

# Occupational Health & Safety 2022



# Thailand

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## LEGAL FRAMEWORK

### Legislation

1 | What legislation governs occupational health and safety in your jurisdiction? Are there any notable sector-specific laws or exclusions from the primary legislation?

The Occupational Safety, Health and Environment Act of 2011 (OSHA) is the main legislation that governs and designates standards of protective measures for controlling, monitoring and managing occupational safety, health and the environment in workplaces. In principle, OSHA applies to all employers in the private sector and shall not apply to any government agencies.

### Regulations

2 | How are regulations relating to occupational health and safety generally issued in your jurisdiction? What compliance obligations do these regulations generally impose on employers?

Before the enactment of OSHA, the number of workers who suffered from an injury, disability, loss of life or occupational disease had increased and become more severe. Despite this, the general law concerning labour protection matters (ie, the Labour Protection Act of 1998 (the Labour Protection Act)), does not cover mechanisms and measures on the management of working safely and effectively. Therefore, OSHA was legislated and has been effective since 16 July 2011. OSHA aims to regulate the protective measures to control, supervise and manage occupational safety, health and the work environment so that Thailand can protect and preserve its human resources, who are deemed the important resources of the country.

As for compliance with the law, OSHA provides the framework regarding occupational health and safety, while the details on their implementation will be further designated under the Ministerial Regulations issued by the Minister of Labour. These Ministerial Regulations stipulate additional details of standards for management and safety measures in workplaces as well as specific measures for certain types of works that are more likely to expose employees to risks.

Employers are obliged to comply with OSHA as well as Ministerial Regulations and notifications issued by the said law depending on their size of business, characteristics of work and other factors. Their main duties are to manage and maintain the workplace and its environment to be in safe and hygienic conditions.

### Applicable employers and workers

3 | Which employers and workers are subject to the occupational health and safety regime? Are there any notable exclusions?

An 'employer' under the definition in OSHA means:

- any employer under the definition in the Labour Protection Act (ie, a person who agrees to accept an employee for work by paying a wage), and shall include any authorised person who can act on behalf of an employer who is a legal person; or
  - any business entrepreneur who allows any person to work for or to provide benefit for or in an establishment, whether the working or providing some benefit in part or as a whole or a part of the production process or business under the responsibility of the entrepreneur.
- On the other hand, an 'employee' shall mean:
- an employee under the definition in the Labour Protection Act (ie, a person who agrees to work for an employer in return for wages regardless of the name used); or
  - a person who is allowed to work or to provide benefit for or in an establishment of an employer.

The scope of an 'employer' and 'employee' under OSHA is not limited to persons who are bound by a traditional employment relationship under the employment contract, but it also includes any persons allowed to work or provide benefits inside the same business establishment (eg, independent contractors, employees of any third-party vendor, and other off-site workers).

Nevertheless, central, regional and local government agencies, including employees in such agencies, shall not be subject to OSHA and hence are not deemed employers and employees under this law.

### Applicable risks

4 | Which health and safety risks are covered under the relevant legislation?

Compensation of damage caused by an 'occupational accident' or 'occupational disease' is stipulated in the Workmen's Compensation Act of 1994 (the Workmen's Compensation Act).

Under the Workmen's Compensation Act, employees who suffer from injury or sickness from work will be eligible for a subsidy for medicals fees and wages during absence from works by funding from the compensation fund established under the same law. In this regard, the Workmen's Compensation Act defines 'suffering from danger' as 'when an employee is physically harmed or psychologically affected or dies as a result of work or the protection of employer's interest or by the employer's order', while 'sickness' must be an illness that is incidental to the nature of or the condition of work, or the work itself. The types of sickness that are considered as incidental to the nature of work are designated under the Ministerial Regulation issued under the Workmen's Compensation Act. Until now, numbers of illnesses caused by common risks in industrial works have been designated as 'illness incidental to the nature of or the condition of work', for example:

- illness during works caused by chemicals such as mercury, cadmium or lead, etc;

- illness during works caused by physical force such as hearing loss due to excessive noise, sickness caused by air pressure or vibration, etc; and
- respiratory illness during works caused allergic reactions, etc.

