

PANORAMIC

**OCCUPATIONAL  
HEALTH & SAFETY**

Malaysia



LEXOLOGY

# Occupational Health & Safety

Contributing Editor

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**Generated on: September 24, 2024**

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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 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. These amendments took effect on 1 June 2024. 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 (Repeal Act) 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. The Repeal Act also took effect on 1 June 2024. There are specified directions and pending applications under FMA 1967, among others, which will subsist once the repeal takes effect.

In addition, two new subsidiary pieces of legislation have been introduced and took effect on 1 June 2024, namely the Occupational Safety and Health (Plant requiring Certificate of Fitness) Regulations 2024 and the Occupational Safety and Health (Licensed Person) Order 2024.

**Law stated - 11 June 2024**

### 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 objectives of the Amended OSHA (section 66). 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 ergonomic, physiological and psychological needs and 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.

Any act or omission in contravention of these regulations may be regarded as an offence. The offender may either be liable to pay a fine not exceeding 500,000 ringgit, or to imprisonment for a term not exceeding two years or to both.

The regulations relating to FMA 1967 will not be affected by the Repeal Act, unless new regulations are formulated to supersede the old regulations.

**Law stated - 11 June 2024**

### **Applicable employers and workers**

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

The Amended OSHA applies to all places of work throughout Malaysia but excludes domestic workers, armed forces and work on board ships. It also clearly defines 'employers', 'employees' and 'principals subject to the regime under the Amended OSHA:

- **employee** means any person who has entered into a contract of service with an employer;
- **employer** means any person who has entered a contract of service to employ any other person as an employee; and
- **principal** refers to any person who in the course of or for the purpose of his 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.

**Law stated - 11 June 2024**

### **Applicable risks**

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

Generally, employers have an obligation to prevent and reduce any health and safety risks posed to employees, independent contractors, and visitors at their workplace. This obligation arises under sections 15 and 18A of Amended OSHA, which states that employers have the duty to ensure, so far as is practicable, the safety, health, and welfare at work of all their employees and contractors respectively.

To prevent and reduce health and safety risks, employers have a duty to formulate occupational health and safety policies, conduct and implement risk assessments, and notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning, and occupational diseases which had occurred at the workplace.

Also, any person who designs, manufactures, imports, or supplies any plant or substance for use at work, has a general duty to prevent and reduce health and safety risks regarding any plants or substances pursuant to sections 20 and 21.

In addition, the regulations under the Amended OSHA 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 Amended OSHA is intended to promote an occupational environment to also meet the psychological needs of workers. Based on the parliamentary debate on 27 October 2021, this extends to workers working from home as well. Under the Amended OSHA, the Minister may regulate and require employers to monitor the physiological and psychological needs and health of their employees. Current examples include the Guidelines on Occupational Safety and Health in the Office, 1996 and Guidance for the Prevention of Stress and Violence at the Workplace, 2001.

The Employees Social Security Act 1969 (ESSA 1969) is an Act that provides social security in certain contingencies to make provision for certain other matters in relation to it. 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 an employment injury arising out of and in the course of employment (sections 24, 25 and 28 of the ESSA 1969).

The question of 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).

The Anti-Sexual Harassment Act 2022 also recognises the safety risks involving unwanted sexual conduct. Section 4 of the Act defines 'sexual harassment' as a conduct of a sexual nature, in any form, whether verbal, non-verbal, visual, gestural or physical, directed at a person that is reasonably offensive or humiliating or is a threat to his or her well-being. Thus, any person who faces sexual harassment at the workplace may lodge a complaint under this Act.

**Law stated - 11 June 2024**

## 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 - 11 June 2024**

## 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 Amended OSHA 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.

Law stated - 11 June 2024

## 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 has a duty to ensure, so far as is practicable, the safety, health and welfare of all its employees at work (section 15 of the Amended OSHA). 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;
- 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; and
- the development and implementation of procedures for dealing with emergencies that may arise while his 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 also have a duty to conduct and implement risk assessments in relation to safety and health risks, and to appoint an occupational safety and health coordinator (section 18B). This is to assess risk and also to manage and eliminate risks at the workplace. Further, in workplaces with more than five employees, employers are required to appoint an occupational safety and health coordinator (section 29A). The coordinator's role is to coordinate occupational safety and health issues at the place of work.

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

**Law stated - 11 June 2024**

### **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 Amended OSHA, 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 to 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 Amended OSHA.

Section 18A provides that principals have a duty to take, so far as is practicable, such measures as are necessary to ensure the safety and health of:

- any contractor engaged by the principal when at work;
- any subcontractor or indirect subcontractor when at work;
- any employee employed by such contractor or subcontractor when at work; and
- any other person who may be affected by any undertaking carried on by him at the place of work.

For the purposes of this section, 'subcontractor' refers to any person who contracts with a contractor for the execution by or under the subcontractor of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a subcontractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor.

**Law stated - 11 June 2024**

### **Work premises**

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

Section 15(2)(d) of the Amended OSHA 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 of the Amended OSHA).

