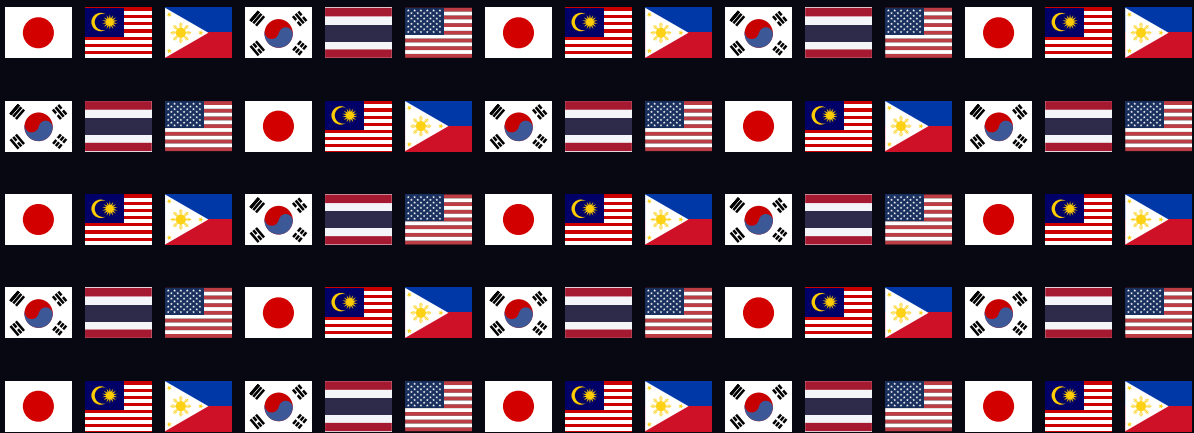


OCCUPATIONAL HEALTH & SAFETY

Malaysia



Occupational Health & Safety

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Quick reference guide enabling side-by-side comparison of local insights into legislation, regulations and codes of practice; employer duties and responsibilities; worker duties and responsibilities; workplace hazards and risk management; liabilities, enforcement and penalties; and recent trends.

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LEGAL FRAMEWORK

Legislation

What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

In Malaysia, the main pieces of legislation governing occupational safety and health are the Occupational Safety and Health Act 1994 (OSHA 1994), the Factories and Machinery Act 1967 (FMA 1967) and the Petroleum (Safety Measures) Act 1984 .

The OSHA 1994 applies throughout Malaysia to industries such as manufacturing, mining and quarrying, construction, agriculture, forestry and fishing, utilities, transport, storage, communication, wholesale and retail trades, hotels and restaurants, finance, insurance, real estate and business services, public services and statutory authorities. However, the OSHA 1994 is not applicable to work on board ships, pursuant to the Merchant Shipping Ordinance 1952 and Merchant Shipping Ordinance 1960 of Sabah or Sarawak and the armed forces.

The Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) was passed by the Parliament and gazetted on 16 March 2022, which will introduce amendments to the OSHA 1994. At this stage, the Amended OSHA has yet to come into force on a date to be appointed by the Minister of Human Resources. The amendments include extending the applicability of the Amended OSHA to all places of work throughout Malaysia except for domestic workers, armed forces and for work on board ships.

The Factories and Machinery (Repeal) Act 2022 was passed by the Parliament and gazetted on 16 March 2022, which will repeal the FMA 1967 and integrate the OSHA and FMA provisions into one comprehensive health and safety legislation. There are specified directions and pending applications under FMA 1967, among others, which will subsist once the repeal takes effect.

Law stated - 30 May 2023

Regulations

How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

The Minister is empowered to make regulations concerning the safety, health, and welfare of workers to achieve the objects of the OSHA 1994 (section 66 OSHA 1994). These regulations prescribe the prohibitions and requirements to be complied with by employers in relation to, among others, the following matters:

- notifications, arrangements to be made for any action or precaution of any accident, dangerous occurrence, occupational poisoning or occupational disease;
- the employment of a safety and health officer;
- the maintenance and preservation of records;
- instructions, training and supervision of persons at work;
- the monitoring of conditions at a place of work including the health of employees;
- the provision of adequate welfare facilities by employers for persons at work; and
- the requirements to examine, test, analyse, label or mark any substance.

Law stated - 30 May 2023

Applicable employers and workers

Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

Employers subject to the regime under the OSHA 1994 include immediate employers, principal employers and self-employed persons, while employees under the OSHA 1994 are defined as persons who are employed for wages under a contract of service or in connection with the work of an industry to which the OSHA 1994 applies. Such employees would include the following:

- employees directly employed by the principal employer;
- employees employed by or through an immediate employer at the place of work or under the supervision of the principal employer;
- employees whose services are temporarily lent or let on hire to the principal employer; and
- independent contractors.

The Amended OSHA extends the applicability of the OSHA to all places of work throughout Malaysia but excludes domestic workers, armed forces and work on board ships.