Illnesses that are designated in the Ministerial Regulation will be automatically assumed as occupational sickness unless proven otherwise. On the other hand, danger or illness that is not caused by direct orders, or does not have a special designation under the law requires proof of causation between such injury or illness and works. In other words, employees who will be eligible for the compensation under the Workmen's Compensation Act or to seek indemnification from employers must prove whether their injury or illness happened 'in the course of employment'. In this regard, the criteria to determine 'the course of employment' will be determined by courts on a case-by-case basis. Based on precedence cases, there are various factors that Thai courts will take into consideration; for example, whether or not such injury or illness happened during business hours or whether the danger is caused by work-related or private activities or caused by direct orders from employers or by any action that is done for the benefit of employers.

### Authorities

- 5 | What government authorities are charged with the enforcement and administration of the occupational health and safety regime in your jurisdiction? What is the extent of their activities and powers?

The government authorities that are mainly charged with the enforcement and administration of the occupational health and safety regime in Thailand are as follows:

- the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW) is the main government organisation that is charged with the enforcement of OSHA and is authorised to impose punishment or order business establishments to rectify the violation of OSHA. The DLPW also oversees the development of safety systems, inspection criteria and the evaluation of occupational safety; and
- the Thailand Institute of Occupational Safety and Health (TOSH) is an independent public organisation established under OSHA. The main responsibility of TOSH is to develop and support the publication of measures to maintain occupational safety, health and environment in workplaces, and also to liaise with the private sector upon the implementation of OSHA. Unlike the DLPW, TOSH has no authority to impose penalties or perform an investigation in the case of violation of the laws.

Both authorities have their headquarters in Bangkok, with branches in major provinces across Thailand. The branch offices are under the direct authorisation of their headquarters and shall adhere to the policy and instruction from their headquarters with no autonomy of their own.

### Soft law and guidance

- 6 | Has the government issued any guidance or codes of practice relating to occupational health and safety in your jurisdiction? What force do these have and how are they implemented in practice?

State authorities responsible for the regulation of occupational safety, health and environment have issued numerous guidelines and manuals for employers and related parties to apply to their businesses to ensure that employers comply with OSHA. Examples of such guidelines and

manuals include safety manuals for construction sites, the evaluation of working environments issued by DLPW and standards to promote occupational safety, health and the environment issued by TOSH.

Although the guidelines and manuals mentioned earlier are not compulsory under the laws, and non-compliance thereof will not directly trigger any legal penalties against employers, still, employers can reduce the risk of violating related laws by observing such guidelines and manuals. Therefore, in practice, many business establishments in Thailand, especially establishments that participate in the occupational safety and health management system standard programme organised by TOSH, tend to comply with these guidelines and manuals as they are directly issued by the relevant authorities who are responsible for OSHA enforcement.

## EMPLOYER DUTIES AND RESPONSIBILITIES

### Primary duty

- 7 | What is the nature and extent of the employer's primary duty to protect workers' health and safety under the relevant legislation? How is this duty observed and interpreted in practice?

Under the Occupational Safety, Health and Environment Act of 2011 (OSHA), the employer shall have the duty to provide and maintain the establishment and the employees to enjoy safe and hygienic working conditions and environment as well as to support and promote the safety measures to prevent any harm against employees' lives, bodies, mentality and health.

In addition to the primary duty under OSHA, various Ministerial Regulations also stipulate standards for administration, management and implementation of occupational safety, health and environment in workplaces in specific works or industries such as works involving machines, cranes and boilers; and works that are exposed to electricity, heat and dangerous chemicals, etc. The safety measures under these Ministerial Regulations contain a wide range of measures and actions that must be taken by employers, for example, installing warning signs, providing training courses for employees, preparing and maintaining personal protective equipment (PPE) for employees who work in risky areas, etc. Such Ministerial Regulations also impose duties for employers to prepare and submit reports regarding their compliances to relevant authorities.

