Employer's Liabilities Relating to Health and Safety

When it comes to health and safety at work, there is both a criminal and a civil angle.

Criminal Angle

One statute that could be relevant is the Workplace Safety and Health Act, which covers all workplaces other than domestic premises generally. Under this statute (among others), the occupier of premises as well as employers must take reasonably practical measures, failing which criminal liability may result. While what is reasonable may turn on many factors, such as the size of the organisation, the physical space available at the workplace, the resources available to the employer and the nature of the work done, generally, if the various advisories issued by the Ministry of Manpower have been followed, the chances of running afoul of the law are reduced. Thus, it is imperative for occupiers and employers to put into practice and observe all the various advisories (such as those relating to safe distancing) as far as reasonably possible.

It is also worth highlighting that under the Workplace Safety and Health Act, there can be criminal liability based on risk alone, without there being any injury or accident (or an actual disease transmission, in this case) occurring at the workplace. For instance, the recent spate of stop work or remedial orders for the lack of safe distancing are based on the presence of a risk.

Aside from the Workplace Safety and Health Act, another statute that can be triggered in this context is the Infectious Diseases Act which stipulates that if the various directives that have been issued have not been complied with, this can trigger criminal liability and stop or remedial orders can also be issued.

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Civil Angle

An employee who catches Covid-19 may be able to sue the employer for negligence or claim work injury compensation.

Breach of duty of care: negligence

In relation to suing the employer in negligence, assuming it can be proven that the infection occurred at work (for instance, many people at the workplace could be infected around the same time, as has happened in some cases) and if the employer had failed to do what was reasonable, civil liability can attach. As to what is reasonable, as stated earlier, many factors could be relevant. However, if the worker triggering the chain of infections was asymptomatic to begin with, that may make it less likely for the employer to be liable. If the advisories issued by the Ministry of Manpower have been followed, the chances of being held negligent would also certainly be lessened.

Work injury compensation

However, even if the employer has not been negligent, the employee may in certain circumstances be able to claim Work Injury Compensation, which unlike negligence, is not based on fault.

Under the Work Injury Compensation Act, certain occupational diseases are listed. As of the date of publication, Covid-19 is not listed. Even so, if it can be proven that the disease was directly attributable to an exposure arising out of and in the course of employment to a chemical or biological agent, the employee may be able to claim. For instance, in the case of a nurse or doctor working in a hospital, there is a very close link between the nature of the job and the disease (that is, the disease arises out of the course of

employment) and hence it is likely that if they fall ill, work injury compensation can be claimed, the virus being a biological agent.

If the employer is negligent and Work Injury Compensation is also claimable, the employee can only claim under one head and will not be compensated twice.

Nonetheless, as the Singapore government is bearing the costs of treatment in public hospitals, there may not be any loss to be claimed, unless the hospital stay is prolonged and results in loss of income, or there is some long-term disability, or the illness results in death.

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice.

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