workers, regardless of physical ability, are treated with fairness, respect, and dignity.

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