



Opinion

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Occupational Safety and Health in a Nutshell (Malaysia)

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To Cite This article: Shuet Ching Neong*, *Occupational Safety and Health in a Nutshell (Malaysia)*. *Am J Biomed Sci & Res.* 2025 29(3) AJBSR. MS.ID.003806, DOI: [10.34297/AJBSR.2025.29.003806](https://doi.org/10.34297/AJBSR.2025.29.003806)

Received: 📅 December 05, 2025; **Published:** 📅 December 09, 2025

Introduction

Most literature of employer's duty of care are formulated with the Occupational and Safety Health Act 1994. This Act spells out the principal legislation which deals with the employment safety and health. Prior to this Act, the Malaysian legislation started in 1884 with the Indian Immigration Ordinance. In 1966, Workers Minimum Housing Standards Act was established, followed by Factory Machinery Act in 1967. There are also Employee Social Security Act in 1969, Pesticides Act in 1974, Atomic Energy Licensing Act in 1984, Petroleum Safety Measures Act in 1994, and finally Occupational Safety and Health Act in 1994. The FMA 1967 has since been incorporated into the OSHA Act as the OSHA (Amendment) 2022. The duty of care of the employer has evolved from just being ordinance right up to it being passed by the legislature. According to the OSHA (Amendment) 2022, the responsibilities of health and safety of the employees lie within the employees and those who created the work environment, i.e. the employers [1]. In my opinion, the duty of care of the employer has evolved from it being just the duty of employers to shared responsibility of all involved, with an emphasis on safety-I and safety-II culture [2], from it being reactive, to its being a proactive state [3]. Manufacturers and suppliers have a duty of care for provision and maintenance of plants at work, operation, handling, storage and transport of plant and substances, instruction, information, training and supervision, maintenance of means of access and egress, and development and implementation of processes that deal with emergencies. The general duties of suppliers and manufacturers are in safe construction, testing and examination, information about use, research on elimination and minimization of risk, and safe election and installation [1].

Workers' rights have been formulated in the OSH legislation based on the needs of the workers. It starts at the top with the enactment of an Act by the Parliament. This is then followed by the Regulations which are details with regards to enforcement of the Act and is gazetted by the Minister [1]. This is then followed by Code of Practice and Guidelines, which are non-legal-binding. The laws regulate the workers' rights starting with the rights of the workers who are citizens in the country, covered by the Employee Social Security Act in 1969. The government has since then permitted the entry of migrant workers into the country to meet the shortage of workers experienced in a few industries in Malaysia [4]. Since then, in 2019, two labour laws were amended which protects and gives equality between migrant workers and national workers, enhanced employers' accountability for the welfare of migrant workers, and also oversee forced labor [5]. In my opinion these acts and current labour laws have evolved to oversee and protect basic human rights which has evolved since its inception in the past. Rights of employees was then included in the OSHA (Amendment) 2022. An employee is noted to have the right to remove himself or herself from the area of risk if deemed harmful to him/her [6].

Based on the OSHA (Amendment) 2022, provision is for ensuring the safety, welfare, and health of the workers and also at the same time, protects the non-workers against harms which can occur from a workplace. This Act acts as self-regulatory, whereby those in the organisation can undertake the responsibility for their safety and health at work. The main responsibility of health and safety at work lies within those who create the risks and those who work in the environment. The OSHA (Amendment) 2022 regulates

all economic activities, except domestic workers, armed forces, and merchant shipping. In OSHA (Amendment) 2022, there is a duty to conduct risk assessments at workplace, whereby hazards are identified, risks are assessed and adequate risk controls taken to mitigate the risks. Employers have a responsibility to provide information that is easily understandable by workers and provide adequate supervision. A safe and healthy environment has to be provided to all workers [1].

In the nature of prevention measures which should be implemented it is noted that the hierarchy of control measures should be considered at all times. The aim of prevention is exclusion, surveillance, and containment [7]. The basis of prevention starts with HIRARC, which is hazard identification, risk assessment, and risk control. According to the hierarchy of controls, elimination must be prioritized in minimizing harm to workers. This is followed by substitution, engineering controls, administrative controls, work practice controls and low down in the hierarchy is the use of personal protective equipment [8]. In my opinion, if the hierarchy of controls is in every safety and health executive's mind, there will be a good risk mitigating factor in the workplace. In the principle of prevention, surveillance needs to be done to monitor the exposure to the hazard. Risk is determined as a function of hazard. The law and practice in Malaysia necessitates medical surveillance to be conducted to every risky environment or workplaces and it can only be done by an Occupational Health Doctor based on the OSHA (Amendment) 2022 [6]. There is also a need for notification of any accidents, dangerous occurrences, occupational poisonings or occupational diseases. With this the relevant harms could be prevented from getting more serious, reduce the occurrence in the workplace, and prevent these occurrences in others.

In my opinion, one of the most difficult risk to quantify is the psychological risks to staff, and it is noted that there is no objective way of quantifying psychological harms to employees. With the OSHA (Amendment) 2022, psychiatric illnesses seem to be missing from the Fourth and Fifth Schedule. Hence, I think it is imperative

to add psychiatric disorder to this list, with a guideline on how to determine if the psychiatric disorder originates from working environment. Stakeholders could all sit down and try to include psychiatric disorders into the Fourth or Fifth Schedule of the OSHA (Amendment) 2022. Although psychological risks are mentioned in the Act, its implementation is poor.

Acknowledgment

None.

Conflict of Interest

None.

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