Law stated - 30 May 2023

Applicable risks

Which health and safety risks are covered under the relevant legislation?

The regulations under the OSHA 1994 recognise various health and safety risks, such as the following:

- fatal and non-fatal injury;
- serious bodily injury such as emasculation, permanent privation of sight, hearing or joints, loss of consciousness, disfiguration of the head or face, fractures, dislocations, amputations, crush injuries, burns, scalding, hypothermia or heat-induced illnesses, electrical injury, acute ill health or any injury that results in the person being admitted immediately into hospital for more than 24 hours;
- dangerous occurrences such as the collapse or failure of structures and equipment, electrical short circuits, explosions, fires, escape of substance or gas;
- occupational poisoning and occupational diseases; and
- exposure to hazardous chemicals and excessive noise.

Apart from the physical aspects of such health risks, the OSHA 1994 is intended to promote an occupational environment to also meet the psychological needs of workers. The Guidelines on OSHA 1994 define health as a state of complete physical, mental and social well-being and not merely the absence of disease. Under the Amended OSHA, the Minister may regulate and require employers and occupiers to monitor the physiological and psychological needs and health of their employees.

An employment injury is defined under the Employees Social Security Act 1969 (ESSA 1969) as a personal injury to an employee caused by an accident or an occupational disease arising out of and in the course of their employment in an industry. The ESSA 1969 recognises that 'accidents when travelling' or 'accidents happening while meeting emergency' and various occupational diseases may be deemed to be an employment injury arising out of and in the course of employment (Sections 24, 25 and 28 of the ESSA 1969).

The question as to whether such accidents arose during their employment will depend on the facts of each case. The words 'in the course of his employment' must necessarily mean 'in the course of his work', which the worker is employed to do and includes some risks incidental to the duty of the service (Ketua Pengarah Pertubuhan Keselamatan Sosial v Vadivelan a/l Sandara Saigara [2009] 1 MLJ 238).

Law stated - 30 May 2023

Authorities

What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The Department of Occupational Safety and Health (DOSH) is a government department under the Ministry of Human Resources. The DOSH is responsible for administering and enforcing the legislation relating to occupational safety and health.

At the federal level, the DOSH is composed of various divisions responsible for corporate services, industrial safety, international policy and research, forensic engineering, building constructions safety, chemical management, petroleum safety, industrial hygiene and ergonomics, occupational health, small and medium-sized industries and non-factory sectors and legal advisory. The federal branch is led by the federal Director-General of the DOSH.

Below the federal level are state branches of the DOSH around Malaysia. Each state branch is headed by its respective state Director-General, who oversees various departments responsible for inspections, industrial hygiene, investigation and prosecution, small and medium industries, analysis and processing, special risks and promotion and resources. These departments are answerable to their respective state Director-General, who will then report to the Director-General at the federal branch.

The National Council for Occupational Safety and Health (NCOSH) under the Ministry of Human Resources is a federal body responsible for determining the direction and policy of the state in relation to occupational safety and health in Malaysia. The NCOSH is composed of representatives of ministries and organisations.

Law stated - 30 May 2023

Soft law and guidance

Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

Yes. The DOSH has published various guidelines covering occupational health, industrial safety, industrial hygiene, ergonomic issues, chemicals, agriculture, forestry and fishing and building construction and engineering work. Guidelines published by the DOSH are not mandatory or legally binding.

The DOSH has also published various industry codes of practice, such as those relating to chemical management, industrial hygiene, occupational health and transportation. These codes of practice are approved by the Minister and implemented to provide practical information for employers to fulfil their obligations to ensure the safety, health and welfare of their employees. If a person has contravened or failed to comply with the OSHA 1994 or its regulations in relation to an approved industry code of practice, the failure to observe the provisions of the approved industry code of practice can be used as evidence by the prosecution in court proceedings.

Under certain conditions, employers shall appoint a safety and health officer and establish a safety and health committee at their places of work to ensure that these guidelines and codes of practice are observed.

EMPLOYER DUTIES AND RESPONSIBILITIES**Primary duty**

What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Every employer (including self-employed persons) has a duty to ensure, so far as is practicable, the safety, health and welfare of all its employees at work (section 15 Occupational Safety and Health Act 1994 (OSHA 1994)). These duties extend to the following matters:

- the provision and maintenance of plant and systems of work that are safe and without risks to health;
- the making of arrangements for ensuring the safety and absence of risks to health in connection with the use of operation, handling, storage and transport of plant and substances;
- the provision of such information, instruction, training and supervision as is necessary to ensure the safety and health at work of the employees;
- the maintenance of the condition of any place of work under the control of the employer or self-employed person so that it is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks; and
- the provision and maintenance of a working environment for its employees that is safe, without risks to health, and adequate as regards facilities for their welfare at work.

Employers also have a duty to formulate a safety and health policy at work and to state the organisation and arrangements for implementing the policy (section 16 of OSHA 1994).

