



# CURRENT PERSPECTIVES OF OCCUPATIONAL SAFETY AND HEALTH LEGISLATION IN MALAYSIA

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**I**n Malaysia, the Occupational Safety and Health Master Plan 2021-2025 (OSHMP25) is a strategy and programme formulated to propel the nation's occupational safety and health (OSH) to a more excellent level. The first two of the seven strategic trusts outcomes in OSHMP25 are strengthening governance through the proliferation of OSH policies and laws, and to empower self-regulations among industries. These strategic thrusts empower policies and laws for OSH to become a way of life that does not require continuous monitoring from relevant authorities. Contemporary OSH policies and laws are continuously being developed and reviewed in Malaysia. This is to overcome ever-evolving OSH issues and to be in line with international laws.



Occupational safety and health (OSH) legislation in Malaysia include Acts, Regulations, Codes of Practice, Orders and Guidelines. They have been enacted or introduced to ensure safety and health in Malaysian workplaces. These legislative measures are aimed to protect employees, contractors, visitors, clients, or anyone else who enters an organization's workplace. An understanding of safety and health legislation is relevant for persons who work in safety and health, human resources, and related roles. This article focuses on the current perspectives and the development of OSH legislation in Malaysia.

### **Historical development of OSH legislation in Malaysia**

It has been three decades since the Occupational Safety and Health Act (OSHA) 1994 (Act 514), commonly referred to as OSHA 1994, was enacted. Prior to OSHA 1994, the Factories and Machinery Act (FMA) 1967 (Act 139) and the FMA Regulations were in place to control factories with respect to matters relating to the safety, health, and welfare of persons in factories and the registration and inspection of machinery. FMA 1967 was enacted to supersede the Machinery Ordinance 1953 of the States of Malaya and it was amended in 2006. There were 16 Regulations promulgated under FMA 1967. Key health related regulations under FMA 1967 included the FMA (Health, Safety and Welfare) Regulations 1970, FMA (Lead) Regulations 1984, FMA (Asbestos Process) Regulations 1986 and FMA (Noise Exposure) Regulations 1989.

However, noting that the FMA 1967 was prescriptive ("command and control"), scope of the industry limited (manufacturing, construction, mining & quarrying), duty heavily dependent on the government and workplaces accidents still high, a new Act was proposed in 1989. The Act came into force as the Occupational

Safety and Health Act 1994 (Act 514) (OSHA 1994) five years later. The major change was with respect to the coverage of OSHA 1994 covering employees in the industry sectors specified in the First Schedule of OSHA 1994. These industrial sectors are manufacturing, mining and quarrying, construction, agriculture, forestry and fishing, utilities, transport, storage and communication, wholesale and retail trades, hotels and restaurants, finance, insurance, real estate and business services, and public services and statutory authorities. OSHA 1994 does not apply to work on board ships governed by the Merchant Shipping Ordinance 1952 and the Merchant Shipping Ordinance 1960 of Sabah or Sarawak and the Armed Forces. FMA 1967 continued to be in force along with OSHA 1994 until it was repealed by the Factories and Machinery (Repeal) Act 2022 (Act 835) becoming operational on 1 June 2024. In 2024, a major development in OSH legislation in Malaysia came about with the Occupational Safety and Health (Amendment) Act 2022 (Act A1648) becoming operational on 1 June 2024.

### **OSH Legislation and Enforcement Agencies**

The Department of Occupational Safety and Health (DOSH) under the Ministry of Human Resources Malaysia is the government agency mainly responsible for administering, managing, and enforcing legislation related to occupational safety and health (OSH) in this country. DOSH is responsible for ensuring the safety, health and welfare of people at work, as well as protecting other people and the public from safety and health hazards arising from the activities at work. Its vision is to cultivate OSH culture in every workplace and to make every job and task safe and healthy for the worker. It enforces the Factory and Machinery Act 1967 (Amended 2006), the Occupational Safety and Health Act 1994 and Petroleum Act

(Safety Measures) 1984 and now the Occupational Safety and Health (Amendment) Act 2022 (OSHA 2022).

