



THE LAWS IN RELATION TO SAFETY AND HEALTH AT WORK IN MALAYSIA

Legislative Framework of Occupational Safety and Health in Malaysia

The legislative structure of occupational safety and health in Malaysia is governed by the Constitution. The main legislations the Occupational Safety and Health Act 1994 (“**OSHA 1994**”), the Factories and Machinery Act 1967 (“**FMA 1967**”) and the Petroleum (Safety Measures) Act 1984. This article will focus on the legislations in relation to safety and health at work and initiatives taken by the Government to reduce the occupational accidents in Malaysia.

Occupational Safety and Health Act 1994 (“OSHA”)

The OSHA 1994, was made in consideration of the fact that the FMA 1967 – which provides control of the factories – only covers sectors such as manufacturing, mining, quarrying and construction. The workers that are covered by the FMA 1967 only consists of 24% of the nation’s total man power, while OSHA 1994 covers 90% of the nation’s total man power.

The objects of OSHA 1994 are:

- (a) to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work;
- (b) to protect persons at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work;
- (c) to promote an occupational environment for persons at work which is adapted to their physiological and psychological needs;
- (d) to provide the means whereby the associated occupational safety and health legislations may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.

The Department of Occupational Safety and Health (“**DOSH**”) is a department under the Ministry of Human Resources. This department is responsible for ensuring the safety, health and welfare of people at work as well as protecting other people from the safety and health hazards in the industry sectors specified in the First Schedule of OSHA 1994 which includes the followings:

- (a) manufacturing;
- (b) mining and quarrying;
- (c) construction;
- (d) agriculture, forestry and fishing;
- (e) utilities;
- (f) transport, storage and communication;
- (g) wholesale and retail trades;
- (h) hotels and restaurants;
- (i) finance, insurance, real estate and business services; and
- (j) public services and statutory authorities.

OSHA 1994 however shall not apply to work on board ships governed by the Merchant Shipping Ordinance 1952 and the Merchant Shipping Ordinance 1960 of Sabah or Sarawak and the armed forces.

OSHA 1994 provides for the appointments of officers and independent inspecting body, establishment of National Council for Occupational Safety and Health and powers and functions of the council. The general duties of employers and self-employed persons to their employees, general duties of designers, manufacturer, supplier and employees are all provided in the Act.

The duty imposed by OSHA 1994 on the employer or the self-employed person is “to ensure, so far as is practicable, the safety, health and welfare at work of all his employees”. The “work” is defined under the Act to mean work as an employee or as a self-employed person. The employee and a self-employed person is deemed to be at their place of work in the circumstances below:

- (a) an employee is deemed to be at work throughout the time when he is at his place of work but not otherwise; and
- (b) a self-employed person is at work throughout such time as he devotes to work as a self-employed person.

Furthermore, the “place of work” is defined as the “premises where persons work or premises used for the storage of plant or substance” and “premises” is defined to include:

- (a) any land, building or part of any building;
- (b) any vehicle, vessel or aircraft;

(c) any installation on land, offshore installation or other installation whether on the bed of or floating on any water; and

(d) any tent or movable structure.

Taking this into consideration, one can see that OSHA 1994 adopts a broad definition for “place of work”. For example, if the employee or self-employed person is contractually obligated to work offshore, on multiple sites, or even assigned overseas during their course of employment, then they are all considered to be the “place of work”.

OSHA 1994 states that an employer’s duty shall extend to include the maintenance of plants and systems of work that are safe and pose no risk to the health of their employees. The employer is also under the duty to provide information, instructional training and supervision to ensure the safety and health at work of their employees. As such it is not enough to merely make sure the premises are safe but the employer must also ensure that the employees are well informed and have the prerequisite training so they may operate in a safe manner, to use and to further ensure their health and safety in the work place. Reasonable care must be taken to make sure the employees are not exposed to dangerous situations. Furthermore, the degree of care given to each employee must be fit for that individual employee, the degree of care to ensure the safety for an able-bodied employee and one who has an impairment should differ as their circumstances are different.

An employer is also required under OSHA 1994 to notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work. The employer shall also send a report thereof within 7 days.

Apart from the employers, employees have the general duties under OSHA 1994 as well, which are as follows:

(a) to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work;

(b) to co-operate with his employer or any other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any regulation made thereunder;

(c) to wear or use at all times any protective equipment or clothing provided by the employer for the purpose of preventing risks to his safety and health; and

(d) to comply with any instruction or measure on occupational safety and health instituted by his employer or any other person by or under this Act or any regulation made thereunder.

Employees' Social Security Act 1969

Another important piece of legislation which protects employees during their course of employment is the Employees' Social Security Act 1969, it provides for social security for employment injury contingencies in favour of employees. Under the Act, the employees has the right to claim for certain benefits such as:

- (a) Medical benefit;
- (b) Disablement benefit;
- (c) Constant attendance allowance;
- (d) Dependants' benefit;
- (e) Funeral benefit;
- (f) Survivor's pension; and
- (g) Invalidity pension.

The Social Security Organisation (“**SOCSO**”) was established as one of the government departments under the Ministry of Human Resources to administer, implement and enforce the Employees' Social Security Act 1969 and the Employees' Social Security (General) Regulations 1971. The Employment Injury Scheme under SOCSO provides protection to employees against occupational injuries including occupational diseases and commuting accidents.

OSH Master Plan 2020

DOSH has set out its aims and expectations in 'Master Plans' which is a five year-plans, each with a theme or focus, which detail OSH objectives and measurements of success. Previous Master Plans have concentrated on ownership and self-regulation. The current plan, which was launched in 2016 and concludes on 31 December this year, has sought to bring about a 'preventive culture'. The plan contains three key objectives:

1. to reduce the rate of work-related deaths by 10%;
2. to reduce the rate of occupational accidents by 10%; and
3. increase reporting of occupational diseases by 30%.

However, to realise this master plan, support from many parties such as the workers, employers, employers' associations, OSH practitioners and the government is necessary. Everyone must actively participate and understand their right to a safe and healthy working environment and the goal needs to be respected at all levels, from the top management all the way through to individual workers.

Vision Zero

The concept of “Vision Zero” was introduced by the International Social Security Association (“**ISSA**”) to reduce workplace accidents and occupational diseases. Vision Zero’s belief is that accidents and diseases have causes and can be prevented. It integrates three dimensions: safety, health and well-being. ISSA has developed resources to support the Vision Zero Campaign and has introduced the “Seven Golden Rules”. They are:

1. leadership through commitment;
2. hazard identification for better risk management;
3. define targets in developing programmes;
4. being well-organised to ensure a safe and healthy system;
5. ensure safety health when using machines and equipment at workplace;
6. improve qualifications and competency of people; and
7. motivate them to participate.

The initiative has been adopted by 2,000 companies, 500 national, regional and global organisations as well as over 500 OSH trainers around the world. In Malaysia, nine organisations are registered as Vision Zero partners including the SOCCSO, Department of Occupational Safety and Health, National Institute of Occupational Safety and Health, University of Malaya and Malaysian Society for Occupational Safety and Health. Malaysia will join other countries from Europe, North and South America, Africa and Asia, including Singapore and Thailand, which have launched Vision Zero. Being part of the Vision Zero initiative allows institutions and companies in Malaysia to join a global movement to promote workplace safety and health, thus improving OSH in their organisations.

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