Further to the above, the Amended OSHA also includes the duty of employers to develop and implement procedures for dealing with emergencies that may arise while their employees are at work.

The question of 'practicable' depends on the severity of the risk in question, knowledge about the risk and ways to remove or reduce it, the availability and suitability of ways to remove or reduce it, as well as costs to remove or reduce it. Common practice and knowledge throughout the industry should be taken into account when making any judgment of whether a safeguard is practicable.

Under the Amended OSHA, employers have an additional duty to conduct and implement risk assessments in relation to safety and health risks, and to appoint an occupational safety and health coordinator. The coordinator's role is to coordinate occupational safety and health issues at the place of work, as opposed to the role of a safety and health officer who is responsible for ensuring the observance of the provisions of the Act and any regulation made under it (section 29 of OSHA 1994).

Third parties

Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

Yes. According to section 17 of the OSHA 1994, employers have a duty to ensure, so far as is practicable, that persons other than their employees are not exposed to any health and safety risk. Such persons include visitors and third

parties to the premises. It should be noted that such duties are only owed towards persons who have entered the premises with the permission of the employer. Those who enter the premises without permission are considered trespassers and are not covered under section 17 of the OSHA 1994.

Law stated - 30 May 2023

Work premises

What is the nature and extent of the employer's duty to ensure safe work premises?

Section 15(2)(d) of the OSHA 1994 requires employers to ensure that all workplaces (such as the building, structure, vehicle and all plant; the physical environment, such as lighting, ventilation, dust, heat and noise; and the psychological environment) under their control are safe and healthy. Furthermore, the employer is required to provide adequate welfare facilities for its employees at work. It should be noted that employees cannot be required to pay for employee welfare facilities such as a first aid box (section 26 OSHA 1994).

Law stated - 30 May 2023

Plant and equipment

What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

A 'plant' is defined under the OSHA 1994 to include any machinery, equipment, appliance, implement or tool, any component thereof and anything fitted. Employers must ensure that all machinery is of sound construction and sound material free from defects, suitable for the purpose, properly maintained and that the requisite certificates of fitness are obtained for the plants where prescribed.

The duty to provide a safe plant does not depend on whether the plant is in use (Bolton MBC v Malrod Installations Ltd [1993] ILR 358). In this case, a decontamination unit had been installed by a contractor hired to remove asbestos. The day before he started work an inspector found electrical faults. It was held that the defendant was under a duty to ensure that the decontamination unit would be safe when the employees came to use it.

Law stated - 30 May 2023

Work systems, training and supervision

What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Employers have a duty to maintain a plant and systems of work, as far as is practicable, so that they are safe and without risks to health (section 15(2)(a) OSHA 1994). According to the Guidelines on OSHA 1994, a safe system of work is one that, under the circumstances, makes adequate provision for the safety of employees and, if carried out with reasonable care, protects employees from foreseeable risks of injury.

In this regard, employers are required to provide information, instruction, training and supervision as is necessary to ensure the safety and health at work of its employees (section 15(2)(c) OSHA 1994). For example, an employer who undertakes work that may, or is likely to, expose its employees to hazardous chemicals, must provide them with such information, instruction and training as may be necessary to enable them to know the risks to health and the precautions to be taken.



Employers shall also ensure that the exposure of employees to hazardous chemicals is monitored in accordance with an approved method of monitoring and analysis. The monitoring of exposure shall be conducted by a hygiene technician.

Law stated - 30 May 2023

Accident response and reporting

What rules and requirements govern employers' response to and reporting of workplace accidents?

Employers are required to report any accident, dangerous occurrence, occupational poisoning or disease that has occurred or is likely to occur at the place of work, to the nearest Department of Occupational Safety and Health (DOSH) office (section 32 OSHA 1994). Upon notifying the nearest DOSH office, employers are required to send a report thereof in an approved form within seven days of the notification (Regulation 5 of the Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning, and Occupational Disease) Regulations 2004). The obligation to report accidents and dangerous occurrences is also provided in other legislation, such as the Factories and Machinery Act 1967 (section 31), Petroleum (Safety Measures) Act 1984 (section 22) and Electricity Supply Act 1990 (section 33).

Where safety and health officers are employed for purposes of ensuring the due observance at the place of work, an employer shall direct a person who has direct control of activities at the place to work to assist the safety and health officer in any investigations of accidents, near-miss accidents, dangerous occurrences, occupational poisoning and diseases.

After the occurrence of any accident, near-miss accident, dangerous occurrence, occupational poisoning or occupational disease at the place of work, the safety and health committee shall inspect the place of work as soon as it is safe to do so. Subsequently, the safety and health officer would furnish the chairman of the committee with a report of his findings, following which a committee meeting would take place to discuss the report. Such report shall be kept for a minimum of seven years (Regulations 13 and 14 of the Occupational Safety and Health (Safety and Health Committee) Regulations 1996).