Under section 15(2)(f), employers also have a duty to ensure the development and implementation of procedures for dealing with emergencies that may arise while their

employees are at work. This duty extends to workers working from home – employers are responsible for ensuring home offices are safe, and that workers are not exposed to health and safety risks.

Law stated - 11 June 2024

## 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 Amended OSHA 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 - 11 June 2024

## 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) Amended OSHA). 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) Amended OSHA). 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.

Under section 18A(3)(c), a principal is also required to provide such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health of the persons at work.

Pursuant to section 31A, the Minister may now require any person to attend an occupational safety and health training course that is conducted by a registered training provider. The employer of any such person must ensure that the person has completed such training course before allowing that person to perform any work for which the training is required. If this section is contravened, the employer shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 50,000 ringgit or to imprisonment for a term not exceeding six months, or to both.

Law stated - 11 June 2024

## **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 of the Amended OSHA). 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 Petroleum (Safety Measures) Act 1984 (section 22), [Electricity Supply Act 1990](#) (section 33) and Fire Services Act 1988 (section 61A).

Where safety and health officers are employed for purposes of ensuring due observance at the place of work, an employer shall direct a person who has direct control of activities at the place of 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 - 11 June 2024

## **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 also imposes a statutory duty on employers, self-employed persons and principals to conduct and implement a risk assessment in relation to the safety and health risk posed to any person who may be affected by his undertaking at the place of work.

**Law stated - 11 June 2024**

### **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 Amended OSHA. A report is only required to be sent to the relevant authorities if 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 - 11 June 2024**

### **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 - 11 June 2024**

## **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 *Rajendiran A/L Manickam & Anor v Palmamide Sdn Bhd* [2020] 9 CLJ 510).

**Law stated - 11 June 2024**

## **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 plan 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.

Under section 30 of the Amended OSHA, 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.

**Law stated - 11 June 2024**

## 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 Amended OSHA 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 Amended OSHA 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 - 11 June 2024**

### 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 Amended OSHA 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 - 11 June 2024**

### **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 of the Amended OSHA). This is necessary to allow the employees to perform their duties independently.

**Law stated - 11 June 2024**

### **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.

Under Section 28A, employees are also offered protection as employers are prohibited from taking any action against employees who aid in the investigation or inspection process either by:

- making a complaint about any matter that is considered a risk to health; or
- making a report to the Director General regarding any patient whom he believes to be suffering from any occupational disease or occupational poisoning.

**Law stated - 11 June 2024**

### **Right to refuse work**

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

The Amended OSHA 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 of the Amended OSHA).

Nevertheless, the 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 - 11 June 2024

## 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 on 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 Amended OSHA and its regulations.

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

Law stated - 11 June 2024

### **Heavy machinery**

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

The legislation in Malaysia governing the operation of machinery generally are the Amended OSHA and its regulations and applicable regulations under the FMA 1967.

The Amended OSHA 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. Further, they are required to revise all such information related to the machinery when there is a new risk that could give rise to serious risk to safety or health.

Further, under the Amended OSHA, any person who intends to install and operate any plant must obtain the approval and certificate of fitness from the officer or a licensed person. To install the plant, the licensee must ensure that the plant has fulfilled all the requirements prescribed by the Minister and obtain the written approval by the Director General. Once the prescribed plant has been installed, the licensee shall serve a written notice to the officer or a licensed person, for an inspection to be carried out. If, upon inspection, the officer or licensed person find that the plant complies with all the requirements, a certificate of fitness will then be issued for the prescribed plant to be operated.

Under the new Occupational Safety and Health (Plant requiring Certificate of Fitness) Regulations 2024, the following plants are prescribed as plants requiring certificate of fitness:

- steam boiler;
- pressure vessel; and
- lifting machinery.

The inspection standard of the licensed person is governed by the new Occupational Safety and Health (Licensed Person) Order 2024. It sets out the standard of inspection required for machines such as steam boilers, pressure vessels, lifting machineries, etc.

It should be noted that despite its repeal, the regulations arising from the FMA 1967 continue to be applicable until new subsidiary legislation is introduced to supersede these regulations.

**Law stated - 11 June 2024**

## **General machinery**

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

The Amended OSHA state 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. Further, they are required to revise all such information related to the machinery when there is a new risk that could give rise to serious risk to safety or health.

Under the Occupational Safety and Health (Plant requiring Certificate of Fitness) Regulations 2024, apart from governing steam boilers, pressure vessels, and lifting machinery – there are regulations requiring the owner of the plants to ensure that other types of machinery are safe and in good working condition. For example, the owner has a duty to ensure that lifts, escalators, walkalators, tower cranes, suspended access equipment, launching gantry, quay cranes and passenger hoists are all maintained by a competent person. The owner is required to enter into an agreement with a competent person for the servicing, adjustment and comprehensive examination of lifts, escalators and walkalators, and the duration of the agreement shall not be less than one year.

Although the FMA 1967 was repealed, its regulations are still applicable. These 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.

Further, 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.

**Law stated - 11 June 2024**

### **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 - 11 June 2024**

## 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.

Under the Amended OSHA, the Minister is empowered to make regulations for the monitoring of conditions at a place of work including the 'ergonomic, physiological and psychological needs' and health of employees.

