

LEGAL AND PRACTICAL CONSEQUENCES OF BREACHING WORKPLACE SAFETY AND HEALTH REQUIREMENTS

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Much has been said about the 36 workplace deaths from January to August 2022. Moral obligations to ensure safety aside, business owners and workers alike ought to take note of the legal and practical consequences that flow from safety breaches.

The Ministry of Manpower (“MOM”) has been stepping up enforcement efforts and have recently announced harsher consequences for those who caught flouting workplace safety and health rules. We take stock on the existing and future consequences businesses (and individuals) can expect:

1. Possible temporary disqualification from public sector construction tenders

From 1 October 2022, there will be a new harmonized set of disqualification criteria across all public sector construction tenders and contractors with poor workplace safety and health performance may be temporarily disqualified from participating in these tenders.

2. Employment ban of foreign manpower

From 1 September 2022 to 28 February 2023, MOM may ban companies from employing new foreign employees for up to three months if it finds serious workplace safety and health lapses following serious or fatal workplace accidents and require Chief Executives to personally account to MOM and take responsibility for rectifications.

Companies in certain sectors and those who use heavy industrial vehicles are also required to conduct a Safety Time-Out in accordance to the checklist sent by MOM by 15 September 2022. Non-compliant companies will be banned from employing new foreign employees for 1 month.

There will also be a revised demerit point system from 1 October 2022 for businesses in the construction sector.

Currently, demerit points may be given to construction businesses who flout safety laws. The accumulation of such demerit points can result in the inability to employ new foreign manpower, and in serious cases, the inability to both employ new foreign manpower and renew existing foreign manpower of up to 2 years.

Construction companies who are dependent on foreign manpower may then face difficulties in finishing projects on time (attracting potential contractual damages), and may be unable to take on new projects due to manpower constraints.



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4. Stop Work Orders

The Commissioner for Workplace Safety and Health (“Commissioner”) has powers to order a full or partial Stop Work Order (“SWO”) following an inspection where safety failings have been found. From 14 June 2022, companies issued with SWO must engage external auditors to conduct a thorough review of their WSH management system before the SWO is lifted. Depending on contractual obligations, companies may face civil liabilities arising from work delays.

5. Increased administrative penalties and costs

Businesses found breaching certain safety requirements face composition fines of up to \$5,000 per breach. Multiple breaches will mean multiple composition fines.

Businesses that had fatal or major injuries must engage external auditors to conduct a thorough review of their system of workplace safety and health controls and implement measures to prevent recurrence.

Businesses who have been determined to have poor workplace safety and health performance may also be placed under the Business Under Surveillance (“BUS”) programme under the MOM and must report regularly to MOM on their action plan and face frequent inspections. Discretion lies in MOM whether the business can exit the BUS programme.

Conclusion

The legal and practical consequences of a lack of safety cannot be ignored. Other than taking pro-active steps for compliance on the ground, stakeholders may want to seek legal advice on steps to safeguard the interests of the company, its key appointment holders, and workers.