Law stated - 30 May 2023

Risk assessments

What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

In 2008, the DOSH published the Guidelines for Hazard Identification, Risk Assessment, and Risk Control to provide information on the methodology for the assessment of physical hazards. Employers should be aware of the following four steps, which are:

- to classify work activities based on their similarity;
- to identify hazards by highlighting operations of tasks that pose significant risks to the health and safety of employees such as health, safety and environmental hazards;
- to conduct a risk assessment by calculating or estimating the likelihood of occurrence and severity of the hazard; and
- if necessary, to determine whether the risk is tolerable and implement control measures.

The Amended OSHA has now imposed a statutory duty on employers to conduct and implement risk assessment.

Law stated - 30 May 2023

Disclosure and reporting requirements

Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Employers are not required to submit health and safety reports on a regular basis to the relevant authorities under the OSHA 1994. A report is only required to be sent to the relevant authorities in the event that an accident, dangerous occurrence, occupational poisoning or disease has occurred or is likely to occur.

Safety and health officers appointed are required to submit health and safety reports to their employers before the 10th of a preceding month. While it is not mandatory for these reports to be submitted to the public authorities regularly, these records ought to be retained by employers for at least five years for an officer to inspect or investigate them if necessary.

Law stated - 30 May 2023

Provision of information to workers

What requirements apply regarding the provision of health and safety information to workers?

Employers are required to provide information to their employees to enable them to know the potential health risks arising from occupational and safety hazards and the precautions to be taken. Such information would include factual material about occupational and safety hazards and precautionary, preventive, response, mitigative and other measures for securing occupational safety and health.

For instance, in respect of exposure to hazardous chemicals, employers are required under the Occupational Safety and Health (Use and Standard of Exposure of Chemicals Hazardous to Health) Regulations 2000 to furnish the following information:

- results of any monitoring of exposure at the place of work;
- collective results of any health surveillance programme undertaken; and
- chemical safety data sheets for each hazardous chemical obtained from the supplier.

Law stated - 30 May 2023

Insurance requirements

What insurance must employers carry to cover liability for occupational health and safety risks?

The Employees Social Security Act 1969 (ESSA 1969) states that all employees in industries to which the Social Security Organisation of Malaysia (SOCSO) applies, regardless of wage level, shall be insured. The contributions payable by employers and employees to the SOCSO shall cover contingencies of invalidity and employment injury.

The SOCSO is a government institution that provides and manages, among others, employment injury insurance schemes. An employment injury insurance scheme provides protection to an employee against accidents or occupational diseases arising out of and in the course of their employment.

Foreign workers are also covered by the employment injury insurance scheme under the SOCSO, subject to the

fulfilment of the eligibility requirements. Under this scheme, foreign workers may qualify for medical, disablement and rehabilitation benefits.

It should be noted that Section 31 of the ESSA 1969 provides that where an employee receives SOCSO compensation for an employment injury under the Act, the employee is not entitled to receive any compensation or damages from the employer under any other law in force. The Federal Court has applied this provision strictly such that Section 31 bars any other claims for the same employment injury under written law and common law (See *Tan Peng Loh v Lee Aik Fong & Anor* [1982] 1 MLJ 74 and *Che Noh Bin Yacob v Seng Hin Rubber (M) Sdn Bhd* [1982] 1 MLJ 80). However, the law is uncertain as to whether there are exceptions, such as in cases of gross negligence (see Court of Appeal case of *Rajendiran A/L Manickam & Anor v Palmamide Sdn Bhd* [2020] 9 CLJ 510).

Law stated - 30 May 2023

Other duties and responsibilities

Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Employers are required to formulate occupational safety and health policies and make arrangements for implementing these policies. These policies have three components – to outline the overall philosophy and intent of the employer’s commitment to safety and health, to demonstrate responsibility for safety and health in hierarchical management structures and to ensure that the policy is being followed at the workplace.

Employers shall also establish a safety and health committee if there are 40 or more persons employed at the place of work. Functions of the committee would include:

- assisting in the development of safety and health rules and safe systems of work;
- reviewing the effectiveness of safety and health programmes;
- carrying out studies on the trends of workplace accidents; and
- reviewing the safety and health policies at the workplace and making recommendations for any revision of such policies.

Under the Amended OSHA, for specified places of work published in the Gazette, an employer is required to appoint one of its employees to act as an occupational safety and health coordinator whose role is to coordinate occupational safety and health issues at the place of work.

Law stated - 30 May 2023

WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

Primary duty

What is the nature and extent of a worker’s duty to protect their own and others’ health and safety under the relevant legislation and regulatory framework?