To observe and realise the implementation of safety measures under the laws by employers, OSHA stipulates that executives or chief workers of the establishments shall have the duty to support and collaborate with employers to comply with the OSHA regulations. Executives or chief workers are also obliged to inspect or give suggestions to employers to improve working conditions in business establishments to avoid the violation of the laws. In practice, safety or legal divisions inside many business establishments will create compliance checklists as their internal manuals to conveniently and routinely check their compliance with the laws.

### Third parties

- 8 | Does the employer owe a duty to protect the health and safety of third parties? If so, what is the nature and extent of this duty?

The duty of employers to maintain occupational safety, health and the environment is not limited to their direct employees, but also extends to any person who works or generates benefits for employers or business establishments even if such person is not directly hired by employers, such as, employees of third-party vendors who are dispatched to work inside the establishments, etc.

Additionally, operators of certain businesses or industries that are designated under the Ministerial Regulation prescribing the Standard for Administration and Management of Occupational Safety, Health and Environment of 2006 issued under OSHA, for example, factories, hotels and financial institutions, etc, are required to implement work safety regulation and manuals that specifically apply to outside contractors to ensure that their contractors observe the health and safety of employees under the same standard.

### Work premises

#### 9 | What is the nature and extent of the employer's duty to ensure safe work premises?

Under OSHA, the employer is obliged to maintain the occupational safety, health and environment of workplaces and to prevent any danger to employees' lives, bodies, mentality and health. This obligation applies to all workplaces and establishments where the employees work, regardless of whether or not such establishments are controlled or owned by the employers.

If multiple employers share the same establishment, all employers shall be required to cooperate and jointly maintain occupational safety, health and the environment in the establishment.

Apart from OSHA, facilities that must be installed inside the workplaces are also stipulated in other laws, for example:

- a business establishment must have first-aid rooms and number of toilets according to the number of employees under the Labour Protection Act of 1998;
- a smoking room must be installed to divide smoking and non-smoking areas under the Tobacco Products Control Act of 2017; and
- an office building that is deemed a large building under the law shall provide facilities to support accessibility for handicapped or elderly persons under the Building Control Act of 1979.

### Plant and equipment

#### 10 | What are the employer's duties and responsibilities regarding the provision of safe plant and equipment?

The employer's duties and responsibilities regarding the provision of safe plant and equipment are stipulated under the Ministerial Regulations issued under OSHA. Such Ministerial Regulations provide minimum standards for the arrangement of fixtures inside worksites to prevent accidents depending on the characteristics of particular worksites; for example, worksites that have machines in operation shall not have an entrance or exit less than 80 centimetres wide, or a curved mirror shall be installed at a corner or junction in worksites that have forklifts, etc.

In terms of safety equipment, personal protective equipment (PPE) that is provided for employees by employers must comply with the standard announced by the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW). Safety officers inside business establishments also have the legal duty to perform daily inspections of machines and tools in worksites to be in safe condition before starting their operation.

### Work systems, training and supervision

#### 11 | What are the employer's duties and responsibilities regarding the provision of safe work systems and adequate training and supervision?

Thai laws do not exactly mention or define the term 'safe work system', but by analogy, the concept of a safe work system is similar to safety regulations or manuals that appear under the OSHA regime. Under the Ministerial Regulation prescribing the Standard for Administration

and Management of Occupational Safety, Health and Environment of 2006 issued under OSHA, employers in specific establishments, such as factories, hotels or financial institutions, are required to have safety regulations for their establishments. Such regulation shall at least state procedures and instructions to ensure safety and to prevent any action that is likely to cause danger during works. Safety officers must also be stationed to be responsible for the planning and administration of safety regulations in the line of duty.

In terms of training and supervision, OSHA imposes the duty to any employer, regardless of its business or industry, to have its executives, chief workers and every employee undergo training on occupation safety, health and environment to realise the safety measure inside its establishment. Such training must be given to any newly hired employees, employees who are transferred from another position or another establishment, or when new machinery or equipment is introduced into the work line. The training must contain curriculums that comply with the standards under the laws.