Other OSH and worker related legislation under the Ministry of Human Resources includes the Employees' Social Security Act 1969 (Act 4), Employment Act 1955 (Act 265), Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446) and Industrial Relations Act 1967 (Act 177). The Ministry of Finance enforces the Employees Provident Fund Act 1999 (Act 452), the Ministry of Natural Resources and Environment enforces the Environmental Quality Act 1974 (Act 127), while the Ministry of Urban Wellbeing, Housing and Local Government enforces the Fire Service Act 1988 (Act 341). The Atomic Energy Licensing Act 1984 (Act 304) comes under the purview of the Ministry of Science, Technology and Innovation and the Pesticides Act 1974 (Act 149) under the Ministry of Agriculture. The Ministry of Works has jurisdiction over the Construction Industry Development Board Act 1994 (Act 520), the Ministry of Health over the Prevention and Control of Infectious Diseases Act 1988 and Road Transport Act and Civil Aviation Act 1969 (Act 3) under the Ministry of Transport. Each of the Ministries has established departments or agencies and the mechanisms to enforce the respective Acts.

### **Key Features of OSHA 1994**

The philosophy and guiding principle of the Occupational Safety and Health Act 1994 is that the "Responsibilities to ensure safety and health at the workplace lies to those who create the risk and on those who work with the risk". The key features of the Act are self-regulation, consultative approach, employees' participation, and the range of working population. The self-regulatory approach is where the management of occupational safety and health in the workplace is by the organization itself rather than by an outside organization such

as the government. Here, it requires employers to initiate and implement safety and health measures to ensure so far as is practicable the safety, health, and welfare at work of all their employees. How successful this self-regulatory approach has been under this Act has been debated.

The consultative approach under this Act has been clearly demonstrated by the establishment of the National Council of Occupational Safety and Health having representatives from the government, employers, employees, and professional bodies. At the workplace level, the consultative approach has been seen with the requirement under the Act to establish Safety and Health Committees in the workplaces with forty or more employees. The OSH (Safety and Health Committee) Regulations 1996 further stated the duties of employers with respect to the composition, functions, meetings and provisions of training and information to the safety and health committee. This mechanism of establishing safety and health committees has worked well in ensuring input is obtained from both parties in matters related to safety and health in the workplace. These committees with participation of employees, where established, have played a significant role in contributing to significant improvements in safety and health in their workplaces.

#### **Provisions and duties under OSHA 1994**

Various provisions and duties are included in OSHA 1994. The provisions include those related to the appointment of officers, the National Council for Occupational Safety and Health, safety and health organizations, Notification of Accidents Dangerous Occurrence Occupational Poisoning and Occupational Diseases, prohibition against use of plant or substance, Industry Codes of Practice, enforcement and investigation,

liabilities for offences, appeals and regulations.

The Act clearly states the general duties of those who create the risk (employers, self-employed persons and designers, manufacturers and suppliers of plant and substances) and those who work with the risk (employees). The duties of employers and self-employed persons include formulating a written statement of his policy on OSH and providing and maintaining a working environment that is safe and without health risk and with adequate welfare facilities. They are required to provide and maintain plant and safe system of work, provide and maintain a place of work and means of access and egress from any place of work and to make arrangements for safe use, operation, handling, storage and transportation of substances and plant. Employers are also required to provide information, instruction, training and supervision to their employees. The duties of designers, manufacturers and suppliers of plant and substances include ensuring that the plant or substance is safe when properly used, to test and examine the plant or substance and to provide adequate information about the use of such plant or substance. Manufacturers and designers of plant or substance are also required to carry out the necessary research to eliminate or minimize any risk to safety and health. The duties of employees include taking reasonable care at work for the safety of persons, to cooperate with the employer or any other person in charge, to wear or use any protective and clothing provided by the employer and to comply with any instruction or measure on occupational safety and health instituted by his employer.

#### **Table 1: Objects Under OSHA 1994**

- 1 To secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work

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

#### **Regulations, Industrial Codes of Practice and Guidelines**

Various legislative measures have been introduced under OSHA 1994. These include regulations, codes of practice and guidelines. Regulations are designed to provide specific details and requirements for enforcing the provisions of the Act. A code of practice complements the Act and regulations to provide detailed practical guidance on how to comply with legal obligations and should be followed unless another solution with the same or better health and safety standard is in place. Guidelines are recommended procedures established to provide direction to those engaged in activities under the law but may not have the effect of law. There are eight Regulations, two Orders, eight Codes of Practice and fifty-five guidelines under OSHA 1994.