**Law stated - 11 June 2024**

## 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 - 11 June 2024**

## 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 out the fire requirements of buildings including the provision of fire alarms, fire detection, fire extinguishment and firefighting access facilities.

In 2018, Parliament passed the Fire Services (Amendment) Bill, which will introduce new changes to the Fire Services Act. Among others, the amendments seek to introduce new section 27A to enhance fire safety in designated premises by the establishment of a fire safety organisation in designated premises. Further, the new section 61A imposes a duty on the owner of a premise, vehicle or vessel or the occupier or person having overall management of a premises to immediately inform the nearest fire station upon an outbreak of a fire.

Law stated - 11 June 2024

## 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 Amended OSHA 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 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:

- 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. This Guidance also explores methods to improve workplace arrangements and practices and to activate effective reporting, recording and evaluation systems.
- 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, which aim to prevent the risk of psychological harm arising from the abuse of substances.

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.

The Anti-Sexual Harassment Act 2022 provides for a right of redress for any person who has been sexually harassed; hence any person who faces sexual harassment at the workplace may lodge a complaint under this Act with the Tribunal.

**Law stated - 11 June 2024**

### **Special categories of worker**

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

The Amended OSHA does not contain express provisions applicable to special categories of workers. The Act is intended to protect all employees defined as any person who has entered into a contract of service with an employer.

There are regulations that 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 Guidelines on Reproductive Health Policy & Programmes at the Workplace to provide guidance on 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 - 11 June 2024**

### **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 Amended OSHA 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 - 11 June 2024**

## 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 of the Amended OSHA).

The Amended OSHA sets out the scope of powers conferred on to DOSH under section 39(2). It sets out how an officer may exercise his or her powers of entry, inspection and examination. This includes:

- make an inspection, examination and investigation of any plant, substance, article or other thing as may be necessary to ascertain whether or not the Amended OSHA and its respective regulations have been complied with;
- direct that the place of work shall be left undisturbed for so long as is reasonably necessary for the purpose of any inspection, examination or investigation;
- take such measurements, photographs and recordings as considered necessary for the purpose of any inspection, examination or investigation;
- take samples of any article or substance found in the place of work that he or she has power to enter, and of the atmosphere in or in the vicinity of the place of work;
- require any person employed in a place of work in which any of the occupational diseases or poisoning specified in any regulation or order made by the Minister under this Act has occurred or is likely to occur, to be medically examined by a medical officer or a registered medical practitioner.
- requiring the production of any book, record, certificate, notice, computerised data or document, or any certified copy thereof, and make a copy thereof as he considers necessary for the purpose of any inspection, examination or investigation;
- assessing the levels of noise, illumination, heat or harmful or hazardous substances in any place of work and the exposure levels of persons at work therein; and

- requiring any hospital, medical clinic or mortuary to provide any information (including the medical reports) of any person who is or had been working in a place of work who is injured in an accident in a place of work or who is suspected of suffering from an occupational disease contracted from a place of work and is receiving treatment at the hospital or medical clinic.

Law stated - 11 June 2024

### **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 assist DOSH with any entry, inspection, examination or inquiry or for the exercise of their powers under the said Act (section 46 of the Amended OSHA). 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 of the Amended OSHA). It is also an offence for failure to comply with any direction given by an officer as is reasonably necessary for the purpose of any inspection, examination, or investigation (section 47 (ea)).

Law stated - 11 June 2024

### **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) of the Amended OSHA). 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) of the Amended OSHA).

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 - 11 June 2024

### **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 Amended OSHA 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.

In terms of personal liability, section 58 of the Amended OSHA provides that no person shall incur any personal liability for any loss or damage caused by an act or omission by him in carrying out the duties under the Amended OSHA or its respective regulations, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

**Law stated - 11 June 2024**

## 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 Amended OSHA or its regulations. An employer that is found guilty of offences under the Amended OSHA shall be held liable to fines, to imprisonment or to both.

The offences under Amended OSHA are predominantly of strict liability, for example, the offences of not appointing a safety and health coordinator, safety and health officer and a safety and health committee (see sections 29, 29A and 30). However, there are also offences that 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 its 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 - 11 June 2024**

## 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 Amended OSHA, every person who at the time of the commission of the offence is a director, compliance officer, partner, manager, secretary or other similar officer can also be held liable for breaching the provisions of the Act (section 52). The director, compliance officer, partner, manager, secretary or other similar 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, compliance officer, partner, manager, secretary or other similar officer of the body corporate will be deemed to be guilty of the offence.

However, the Amended OSHA provides a defence mechanism that puts the onus on the person to prove that the offence was committed:

- without their knowledge; and
- without their consent or connivance, and that they have taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Section 52A places a responsibility upon directors and/or other office bearers to monitor the conduct of their employees, agents, or agent's employees. This is because the directors and/or office bearers will be subject to the same punishment or penalty as the person's employee, agent or agent of the employee.

**Law stated - 11 June 2024**

## 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). These amendments took effect on 1 June 2024.

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.

**Law stated - 11 June 2024**