In addition to general training, the law also requires the employer to provide special training courses for works that are prone to severe health risks, such as training courses for works in confined space, safety training for works that are related to electricity, etc. Upon the provision of these special courses, the employer shall record the names of employees who have passed the courses, as well as the names of the instructors, to present to the inspection authorities or to submit to the relevant authorities as required under the law.

### Accident response and reporting

#### 12 | What rules and requirements govern employers' response to and reporting of workplace accidents?

Under Thai law, employers' duty to report workplace accidents is stipulated in various laws depending on the objectives of the report, the nature of the accident and the place of accident, which are the responsibility of specific regulators. The main authorities who are responsible for receiving accident reports include:

- the DLPW: under OSHA, employers must report the details of the incident to the safety inspection authority in writing immediately or within a designated period when there is a serious accident or an employee faces any danger from work in business establishments;
- the Social Security Office: under the Workmen's Compensation Act, employers shall notify the occurrence of accident, sickness or disappearance of the employees to the local Social Security Office within 15 days of the date when the employer is aware of such incident or should have known of such incident;
- the Department of Industrial Works (DIW): under the provisions of the Factory Act of 1992 (the Factory Act), if the establishment of the employer is a factory and there is an accident in the factory, the employer shall report in writing the occurrence of:
  - any accident that caused casualty, sickness or injury to an employee in which such employee cannot resume his or her work within 72 hours after the accident; or
  - any accident that forced the factory to suspend its operation for more than seven days to DIW within the period designated by the Factory Act.

In addition to the laws above, employers are also required to report defects or malfunction in machinery or substances that will likely cause harm to employees even before the occurrence of an actual accident under special laws, for example, a defect or abnormality that is found within a nuclear reactor shall be reported to the Office of Atoms for Peace without delay and such reactor must be immediately shut down under the Nuclear Energy for Peace Act of 2016.

## Risk assessments

### 13 | What rules, requirements, procedures and best practices should employers be aware of when conducting occupational risk and hazard assessments?

Risk assessment is an important measure to manage and maintain occupational safety and the environment in the workplace. In this regard, OSHA imposes a duty upon employers to perform a risk assessment. However, types of business that require risk assessment and the period of assessment are not clearly defined by the law.

Due to the above reason, in practice, business establishments that are factories opt to perform risk and hazard assessment under the rules, requirements and procedures of the Factory Act, namely, the Regulation of Department of Industrial Works on Criteria for Hazard Identification, Risk Assessment, and Establishment of Risk Management Plan dated 17 April 2000. Establishments that are not factories may choose to adopt the Occupational Safety and Health Risk Assessment Standard published by the Thailand Institute of Occupational Safety and Health as a guideline.

## Disclosure and reporting requirements

### 14 | Are employers required to submit regular health and safety reports to the relevant authorities? If so, what is the nature and extent of this requirement?

Employers have the legal duty to conduct inspections and periodically submit health and safety reports to the relevant authorities, depending on the industry in question, the characteristics of the works and other conditions stipulated by law. The main authority responsible for receiving the report is the DLPW, the OSHA regulator. Examples of reports to be submitted to the DLPW include reports regarding:

- the operation of safety officers;
- health risks to employees in the case where dangerous chemicals are used; and
- measurement and analysis of working conditions for light, heat and noise volume in business establishments, etc.

In addition to the duty to submit reports to the DLPW, health and safety reports are also required to be submitted for particular types of establishment regulated under specific laws, for example, establishments that are factories shall be required to submit annual boiler safety inspection reports to the DIW under the Factory Act; establishments with liquid petroleum gas (LPG) storage must file LPG storage tank safety inspection reports to the Department of Energy Business under the Fuel Oil Control Act of 1999, etc. Due to the variety of regulators, employers should examine the laws that regulate their business to ensure that they have complied with report duties imposed by the responsible authorities.

