

The Singapore Employer's Duty of Care on Workplace Safety & Health when Employees Travel

1. Overview Of The Singapore Employer's Duty Of Care For Employees Who Travel Overseas For Work

- 1.1 The employment relationship automatically imposes a duty of care on the employer towards its employee. This duty extends to a reasonable duty of care owed when the employee carries out his work or performs functions in relation to his work obligations.
- 1.2 The duty of care in an employer-employee relationship arises at common law and under legislation. Whilst the Employment Act regulates employment and welfare related issues, the Workplace Safety and Health Act ('WSHA') focuses on safety and health issues of employees. The focus is on taking reasonably practicable steps to ensure the safety and health of employees are taken care of. This duty can extend to situations where the employee is required to travel on work or is seconded overseas. Any breach of the common law could result in civil claims, whilst additionally a breach of the legislative duty will result in criminal liability on the employer as well as individuals, such as the company's directors or managers overseeing the affected employee. In addition, the employer can be liable under the Work Injury Compensation Act to compensate employees for any injury or illness suffered in the course of work, or incidental to work.
- 1.3 This article provides a snapshot of the safety and health obligations of employers based in Singapore.
- 1.4 As a preliminary comment, under the Singapore Employment Act, it is an offence for any employer to fraudulently induce an employee to enter into an employment contract to work outside of Singapore. As such, employers must ensure that its employees are provided clear and sufficient information when they are posted overseas for work or secondment. If the employer is found guilty of doing so, the company, as well as the responsible officer in the company, may be liable to a fine of up to S\$5,000 and the officer may in addition, be imprisoned for a term of up to 2 years.

2. Workplace Safety And Health Act

Overview

- 2.1 The WSHA applies to all workplaces, unless otherwise excluded by the statute. The WSHA imposes a broad performance-based liability regime on employers, including the following:
- (a) imposing general duties of care on stakeholders, including employers, occupiers and principals vis-a-vis their employees and other people who are affected by the work; and
 - (b) requiring employers to proactively identify and mitigate risks and hazards at the workplace.
- 2.2 A number of regulations promulgated under the WSHA expand and encompass a diverse range of matters, including but not limited to:
- (a) general provisions mandating the minimum health and safety standards at the workplace;
 - (b) medical and hygiene monitoring of employees where necessary;
 - (c) implementation of a safety and health management system;
 - (d) provision of first aid boxes and first aiders at workplaces;
 - (e) regular inspections to uncover safety or health lapses at the workplace; and
 - (f) elimination of foreseeable risks to employees at the workplace.
- 2.3 In addition to the general regulations, there are also detailed and specific rules set out for particular sectors such as construction and shipping industries.
- 2.4 The self-regulatory yet penal nature of the WSHA imposes an onerous obligation on the employer. Employers are now obliged to continually monitor and assess risks in the workplace, and implement sufficient and appropriate controls to the workplace and its employees to manage these risks as far as reasonably practicable. In this vein, the Workplace Safety and Health Council has issued codes of practice, guidelines and technical advisories to recommend workplace practices. Although such materials do not have legislative effect, they provide guidance on expected industry standards relating to safety and health measures, and common practices and knowledge. Hence, these materials may be relied on to determine what constitutes 'reasonably practicable' measures to be adopted by employers.

- 2.5 A violation of the provision of the WSHA will result in the company being liable to a fine of up to S\$500,000, or where an officer of the company is liable (whether jointly with the company or otherwise), a fine of up to S\$200,000 and/or imprisonment term of up to 2 years.

Persons Who Owe Duties Under The WSHA

- 2.6 The WSHA casts the duty of care over a wide net of persons, from employers to occupiers, principals, manufacturers and suppliers.
- 2.7 It is important to note that the statutory duty of care may be imposed on a person at any one time under two or more capacities. As such, an employer may incur liability in a dual capacity as an employer, as well as an occupier of a workplace. This has significant repercussions since the duty of care varies according to a person's capacity. Given the fact that separate and distinct duties and liabilities may be imposed, an employer with multiple capacities must take comprehensive steps to ensure that a reasonable standard of care is met at all angles. This is especially since the employer's duty or liability will not be diminished simply because the duty is actually shared across different persons or under different capacities.
- 2.8 Generally, an employer is duty-bound to implement, as far as reasonably practicable, necessary measures to ensure the safety and health of its employees at work, including:
- (a) providing and maintaining a safe and healthy work environment, with adequate welfare support for its employees;
 - (b) inspecting any machinery or equipment used by employees;
 - (c) preventing employees from being exposed to work or workplace hazards under the employer's control;
 - (d) instituting procedures to deal with workplace emergencies; and
 - (e) informing and educating its employees as required for them to perform their work.
- 2.9 Where a company engages a subcontractor or consultant (i.e. a person not under a contract of service), the company will be deemed a 'principal' and will be obligated to take the same measures as that towards its employees. More importantly, a principal has the expanded duty of ensuring that, as far as reasonably practicable, its safety and health measures apply to any direct or indirect third party contractor engaged by the subcontractor when at work, as well as any employee employed by the subcontractor or third party contractor when at work.