Section 24 of the Occupational Safety and Health Act 1994 (OSHA 1994) requires employees to take reasonable precautions for the safety and health of themselves and other workers who may be affected. This duty varies depending on the employee’s status. It is sufficient to state that the duty of reasonable care would be assessed based on the employee’s level of training and the standard of reasonable care that is expected of the person. Furthermore, it is

critical for employees and employers to work together to ensure a safe and healthy workplace. For instance, employees are required to follow instructions stated in the health and safety policies issued by employers. If an employer has set up a safe system of work and has done all that is reasonable to maintain it, then any employee who through their own misconduct endangers themselves would be considered non-cooperative.

Section 25 of the OSHA 1994 also includes an employee's duty not to interfere with or misuse things provided or done in the interests of safety, health and welfare.

Law stated - 30 May 2023

Consultation and collaboration with employers

Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

Yes. The OSHA 1994 provides for the establishment of safety and health committees at workplaces consisting of, among others, representatives of employers and employees. The representatives of employees must represent the various sections of a place of work. This committee will provide consultation to employers to enable them to cooperate with their employees in promoting and developing measures for safety and health at the workplace and to check the effectiveness of such measures.

Law stated - 30 May 2023

Trade unions

What role do trade unions play in protecting occupational health and safety in your jurisdiction?

Trade unions are not entitled to take any action against their members, being employees, who perform their duties as members of the safety and health committee (section 27 OSHA 1994). This is necessary to allow the employees to perform their duties independently.

Law stated - 30 May 2023

Whistle-blowing

Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

According to section 7 of the Whistleblower Protection Act 2010, workers will be granted whistle-blower protection, such as confidentiality protection, immunity from civil and criminal action and protection from adverse action.

Law stated - 30 May 2023

Right to refuse work

Do workers have the right to refuse work or seek reassignment in hazardous situations?

OSHA 1994 does not expressly confer the right of an employee to refuse work or seek reassignment in hazardous situations. If an employee makes a complaint about a matter that they consider is not safe or poses a health risk, they shall not be dismissed, injured in their employment or have their position altered to their detriment for that reason (section 27 OSHA 1994).

Nevertheless, the Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) now includes the right of employees to remove themselves from the danger or the work if they have reasonable justification to believe there exists an imminent danger and the employer fails to take any action to remove the danger.

Law stated - 30 May 2023

HAZARDS AND RISKS

Hazardous substances and chemicals

What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The Occupational, Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000 and the Occupational Safety and Health (Classification, Labelling and Safety Data Sheet of Hazardous Chemicals) Regulations 2013 govern the handling and use of hazardous substances and chemicals.

An employer is under a duty in respect of any other person who may be affected by the work activity of the employer, such as its employees. These duties include:

- registering all chemicals hazardous to health used in the place of work;
- ensuring that all hazardous chemicals are labelled and that chemical safety data sheets are provided;
- ensuring that the exposure of any person to hazardous chemicals is within the permissible exposure limit;
- carrying out assessments of the risks created by the chemical to the employee;
- implementing control measures;
- carrying out health surveillance programmes where necessary;
- providing information, instruction and training to employees of the risks to health and the precautions to be taken; and
- ensuring that warning signs are posted in conspicuous places.

Employees are also required to use protective equipment and clothing and to comply with instructions or measures under the Occupational Safety and Health Act 1994 (OSHA 1994) and its regulations.

Employers and employees who fail to comply with these duties under the OSHA 1994 can be found guilty of offences.

Law stated - 30 May 2023

Heavy machinery

What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

The legislations in Malaysia governing the operation of machinery generally are the Factories and Machinery Act 1967 (the FMA 1967) and the OSHA 1994 and their respective regulations. The FMA 1967 regulates the operation of heavy machinery such as steam boilers, unfired pressure vessels, fired pressure vessels, pipelines, prime movers, gas cylinders, gas holders, hoisting machines and tackle, transmission machinery, driven machinery, materials handling equipment, amusement device or any other similar machinery and any equipment for the casting, cutting, welding or electro-deposition.

The FMA 1967 imposes obligations on the owners and occupiers of factories and machinery relating to the safety, health and welfare of persons and the operation, registration and use of factories and machinery. Such owners and

occupiers can be held liable for offences if they contravene the Act or its regulations.

On the other hand, the OSHA 1994 imposes obligations on designers, manufacturers, importers and suppliers to ensure that a plant for use at work (including machinery) is designed and constructed to be safe and without risk to health. They are required to carry out testing and examination of the machinery, issue instructions on the proper use of the machinery to the employer and carry out the necessary research to discover and eliminate or minimise any risk to safety or health that their design or machinery might cause.

It should be noted that the Factories and Machinery (Repeal) Act 2022 was passed by the Parliament and gazetted on 16 March 2022, which will repeal the FMA 1967 and integrate the OSHA and FMA provisions into one comprehensive health and safety legislation.

Once the repeal of the FMA 1967 is in effect, any registration made or order, notice, direction, written authority, approval, certificate of fitness, special scheme of inspection or certificate of competency given or issued under the FMA 1967 shall be dealt with under the OSHA 1994. Further to that, there are specified types of pending applications under the FMA 1967 that shall continue to be dealt with under the FMA 1967, as if it had not been repealed.