## Provision of information to workers

### 15 | What requirements apply regarding the provision of health and safety information to workers?

The provision of health and safety information to workers is one of the important measures to maintain safety in business establishments. Employers have a duty to inform employees of any danger that may occur during work, and to distribute safety manuals to every employee upon hiring employees or the change of their positions or places of work.

In addition to general safety manuals, employers shall also provide additional safety information to employees whose work conditions are prone to specific risk stipulated by the laws (eg, safety manuals for works related to electricity, manuals for usage, inspection and maintenance for forklifts, training course of usage and maintenance of PPE, etc).

Regarding hazardous chemicals, employers have a duty to affix safety labels and prepare safety data sheets as well as to install warning signs in worksites related to dangerous chemicals under the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Dangerous Chemicals of 2013 issued under OSHA (the Ministerial Regulation on Dangerous Chemicals) and the Hazardous Substances Act of 1992 (the Hazardous Substances Act).

Apart from legal requirements, regulators charged with hazardous substances such as the DIW, the Food and Drug Administration and the Department of Livestock Development are now perusing to adapt to the Globally Harmonised System of Classification and Labelling of Chemicals to standardise the classification and level of hazard of chemicals under their jurisdiction.

## Insurance requirements

### 16 | What insurance must employers carry to cover liability for occupational health and safety risks?

Under Thai law, employers have no legal obligation to take on any insurance liability for occupational health and safety risks. Instead, the compensation scheme under the Workmen's Compensation Act provides a similar function to insurance for employees. Under the said Act, any employer who hires one or more employees shall be obliged to pay its contribution to the workmen's compensation fund. The workmen's compensation fund is a state-organised fund established under the Workmen's Compensation Act and will compensate employees for injury, sickness or death in the course of employment.

Although there is no legal obligation for employers to take on any insurance liability for occupational health and safety risks, in practice many companies choose to voluntarily take on a risk insurance policy or group insurance for employees as a form of welfare. Further, prominent insurance companies in Thailand also offer various policies to suit the need and size of businesses.

## Other duties and responsibilities

### 17 | Are employers subject to any other notable health and safety duties and responsibilities in your jurisdiction?

Apart from OSHA, which is the main regulation that imposes the duty for employers to maintain occupational safety, health and environment in workplaces, many regulations in Thailand impose additional duties upon employers depending on the characteristics of the businesses and related machines or substances. For example, employers whose establishments are factories shall be obliged to comply with safety regulations under the Factory Act; establishments that possess radiation-generating devices must comply with the regulations in the Nuclear Energy for Peace Act of 2016; employers who are importers/manufacturers, transporters or possessors of hazardous substances shall comply with the Hazard Substances Act. Local governments in each municipality may also be authorised to issue safety or cleanliness ordinances within each area under the laws related to cleanliness or town planning.

## WORKER DUTIES, RIGHTS AND RESPONSIBILITIES

### Primary duty

### 18 | What is the nature and extent of a worker's duty to protect their own and others' health and safety under the relevant legislation and regulatory framework?

Under the Occupational Safety, Health and Environment Act of 2011 (OSHA), employees shall have the duty to cooperate with employers in implementing and promoting occupational safety, health and

environment during works. However, OSHA imposes no penalty on an employee who fails to give his or her cooperation. In practice, however, compliance to the employer's safety measure will be generally included as the employee's duties in work rules. Thus, failure to comply with the safety measure in work rules may result in disciplinary action or the employment termination of the employee.

### Consultation and collaboration with employers

19 | Are workers in your jurisdiction entitled or required to consult and collaborate with their employer in relation to the development and implementation of health and safety measures and policies?

