



The Covid-19 pandemic has forced millions out of their offices for almost two years and companies have been implementing working-from-home (WFH) or remote working arrangements to achieve continuity of service and to maintain productivity while safeguarding employees' health and safety. WFH arrangement offers many benefits and flexibility, but who is responsible and what is the extent of liability when an employee is involved in an accident while working remotely?

THE CURRENT LAWS

Under the Malaysian Occupational Safety and Health Act 1994 (“**OSHA 1994**”), employers have the duty to ensure, so far as is practicable, the safety, health and welfare at work of all their employees. “Place of Work” is defined under OSHA 1994 as the “premises where persons work” and “premises” is defined to include any land, building or part of any building and any tent or movable structure. However, it is unclear as to whether OSHA 1994 would cover the remote working or WFH arrangement.

The Malaysian Human Resources Minister announced in October 2021 that the ministry has included amendments to the Employment Act 1955 on the flexible work/work from home method. These amendments would have a second reading which will be held between 14th and 16th December 2021 to review all changes.



It was mentioned that the scope of the amendments would be limited to work-related activities within their control, being subjected to the nature of work. It means that an employer will only be liable for work from home injuries sustained by their employees if they were doing something related to their jobs at the time of the injury.

The Chief Executive Officer of Social Security Organisation (SOCSO), in his statement in March 2021 also assured contributors that his agency extended the accident coverage to encompass WFH situations in response to the extraordinary circumstances caused by the Covid-19 pandemic.

THE UNCHARTED WATERS

To put it simply, an injury that occurs while an employee is working from home would be justifiable and valid as an injury that takes place during the normal working hours and at the normal place of business. However, what is true in theory doesn't always go smoothly in practice.

There would be some inevitable grey areas, like when exactly work time begins and ends each day and what would really constitute injuries related to jobs. This is especially the case when employees put in longer hours to support the business and customer needs. Employees may continue working beyond their normal working hours and it remains unclear as to how the law would protect injuries sustained by employees during the extra hours.

The working location or environment at home does not usually have the safety standards in place as compared to the office. When employees are working from home, they are at risk of getting hurt by unknown objects or broken glass on the floor, tripping over random household items, slipping on water spilled over or house on fire by an electrical short circuit. Many employees do not have a dedicated work station at home and they may also find it challenging to share a workspace with family or roommates. Safeguarding the workplace environment against fires and natural disasters can also be difficult for remote employees.

Another aspect is that WFH may result in employees incurring related expenses. The government may need to consider imposing legislative requirements requiring employers to reimburse employees for reasonable and necessary WFH expenses, for instance, stable internet connections, additional IT software and hardware and perhaps, ergonomic tables and chairs.

These ambiguities and the blurring of boundaries would need to be addressed accordingly as they may pose considerable hurdles to the proper enforcement and implementation of the laws.

MOVING FORWARD

Proposals to amend the existing laws are positive moves but observing how the laws will be implemented on a practical level in the future will be “when the rubber hits the road”. Duties should be imposed upon employees to protect themselves and to cooperate with their employers in the implementation and compliance with the company’s policy or guidelines on WFH.

Leonard Yeoh is a partner and Pua Jun Wen an associate with the law firm, Tay & Partners



LEONARD YEOH

Partner, Head of Dispute Resolution and Employment & Industrial Relations Practice Groups

For further information and advice on this article and/or on any areas of Dispute Resolution and Employment & Industrial Relations, please contact: leonard.yeoh@taypartners.com.my



PUA JUN WEN

Associate

junwen.pua@taypartners.com.my