Law stated - 30 May 2023

General machinery

What occupational health and safety rules govern the operation of general machinery in the workplace?

The FMA 1967 and its regulations govern the use, operation and installation of machinery. All machinery and every part thereof shall be of sound construction and sound material free from defect and suitable for purpose and be properly maintained. Where a certificate of fitness is prescribed, a valid certificate of fitness must be issued under the FMA 1967 for a person to operate any machinery.

The OSHA 1994 also states that machinery must be designed and constructed to be safe and without risk to health. Designers, manufacturers, importers and suppliers are required to carry out testing and examination of the plant, issue instructions on the proper use of the plant to the employer and carry out the necessary research to discover and eliminate or minimise any risk to safety or health that their design or machinery might cause.

Dangerous parts of any machinery must be securely fenced by a form of protective device designed to prevent serious bodily injury or bodily injury to any person, which includes a guard and a guard rail. Guards should be designed, constructed and used so that they will:

- provide positive protection;
- prevent access to the danger zone during operation;
- cause the operator no discomfort or inconvenience;
- withstand long use with minimum maintenance;
- resist normal wear and shock; and
- not constitute a hazard by themselves such as splinters, sharp corners or rough edges.

It should be noted that the Factories and Machinery (Repeal) Act 2022 was passed by the Parliament and gazetted on 16 March 2022, which will repeal the FMA 1967 and integrate the OSHA and FMA provisions into one comprehensive health and safety legislation.

Once the repeal of the FMA 1967 is in effect, any registration made or order, notice, direction, written authority, approval, certificate of fitness, special scheme of inspection or certificate of competency given or issued under the FMA 1967 shall be dealt with under the OSHA 1994. Further to that, there are specified types of pending applications under the FMA 1967 that shall continue to be dealt with under the FMA 1967, as if it had not been repealed.

Lock-out and tag-out

What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

The Electricity Regulations 1994 provide that only a competent person or a person acting under the control of a competent person shall undertake to carry out any maintenance, repair, replacement, servicing or cleaning of any equipment that forms part of an installation. A competent person is someone who holds a certificate of competency and is recommended by an electrical services engineer, competent electrical engineer or an electrical supervisor to undertake such works.

Any person engaged in work in connection with any installation or equipment shall ensure that the switch of a circuit shall be locked in an 'off' position until the work is finished. In cases of aerial line and underground cabling works, a notice shall be hung on the switch to warn persons to stay clear of the circuit and be warned that the circuit is to be made live.

Law stated - 30 May 2023

Ergonomic risks and eye strain

What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

The Factory and Machinery (Safety, Health and Welfare) Regulations 1970 provide regulations to ensure that seating facilities, work benches or worktables for persons employed in factories are of a design construction and dimensions suitable for them. No person shall also be employed to lift, carry or move any load so heavy as to be likely to cause bodily injury to them (section 12 FMA 1967).

The Department of Occupational Safety and Health (DOSH) has published several guidelines to provide practical and helpful solutions to the ergonomic problems faced by employees. These guidelines include Guidelines on Occupational Safety and Health for Standing at Work, for Seating at Work, on Occupational Vibration and on Manual Handling.

In addition to ergonomic issues, employees in an office setting can be exposed to sore eyes and eye strain from working with video display unit screens for long hours. In this regard, the Guidelines for Working with Video Display Units (VDU) issued by the DOSH provide strategies to reduce VDU-related risks that include making arrangements to the workplace design, equipment and system and provisions for training and medical examinations for employees.

Law stated - 30 May 2023

Noise and temperature

What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

The Occupational Safety and Health (Noise Exposure) Regulations 2019 and Factories and Machinery (Noise Exposure) Regulations 1989 protect employees from exposure to excessive noise. Employers and occupiers are required to take measures to reduce excessive noise by identifying the excessive noises, providing a personal hearing protector, hearing protection zones and carrying out audiometric testing.

For extreme temperatures at workplaces, the Factory and Machinery (Safety, Health and Welfare) Regulations 1970 provide that any building constructed wholly or partly of materials having a high coefficient of heat transmission that

are subject to the heat of the sun shall be lined with suitable insulating material or coated with white paint, white-wash or other heat-reflecting material or so lined and coated.

The Guidelines on Occupational Safety and Health in the Office published by the DOSH note that almost all offices in Malaysia use air-conditioning systems to maintain a comfortable temperature and most people work comfortably at a temperature between 20 and 26 degrees Celsius. These Guidelines recommend that windows, skylights or glass partitions in offices should not allow excessive temperatures during hot weather.

Law stated - 30 May 2023

Fire risks

What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

Fire safety standards in Malaysia are governed by the Fire Services Act 1988 and the Uniform Building By-Laws 1984 under the Streets, Drainage and Building Act 1974 .