In principle, the duty to designate health and safety measures and policy shall belong to employers. Certain types of business establishments such as factories, hotels or department stores are required by OSHA to appoint responsible employees to become safety officers and a committee for operational safety, health and the environment in workplaces. In such establishments, the appointed safety officers and committee have the duty to consult and collaborate with their employer concerning the development and implementation of health and safety measures and policies. In this regard, the capacity of safety officers and their duty will depend on the ranks they have been appointed. Specifically, safety officers who are ranked from a technical level or above are required to designate preventive measures and safe working procedures and then proposed them to the employer. The safety committee in each establishment will be responsible for considering safety measures and working plans and then proposed them to employers. The scope of safety plans adopted in business establishments may extend to matters that are not directly related to the prevention of accidents (eg, the prevention of work-related sickness or nuisance, etc).

### Trade unions

20 | What role do trade unions play in protecting occupational health and safety in your jurisdiction?

In principle, the main objectives of trade unions are in accordance with the Labour Relations Act of 1975, namely:

- to protect and seek benefits for employees who are members of a trade union; and
- to represent and act on behalf of the employees when negotiating with the employers for the benefit of the employees.

Trade unions can also participate in the investigation of workplace accidents or cooperate with the employer to prevent accidents.

Historically, trade unions in Thailand played a significant part in establishing basic rights for workers, such as maternity leave and the social security system. However, movements by trade unions to improve working environments have gradually faded in recent years, and the role of trade unions is often limited to negotiations with employers on wage increases, bonuses and welfare.

### Whistle-blowing

21 | Are workers afforded any legal protections against reprisals for whistle-blowing in relation to occupational health and safety risks?

Presently, Thailand has no specific law on whistle-blowing concerning occupational health and safety risks. However, the measure to protect employees who filed a complaint against reprisals can be found in the work rules of many companies. Although the law does not require employers' work rules to have the protection measure for whistle-blowers in place, in practice, work rules in many companies and the

template work rules recommended by the Department of Labour Protection and Welfare under the Ministry of Labour contain a standard provision that an employee who files a petition, gives a statement, information or becomes a witness or becomes members of the disciplinary panel, shall not receive retaliation by dismissal, punishment or any negatives actions from the employers, provided that he or she has faithfully filed the petition or given the statement or performed his or her duty on the disciplinary panel.

Further, OSHA prohibits employers to dismiss an employee or change the employee's work position if such employee filed a lawsuit, becomes a witness or gives statements on operational safety and the environment in workplaces to the safety inspection authority or official committees established under OSHA or the courts.

### Right to refuse work

22 | Do workers have the right to refuse work or seek reassignment in hazardous situations?

Thai laws do not stipulate the right to refuse work or seek reassignment in hazardous situations as a general principle. The right to refuse work or seek reassignment in hazardous situations can be found only in specific cases under the law. For example, under the Labour Protection Act of 1998, a pregnant woman is allowed to submit a pregnancy certificate to her employer to be temporary assigned to another position either before giving birth or after giving birth if the current position is not suitable for her condition, and the employer shall consider such request to assign the employee to a more suitable position.

Several Ministerial Regulations issued under OSHA regarding risky working conditions also address the right to refuse work, for example, under the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Confined Space Work of 2019, an employee who works in a confined space may refuse to work in a certain mission if he or she views that an appropriate safety measure has not been prepared for such mission.

## HAZARDS AND RISKS

### Hazardous substances and chemicals

23 | What occupational health and safety rules govern the handling and use of hazardous substances and chemicals? What are the practical implications of these rules?

The main laws governing the handling and use of hazardous substances and chemicals are the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Dangerous Chemicals of 2013 (the Ministerial Regulation on Dangerous Chemicals) issued under the Occupational Safety, Health and Environment Act (OSHA) of 2011 and the Hazardous Substances Act of 1992 (the Hazardous Substances Act). In this regard, the Ministerial Regulation on Dangerous Chemicals focuses on imposing a standard for the employer upon the usage and storing of dangerous chemicals to prevent harm against its employees while the Hazardous Substances Act focuses on imposing the duties to obtain licences for manufacturing, importing, export, possessing and advertising relegated chemicals.