#### **Table 2: Regulations under OSHA 1994**

- 1 Occupational Safety and Health (Noise Exposure) Regulations 2019
- 2 Occupational Safety and Health (Classification, Labelling and Safety Data Sheet of Hazardous Chemicals) Regulations 2013
- 3 Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Disease) Regulations 2004
- 4 Occupational Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000

- 5 Occupational Safety and Health (Safety and Health Officer) Regulations 1997
- 6 Occupational Safety and Health (Safety and Health Committee) Regulations 1996
- 7 Occupational Safety and Health (Control of Industrial Major Accident Hazards) Regulations 1996
- 8 Occupational Safety and Health (Employers' Safety and Health General Policy Statements) (Exception) Regulations 1995

### **Occupational Safety and Health (Amendment) Act 2022 (Act A1648)**

The Occupational Safety and Health (Amendment) Act 2022 (Act A1648) (OSH 2022), operational on 1 June 2024, is a major development in the history of OSH legislation in Malaysia. OSHA 1994 had been in existence for 30 years and the authorities had felt it was time to make several amendments to the Act. This Act, OSHA 2022, making amendments to OSHA 1994, was passed in Parliament in October 2020, received Royal Assent on 4 March 2022 and was published in the Gazette on 16 March 2022.

Amendment to Section 1 relating to coverage of the Act is this Act shall apply to all places of work throughout Malaysia including in the public services and statutory authorities. A new section 7A on "Appointment of licensed person, etc." gives power to the Minister to grant a license to any person to carry out inspection of any plant prescribed by the Minister. Section 9 sees membership of the National Council for Occupational Safety and Health (Council) increased from a minimum of 12 and maximum of 15 members, to between a minimum of 22 and maximum of 25 members. Section 9 gives powers to the Council to coordinate all matters and activities relating to occupational safety and health which are implemented or carried out by the Government. Amendments to Section 11 include requiring training and education to enhance community awareness on occupational safety, health and welfare. It also requires

occupational safety and health research to be developed and results published; and the development and establishment of a mechanism to generate, process, store and disseminate information on occupational safety, health and welfare.

The duties of the principal to take measures to ensure the safety and health of any contractor, subcontractor or indirect subcontractor and any employee employed by them have been included in a new Section 18 of the Act. The new Section 18 also requires an employer, self-employed person or principal to conduct and implement a safety and health risk assessment at the place of work.

Fines have been increased under OSHA 2022 for contravening duties spelt out in the Act. Employers and self-employed persons contravening their duties under OSHA 1994 were liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both. The fine has been increased to five hundred thousand ringgit under OSHA 2022. Manufacturers who were liable to a fine not exceeding twenty thousand ringgit on contravening OSHA 1994 are now liable to a fine of two hundred thousand ringgit under OSHA 2022. Employees contravening their general duties under Section

24 who were liable to a fine not exceeding one thousand ringgit are now liable to a fine of two thousand ringgit.

A new section 26A, under the rights of employees, gives the employee the right to remove himself from danger if he believes there exists an imminent danger at his place of work. This can be done after he has informed his employer of the danger, and the employer has failed to take any action to remove the danger. While DOSH had published Guidelines on Occupational Health Services (OHS) where OHS were to be implemented was not stated in the Act. In Section 28 of OSHA 2022, the shoulder note Occupational Health Organisations in OSHA 1994 has been amended to read as Occupational Health Services. The requirements for arrangements for these services are included in this section. Specific provisions to appoint a safety and health coordinator, for classes of persons to attend safety and health training courses provided by registered training providers, for activities to be carried out by competent person and registered training provider have been introduced in the Act. Amendments made to OSHA 1994 in the new OSHA 2022 will contribute significantly to achieving the objects of the Act.

### **Conclusion**

The enactment of OSHA 2022 is a significant long awaited and momentous step in the development of OSH legislation in Malaysia. Amendments made in OSHA 2022 to the OSHA 1994 will contribute substantially to DOSH achieving its vision, mission, and the objects of OSHA 1994. The enactment of OSHA 2022, while achieving one of OSHMP25 strategic trust outcomes, adds to the many already existing efforts made by the government in promoting a safe and healthy work environment and a safety culture in the workplace in Malaysian workplaces.