The Fire Services Act 1988 provides for fire-hazard abatement arrangements to be taken by the fire services authorities and storage of water and fire hydrants. The Uniform Building By-Laws 1984 set outs the fire requirements of buildings including the provision of fire alarms, fire detection, fire extinguishment and firefighting access facilities.

Law stated - 30 May 2023

Psychiatric harm from stress, abuse and violence

What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

The purpose of the OSHA 1994 includes promoting an occupational environment for persons at work to meet their physical and psychological needs. There are no comprehensive regulations issued pursuant to the OSHA 1994 to address psychiatric harm suffered by workers. However, the Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) now provides that the Minister may regulate and require the monitoring of the physiological and psychological needs of employees. That said, the DOSH has issued guidelines that deal with these problems.

The DOSH issued a Guidance on the Prevention of Stress and Violence at the Workplace to provide a proactive and participatory approach to preventing and reducing the causes of work-related stress and violence. This Guidance identifies hazards and situations at risk of stress and violence subject to the nature and characteristics of the work. For example, inflexible and long working hours are a stressor on working time. Further, working with valuables and cash handling may expose workers to violent crimes. This Guidance also explores methods to improve workplace arrangements and practices and to activate effective reporting, recording and evaluation systems.

The Employment Act 1955 also contains specific provisions for the regulation of working time, including rest days, the length of working hours, rest breaks, shift work and the maximum number of hours of overtime allowed. In addition, this Act also provides protection for workers against sexual harassment and outlines the procedures for inquiries to be conducted by employers into complaints of sexual harassment.

Law stated - 30 May 2023

Special categories of worker

Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

The OSHA 1994 does not contain express provisions applicable to special categories of workers. The Act is intended to protect all employees defined as persons employed for wages under a contract of service on or in connection with the work of an industry.

There are regulations which include provisions that deal with the health and safety of pregnant employees:

- Regulation 28(2) of the Occupational Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000 provides for medical removal protection of pregnant or breastfeeding employees;
- Regulations 34(e), 41(c) and 43 of the Factories and Machinery (Lead) Regulations 1984, according to which the employer is obliged to provide for special biological monitoring and medical removal protection of female employees of childbearing capacity; and
- The Atomic Energy Licensing (Basic Safety Radiation Protection) Regulations 2010 provide for special conditions for pregnant workers, such as on the dose limit of exposure.

The DOSH issued a Guidelines on Reproductive Health Policy & Programmes at the Workplace to provide guidance for identifying and managing potential occupational reproductive health hazards, to promote a safe, healthy and productive work environment and to specifically reduce teratogenic, mutagenic, carcinogenic and material risks. The components of the Guidelines include the development of a reproductive health policy and programmes in the workplace, the identification of reproductive health hazards and risk assessment and the management of reproductive health hazards.

Law stated - 30 May 2023

Other hazards and risks

Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Sleeping while on duty compromises the health and safety of workers at a workplace. The seriousness of the consequences resulting from sleeping on duty depends on the nature of the work. For occupations such as pilots, air traffic controllers, security guards, lifeguards or those operating machinery, the act of the employee sleeping on the job could pose a huge risk to the health and safety of others, which may cause serious injury, death or environmental disasters.

Drug and alcohol abuse in the workplace has also been found to contribute to workplace accidents. The OSHA 1994 does not expressly deal with occupational hazards such as drug and alcohol abuse. Nevertheless, the DOSH has published the Guidelines On Preventing and Responding to Drug and Alcohol Problems in the Workplace and the Code of Practice on Prevention and Eradication of Drug, Alcohol and Substance Abuse in the Workplace 2005. It is crucial for employers to prepare written policies on the abuse of illegal substances to instil awareness within the organisation of the repercussions so that every worker can take precautionary steps to prevent these issues.

Law stated - 30 May 2023

ENFORCEMENT

Inspections and investigations

What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

Officers of the Department of Occupational Safety and Health (DOSH) are conferred with wide powers of enforcement and investigation that include powers of entry, seizure, inspection and the examination of witnesses (Part XI, Occupational Safety and Health Act 1994 (OSHA 1994)).

Law stated - 30 May 2023

Cooperating with authorities

What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

Employers are duty-bound to provide assistance to the DOSH, which may require for any entry, inspection, examination or inquiry or for the exercise of their powers under the said Act (section 46 OSHA 1994). Employers that fail or refuse to provide such assistance commit an offence upon which such person may be liable to a fine or to imprisonment (section 47 OSHA 1994).

Law stated - 30 May 2023

Penalties and notices

What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

The health and safety authorities are empowered to issue an improvement notice if the officer is of the opinion that a place of work, plant, substance or process is likely to be a danger, is likely to cause bodily injury, is a serious risk to the health of any person or is likely to cause damage to any property (section 48(1) OSHA 1994). The improvement notice would require the person to take measures to remove the danger or rectify any defect.