Since the regulations on hazardous substances and chemicals are governed by the two main laws mentioned above, the same types of chemicals can be regulated by both laws and have the same duties under these laws. In such cases, business operators involved in regulated chemicals are required to create safety data sheet or report to relevant authorities under both laws; in other words, chemicals regulated under OSHA shall be reported to the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW), while the same chemicals

that are also regulated under the Hazardous Substances Act shall also be reported to the Department of Industrial Works or other authorities who are in charge of the hazardous substance.

Further, hazardous substances or dangerous chemicals that can be used as weapons components such as chlorine are also regulated under the Weapon Control Act of 1987 and require a licence to possess. The Transportation of hazardous substances is also subjected to regulation under the Land Transport Act of 1979.

### Heavy machinery

#### 24 | What occupational health and safety rules govern the operation of heavy machinery? What are the practical implications of these rules?

No law particularly governs the operation of heavy machinery in Thailand. The operation of machinery, in general, will be governed by the Ministerial Regulation prescribing the Standard for Administration and Management of Occupational Safety, Health and Environment relating to Machines, Cranes and Boilers of 2009 (the Machines, Cranes and Boilers Ministerial Regulation). Specifications of cranes that are regulated under the Ministerial Regulation also include large-size cranes that can be deemed as heavy machinery. The duties of employers upon the operation of cranes will depend on their lifting capacity. For example, cranes used in construction work that have more than three tons of safe working load require inspection every three months, while cranes with smaller loads require inspection every six months.

Machinery related to construction work such as pile drivers or drilling machines can be subject to the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of the Occupational Safety, Health and Environment relating to Construction Work of 2021. The said Ministerial Regulation imposes safety measures especially for works on construction sites, for example, after a pile driver has been installed on the site, the employer must arrange to have an engineer inspect the pile driver before operation.

### General machinery

#### 25 | What occupational health and safety rules govern the operation of general machinery in the workplace?

The main law that governs the operation of general machinery in the workplace is the Machines, Cranes and Boilers Ministerial Regulation issued under OSHA. Such Ministerial Regulation imposes safety measures for general machinery, such as pressing machines, as well as heavy machinery such as cranes and boilers. The safety measures include measures to prevent danger towards machine operators and also to eliminate the risk of accidents at the locations where machines are installed by requiring employers to designate hazard zone at places near the machines.

The Machines, Cranes and Boilers Ministerial Regulation also imposes machine guarding requirements such as requiring machines that use electricity must install an earth wire, or machines that have conveyers or moving wheels that are more than two metres tall must install barriers to prevent contact with the dangerous parts.

### Lock-out and tag-out

#### 26 | What occupational health and safety rules govern how employees are protected while performing service and maintenance on machinery and equipment? Any there any exceptions to these rules?

At present, several Ministerial Regulations issued under OSHA mention lock-out and tag-out, which include:

- the Ministerial Regulation prescribing the Standard for Administration and Management of Occupational Safety, Health and Environment relating to Machines, Cranes and Boilers of 2009;
- the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Confined Space Work of 2019; and
- the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Electricity of 2015

Under these Ministerial Regulations, lock-out and tag-out will be performed to cut off electricity sources from machines or to prevent any person from reaching the engine switches to avoid any accidental operation and to prevent danger to employees while performing service and maintenance on machinery and equipment.

### Ergonomic risks and eye strain

#### 27 | What rules and measures apply to manage ergonomic risks and eye strain in the workplace?

Under the Labour Protection Act of 1998 (the Labour Protection Act), the maximum weight that the employer may order an employee to lift by physical force must not exceed the average weight designated under the Ministerial Regulation issued under the Labour Protection Act. At present, the Ministerial Regulation of the Ministry of Labour on Maximum Allowable Weight of Lifting of 2004 stipulates the allowable weights as follows:

- a female worker from 15 to 18 years of age: 20 kilograms;
- a male worker from 15 to 18 years of age and a female worker from 18 years of age: 25 kilograms; and
- a male worker from 18 years of age: 50 kilograms

If the lifting weight is above the allowable weights, the employer must provide an appropriate labour-saving device to employees. As for other ergonomic risks, Thai laws impose no legal duties for the employer to carry out any measure or management to reduce such risk. In practice, the employer may voluntarily choose to adopt a corporate guideline or Ergonomics Standard on Manual Materials Handling issued by the Thailand Institute of Occupational Safety and Health (TOSH).

