

Dispute Resolution

Are You Ready? Amendments to OSHA in June 2024

Key changes in the **Occupational Safety and Health (Amendment) Act 2022**

The **Occupational Safety and Health (Amendment) Act 2022** (“Amendment Act”) was passed and gazetted on 16 March 2022. The Amendment Act will come into force on 1 June 2024. The salient changes are discussed below.

A. Scope of application of the Occupational Safety and Health Act 1994 (“OSHA”)

OSHA now applies to all workplaces including public services and statutory authorities. Exceptions are stated in Schedule 1 of OSHA, and include, for example, the armed forces and work on board ships governed by the Merchant Shipping Ordinance 1952 (*section 1(2) of OSHA*). The salient difference is that OSHA previously only governed certain industries such as manufacturing, construction and business services.

B. Extension of liability to persons behind the companies

OSHA now has a wider reach in terms of accountable persons; section 52 of OSHA enlarges the liability of the persons behind an employer where the employer is a commercial organisation.

Previously, the shoulder note of the section referenced “*Offences committed by body corporate*”, and the provision imposed liability on both the body corporate and the persons behind it.

The Amendment Act makes express reference to the liability of a director, compliance officer, partner, manager, secretary or other similar officer of the organisation in addition to the organisation itself.

Further, liability is imposed on persons beyond those originally contemplated by OSHA. It extends liability to persons behind limited liability partnerships, firms, societies and other body of persons (“organisations”) as well as to anyone who appears to

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be responsible for the management of the affairs of the organisation (“management”).

These persons may be jointly or severally charged in the same proceedings with the company and be held liable as such. This form of liability is criminal in nature, attracting both fines as well as terms of imprisonment.

Nonetheless, section 52 of OSHA also confers a statutory defence. When a company is found guilty of an offence, its management is deemed to be guilty unless the offence was committed without the individual’s knowledge and without the individual’s consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent its commission.

C. Introduction of duties of Principal under the OSHA

Obligations have been introduced to a “principal”, as defined in section 3(1) of OSHA as:

“any person who in the course of or for the purposes 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.”

The duties of a principal are provided under the new sections 18A and 18B of OSHA. The former imposes a duty on the principal to ensure the safety and health of a contractor, subcontractor or employee employed by such contractor or subcontractor who works under the principal’s direction; the latter will be discussed below.

D. Expansion of employers’ duties vis-à-vis offences under OSHA

(i) Section 15 of OSHA

Section 15 of OSHA now imposes an obligation on an employer to develop and implement procedures for dealing with emergencies that may arise while the employees are at work. Nevertheless, the word “*emergencies*” is not defined in OSHA.

(ii) Section 18B of OSHA

Section 18B of OSHA now imposes a duty to an employer, self-employed person and principal to conduct a risk assessment in relation to the safety and health risks posed to any person who may be affected by his undertaking at the place of work. Risk controls must be implemented if the same is required following the risk assessment.

E. Appointment of Occupational Safety and Health Coordinator

Section 29A of OSHA requires an employer with five or more employees at the workplace to appoint an employee to act as an Occupational Safety and Health Coordinator (“OSH Coordinator”) for the purpose of coordinating occupational safety and health issues at workplace.

However, this provision does not apply to 10 industries provided under Order 3 of the Occupational Safety and Health (Safety and Health Officer) Order 1997 where the employer will instead employ a Safety and Health Officer in this regard.

Section 29A(4) of OSHA provides that it is an offence if the employer fails to appoint the OSH Coordinator, which on conviction, may be liable to a fine not exceeding RM50,000 or to imprisonment for a term of not exceeding six months or to both.

To-date, there are no guidelines or regulations as to who should be appointed as an OSH Coordinator. Based on the official website of Department of Occupational Safety and Health Malaysia, it is understood that an OSH Coordinator is a person who has completed the relevant prescribed occupational safety and health courses conducted by the approved training centre.

F. Rights of employees to remove from imminent danger at workplace

Section 26A of OSHA grants the employee a statutory right to remove himself from any imminent danger at his workplace or from the work if the employer fails to take any action to remove such a danger. Section 26A(3) of OSHA provides that “*imminent danger*” means:

“a serious risk of death or serious bodily injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard.”

Upon exercising the right, the employees are protected against undue consequences and discrimination.

G. Occupational Safety and Health Training Course

Under Section 31A of OSHA, the Minister may require any class or description of persons to attend an occupational safety and health training course conducted by a registered training provider. The employer must then ensure that such a person has completed the training course before allowing that person to perform any work for which the training is required. Otherwise, it is an offence which on conviction, may be liable to a fine not exceeding RM50,000 or to imprisonment for a term of not exceeding six months or to both.

H. Increased Penalties

The maximum penalty for almost all offences under OSHA has seen a ten-fold increase. A higher penalty serves as both a deterrent and punitive measure to encourage employers to comply with safety regulations and allocate resources toward preventing workplace accident and injuries.

Conclusion

The Amendment Act marks a commendable step forward in bolstering the safety, health, and well-being of workers. The introduction of new duties and heightened penalties demonstrates Parliament's serious commitment to addressing workplace safety.

Considering this, it is crucial for the employers, companies, and their directors and the principal to remain abreast of this new development to ensure their processes and decision-making are aligned to occupational health and safety standards.

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Financial Services

Revised Guidelines on Conduct for Capital Market Intermediaries

The Securities Commission Malaysia issued a revised [Guidelines on Conduct for Capital Market Intermediaries](#) which will come into effect on 1 October 2024.

The revised guidelines were issued to provide better guidance to capital market intermediaries and their representatives in raising their standards in cultivating a corporate culture and business conduct which is focused on delivering the outcomes set out in paragraph 1.02 of the revised guidelines to their clients.

Policy document on Fair Treatment of Financial Consumers

A revised policy document on fair treatment of financial consumers has been issued on 27 March 2024.

The revised policy document introduces a new principle and specific requirements for financial services providers (as defined therein) to consider and respond to the interests and needs of vulnerable consumers (as defined therein) in conducting its business and operations.

The revised policy document supersedes the version issued on 6 November 2019.

Parliament passes the Money Services Business (Amendment) Bill 2024

The Malaysia Parliament passed the [Money Services Business \(Amendment\) Bill 2024](#) on 3 April 2024. The bill will come into operation on a date to be determined by the Minister of Finance by way of notification in the *Gazette*.

Pursuant to the bill, the proposed amendments are meant to, among others:

- substitute the definition of “*money-changing business*” to avoid confusion with the term “*money-lending business*”.
- substitute the definition of “*remittance business*” to facilitate the prosecution for the offence of conducting money remittance business without a licence by restructuring the existing definition.

- effect drafting changes to replace references to the repealed laws.
- provide for the admissibility of evidence in the trial proceedings for offences relating to unlicensed money services business.
- empower the court before which the prosecution has been conducted to make a forfeiture order for any property seized under the Act.

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