Impact Of The WSHA On Employees Who Travel Overseas For Work

- 2.10 Whilst the easy argument to make is that a Singapore employer's obligations under the WSHA should apply only to when the employee is working in Singapore, the language of the WSHA does allow for wider interpretation. The WSHA defines the term 'workplace' to mean any premises where a person is 'at work', or is to work, currently works, or customarily works. This broad definition means that the employer's duty of care extends beyond the employee's primary workplace, such as the office, and can be any place where the employee is to perform his work obligations. In addition, the term 'at work' is defined as all times at which the employee is performing his work obligations, 'wherever that work is carried out'.
- 2.11 Given such a broad definition, there is a strong argument to be made that an employer in Singapore who is governed by the provisions of the WSHA must ensure that his employees who are required to travel on the job are also adequately protected with safe and healthy work practices.
- 2.12 Having said this, it is important to note that the employer's standard of duty of care under the WSHA is subject to what is 'reasonably practicable'. In relation to employees who have to travel overseas for work, there is thus a limit to the type and extent of safety and health measures an employer can undertake, compared to what can be controlled within Singapore. As such, it may not be 'reasonably practicable' to require an employer to ensure that the foreign workplace fulfils all the necessary requirements set out in the WSHA. There are inherent practical difficulties in doing so apart from the fact that foreign jurisdictions may have other health and safety laws relating to employees, and it is not within the control of employers based in Singapore to have a say in how these foreign workplaces are regulated.
- 2.13 However, where the employer has information relating to specific safety or health risks in the foreign jurisdiction, then prior to its employees travelling overseas for work, the employer will bear the obligation to curb or minimise their employees' risk exposure. The employer will be expected to take all 'reasonably practicable' measures to, where possible, either control the risks involved, or at the very least, prepare their employees for such risks. As an example, it will be good practice for employers to ensure that its employees are made aware of potential safety and health risks they might encounter when they travel overseas for work, or make arrangements to educate its employees to deal with such risks as and when they arise.

3. Common Law Duty of Care In Relation To Employees Who Travel Overseas For Work

3.1 Under the common law, the employer is expected to take reasonable care not to expose its employees to unnecessary risk. Otherwise, the employee is entitled to sue his employer for damages relating to the injury suffered. Whether there has been a breach of the employer's duty of care will depend on whether a reasonable and prudent employer would have done what the employer did.

3.2 In the context of employees who are made to travel overseas for work, it is likely that the court will balance the gravity of the risk involved and the likelihood of the employee being injured, versus the employer's cost of taking preventive measures. As mentioned at paragraph 2.12 above, employers may not have control over workplaces in foreign countries and it may not be reasonable to expect employers to anticipate the type of risks its employees may be susceptible to.

3.3 However, depending on the nature of the employee's work and the nature of the risks associated with his work, it may very well be that an employer, especially one which regularly sends its employees overseas for work, is obliged to prepare a travel policy or handbook for its employees to create awareness of such risks and to provide sufficient information and training.

4. Impact Of Work Injury Compensation Act On Employees Who Travel Overseas For Work

4.1 The Work Injury Compensation Act ('WICA') allows an employee to seek compensation for any injury or illness suffered in the course of their employment. This statute is based on a 'no fault' compensation system and provides the employee with an alternative remedy to claim for medical leave wages, medical expenses and lump sum compensation for permanent incapacity or death instead of proving damages under a civil lawsuit.

4.2 An employee may seek compensation for an illness or injury arising from an accident that happened during his working hours or while on official duties, as well as an accident that happened due to work, such as commuting during work and for work purposes (e.g. travelling from workplace to meeting venue). As such, an employee, who is employed by a local or foreign company in Singapore, and resides in Singapore during his course of

employment, will be eligible for compensation under WICA if he suffers from a work injury or illness even during an overseas work assignment.

5. Conclusion

5.1 The relevant work related legislation and common law both impose a duty of care on employers to take all reasonably practicable measures to ensure the safety and health of its employees. Whether or not the employer's statutory or common law duty of care extends to employees travelling overseas for work depends largely on the particular circumstances of each case. Arguably in current times where it is common for employees to travel, there is high chance that the relevant legislation will apply.

5.2 As such, local companies as well as foreign companies based in Singapore must be mindful of their obligations, and as far as reasonably practicable, identify any possible or related risks that their employees may be exposed to overseas. It is thus important for employers to institute proper corporate policies and procedures to address these risks and ensure that proper training procedures, welfare facilities and emergency plans are made available and readily understandable to their employees. Otherwise, an employer may find itself liable for both civil remedies and criminal penalties under Singapore law.

The legal information in this paper has been prepared by M/s Rajah & Tann LLP. This short article only provides a brief summary of the state of the law relating to workplace safety and health laws in Singapore, with a discussion on the potential implications for employers where their employees are required to travel on work. This article is not legal advice and cannot be viewed as a substitute to obtaining proper legal or other professional advice.