If the officer is of the opinion that the defect is likely to cause immediate danger to life or property, they may also issue a prohibition notice to prohibit the use or operation of a place of work, plant, substance or process until such time that any danger is posed is removed and the defect made good to the satisfaction of the officer (section 48(2) OSHA 1994).

A person who is aggrieved by such notices may appeal to the Director-General or the appeal committee appointed by the Minister. After considering the appeal, the Director-General may confirm, revoke or vary the notice by an order in writing (section 50 OSHA 1994).

Law stated - 30 May 2023

Civil liability

What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

The OSHA 1994 is a piece of legislation that imposes criminal liability. Section 59 of the OSHA 1994 provides that a civil action cannot be taken against any party if there is a breach of duty of employers in respect of the responsibilities

of an employer, occupiers, manufacturers, designers, suppliers, employees and trade unions.

Nevertheless, this limitation under section 59 does not affect a right of action arising or civil proceedings taken with respect to breaches of duties imposed by other legislation regarding safety and health and common law. As such, an employer can be exposed to civil claims for damages for negligence under the realm of common law.

On the other hand, the exposure of owners, occupiers, engineers, dredgemasters, drivers or other persons to criminal and civil liability remains unaffected under the Factories and Machinery Act 1967.

Law stated - 30 May 2023

Criminal liability

May employers be criminally liable for health and safety violations? What defences apply?

Yes, an employer may be prosecuted for contravening the provisions of the OSHA 1994 or its regulations. An employer that is found guilty of offences under the OSHA 1994 shall be held liable to fines, to imprisonment or to both.

The offences under OSHA 1994 are predominantly of strict liability nature, for example, the offences of not appointing a safety and health officer and a safety and health committee (see Sections 29 and 30). However, there are also offences which involve different tests and factors to consider in establishing whether an offence has been committed. For example, it is an offence under Section 15 if the employer fails to ensure, 'so far as is practicable', the safety, health and welfare of their employees. The question of practicability takes into account the severity of the risk in question, knowledge about the risk and ways to remove or reduce it, the availability and suitability of ways as well as costs to remove or reduce it.

Law stated - 30 May 2023

Director and officer liability

To what extent may company directors and officers be held liable for health and safety violations?

Where a body corporate contravenes the provisions of the OSHA 1994, every person who at the time of the commission of the offence is a director, manager, secretary or other officer of the body corporate can also be held liable for breaching the provisions of the Act (section 52(1) OSHA 1994). The director, manager, secretary or officer of the body corporate can be charged jointly in the same court proceedings with the body corporate or severally. In this scenario, the director, manager, secretary or other officer of the body corporate will be deemed to be guilty of the offence.

The Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) has expanded the list of officers of the body corporate to include compliance officer, partner and manager.

Law stated - 30 May 2023

UPDATE AND TRENDS

Recent developments

What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

The Occupational Safety and Health (Amendment) Act 2022 (Amended OSHA) was passed by the Malaysian Parliament to amend the Occupational Safety and Health Act 1994 (OSHA 1994). The Amended OSHA has yet to come

into force on a date to be appointed by the Minister of Human Resources.

The key changes introduced in the Amended OSHA include the following:

- the application of the Amended OSHA will be extended to all places of work throughout Malaysia, in contrast with the existing OSHA 1994, which applies to only specific industries under the First Schedule of OSHA 1994;
- the scope of an employer's duties is expanded to include developing and implementing procedures for dealing with emergencies that may arise at a workplace, conducting safety and health risk assessments and implementing risk controls to eliminate and reduce safety and health risks;
- the Amended OSHA includes duties on principals (defined as 'persons who in the course of or for the purposes of trade, business, profession or undertaking contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal') to ensure the safety and health of persons working under the principal's directions;
- the appointment of a safety and health coordinator;
- employees have the right to remove themselves from danger or work if they believe there is an imminent danger at their place of work if the employer fails to take action to remove the same; and
- increase in penalties for fines imposed against employers and principals from 50,000 ringgit to 500,000 ringgit.

Further, the Factories and Machinery (Repeal) Act 2022 was passed by the Malaysian Parliament to repeal the Factories and Machinery Act 1967 (the FMA 1967). As such, the Amended OSHA seeks to integrate the provisions in the OSHA 1994 and FMA 1967 into one comprehensive safety and health legislation.

In addition, the Anti-Sexual Harassment Act 2022 was passed by the Dewan Rakyat and gazetted on 18 October 2022. Currently, this Act has yet to come into force on a date to be appointed by the Minister. The Act provides for a right of redress for any person who has been sexually harassed, the establishment of a Tribunal for Anti-Sexual Harassment and to promote awareness of sexual harassment.

Law stated - 30 May 2023

Jurisdictions

	Japan	Mori Hamada & Matsumoto
	Malaysia	SKRINE
	Philippines	Villaraza & Angangco
	South Korea	Yoon & Yang LLC
	Thailand	Nagashima Ohno & Tsunematsu
	USA	Morgan, Lewis & Bockius LLP