



***PERSEKUTUAN MAJIKAN-MAJIKAN MALAYSIA
MALAYSIAN EMPLOYERS FEDERATION***

A Critical Analysis of the newly proposed OSH Legislation: The Employers Perspective

by

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OSH Legal Development

- OSH legislations –
 - Factories and Machinery Act 1967 and OSH Act 1994 will be revoked
- Replaced by new act - **OSH Act 2016**
 - Changes may effect companies / enterprises to re adjust its internal implementations.
 - Penalties will be more severe ?

MEF Views on OSH Act 2016

- MEF submitted its views on the proposed draft of OSH Act 2016.
- Views gathered from MEF members.
- MEF OSH Advisory committee had its meeting to finalise MEF view on the new proposed draft.
- MEF official feedback submitted to DOSH.

Main concerns of MEF :

1. The set up of National Council of OSH.
2. Appointments / Licensing of firms and competent persons.
3. Employers duty to conduct Hazard Identification, Risk Assessment and Risk Control (HIRARC).
4. Employer and employees relations
5. Joint and several liabilities of senior officers of private sector companies
6. Penalties & compounding offences-custodial sentence
7. Board of appeal

MEF Views on OSH Act 2016

1. Establishment of National Council of OSH (NCOSH).
 - Proposed act allows individuals to represent employer or employees.
 - Individuals should not be representing Employers/ Employees. Only the most representative employers'/employees' organisation/ associations / federations should represent the employers/employees community in NCOSH

1. Establishment of the National Council of OSH (NCOSH).
 - NCOSH main role to establish OSH national profile, agenda, policy, legislation framework and to oversee OSH activities at macro level.
 - NCOSH should avoid micro managing OSH or duplicate functions of DOSH, NIOSH and SOCCSO.

2. Appointments / Licensing of firms and competent persons.
 - Some of OSH functions to be carried out by competent persons or firms.
 - Commercialization of services rendered should be monitored in a transparent manner by the authority to reduce abuse and to ensure no price hike of services to employers.

2. Appointments of Licensing of firms and competent persons.
 - The appointment of a competent person (OYK) or Competent Firm (FYK) should adhere to strict criteria.
 - The process of appointment should be transparent.

3. Duty to conduct and implement hazard identification, risk assessment and risk control (HIRARC)
 - MEF supports the idea of conducting risk management for activities at work.
 - MEF believes that the best method to ensure safety is by eliminating hazard at its source.
 - The New act should only specify minimum standard of risk assessment and not to fix to a single method of risk assessment *i.e.* HIRARC.

4. Employers & employees relations

- The new proposed act needs to highlight responsibilities of employees.
- Need to include provision on employee liable to disciplinary actions for breach of Safety and Health Rules /Regulations.
- Disciplinary action taken arising from breach of safety & health policies & procedures should not be subjected to any challenge.

4. Employer & employees relations

- Rights of Employees to remove himself from danger during work activity. Provision should be applicable to working situation/ condition which is life threatening only.
- If a work situation has been assessed and risk related to work has been controlled the issue of stop work or removal of employees should not arise.

5. Penalty & compounding offences

- The new proposed act indicates an increase in penalty from RM50,000.00 to RM500,000.00
- The increase in monetary penalty is not acceptable.
- The management of the penalty collected is a concern.
- The aim to improve safe behaviour at work/ “regulate behavior” by purely imposing higher penalty will not be achieved .

5. Penalty & compounding offences

- Compounding offences should only be done as a last resort after failure to comply with advice provided by the enforcement agency.
- Compounding offences should not be considered as part of the enforcement agencies key performance indicators in enforcing the law.

6. Board of Appeal

- The procedure to appeal should be made easy.
- The board needs to avoid complicated procedures that can result in backlog of cases.

MEF recommends :

1. Single incident notification systems.
2. Use of proper terminology.
3. Intensify health programmes.
4. Special assistance fund

Notifying an reporting of incidences

- Malaysia needs to have a single incident reporting system.
- The system should cover both work related incidents and commuting accidents.

Notifying an reporting of incidences

- Currently one accident case may need to be reported to various authority via various reporting forms and procedures under the laws i.e SOCSO, Energy Commission and DOSH.

Notifying an reporting of incidences

- Employers should not be penalize if they fail to fulfill reporting requirements.
- Information from accident reporting should be used to improve the workplace and share within the same sector as lesson learned.

Use of proper terminology

- MEF proposed the term Welfare not be used in the OSH legislation.
- MEF suggested the term Wellbeing.

Intensify Health programmes

- MEF suggested NCOSH / NIOSH / DOSH/ SOCSO to put more emphasis on health programmes in the future OSH master plan (2016-2020.)
- The health aspect at the workplace seems lacking the OSH masterplan 2015.

Special assistance fund

- A fund for industries or enterprises to establish its on OSH Best practices technical standards/ code of practise/guidelines should be set up.
- This fund is important to ensure that safety and health initiatives are industry driven instead of government driven.

Conclusions

- New proposed act needs to consider concerns of stakeholders for higher- buy .
- Penalties and compounding of offences should not be main factors in self regulations.
- Employers should be given trust and support in managing OSH at the workplace

THANK YOU