For the protection of eye strain in the workplace, the employer shall maintain the establishment by ensuring that it does not have an illuminance volume less than the level designated by law. In the case of works that involve light sources or sunlight with significant glare, the employer must provide employees with suitable protective equipment at all times during work or provide appropriate lighting in the case of works in dark places. The employer must also measure and analyse the illuminance volume in the workplace and submit an annual report to the DLPW under the Ministerial Regulation prescribing the Standard for the Administration and Management of Occupational Safety, Health and Environment relating to Heat, Light and Noise of 2006 issued under OSHA (the Ministerial Regulation on Heat, Light and Noise).

### Noise and temperature

#### 28 | What rules and measures apply to manage risks arising from workers' exposure to noise and temperature extremes?

Employers have the duty to control noise and heat in the establishment to not exceed the volume designated by law. If the noise or heat is above the allowable level and there is no method to reduce such effect, employers shall provide employees with protection gear and instruct employees to wear such gear at all times. If the average volume of noise during eight hours of work is above 85dB(A), employers shall also designate hearing conservation measures in workplaces.

Additionally, employers in certain types of business designated in the Ministerial Regulation on Heat, Light and Noise issued under OSHA are also required to measure the level of noise and heat in their business establishment and shall submit reports to the DLPW annually.

### Fire risks

29 | What rules, restrictions and procedures govern the assessment and management of fire risks in the workplace?

The assessment and management of fire risks in the workplace are mainly governed by the Ministerial Regulation prescribing the Standard for Administration, Management and Operation of Occupational Safety, Health and Environment relating to Fire Prevention and Control of 2012 issued under OSHA. Under this Ministerial Regulation, an employer whose business establishment has more than 10 employees shall have a fire safety emergency plan. This emergency plan shall include fire monitoring measures, safety training, fire extinguisher instruction, evacuation plan and remedy. In terms of the installation of fire protection equipment such as fire extinguishers or water reserves, etc, employers must evaluate the fire risk in their area on a self-evaluation basis and the result from this self-evaluation will determine the level of equipment that must be installed.

Additionally, if employers are owners of buildings where business establishments are located, these employers also have duties to prevent fire risk under building-related laws. For example, under the Building Control Act of 1979, buildings of 10,000 square metres or more are required to install fire protection systems inside them and have annual inspections performed to maintain the equipment.

### Psychiatric harm from stress, abuse and violence

30 | What rules and measures apply to prevent and address psychiatric harm arising from workplace stress, abuse and violence?

OSHA vaguely addresses psychiatric harm arising from workplace stress, abuse and violence by stipulating that the duty of employers is to support and promote the work operation of employees to prevent them from physical, mental and health harm. However, in practice, there are no specific rules or measures to prevent and address such psychiatric harm. Any individual who inflicts psychological damage to another person may be subject to a petty offence under the Criminal Code for threats or humiliation in public.

### Special categories of worker

31 | Are there any notable rules or procedures providing additional health and safety protection to special categories of worker?

For special categories of workers, for example, child workers, female workers and pregnant workers, they are specifically protected under the Labour Protection Act and shall be prohibited from certain dangerous works (eg, child workers are prohibited from metal smelting, blowing, casting or forging works; female workers are prohibited from mining or construction work that must be done underground, underwater, in a cave, tunnel or mountain shaft, unless the characteristics of the work do not pose a hazard to the health or the body of the female employees; and pregnant workers are prohibited from work connected with vibrating machinery or engines).

Currently, Thailand has yet to announce any mandatory specific health and safety protection for older workers and workers with disabilities but these workers may be entitled to accessible facilities that are specially designed for handicapped and elderly persons set out under the building control laws and the laws on empowerment of persons with

disabilities. However, since the number of Thailand's ageing population is growing, an announcement from the Ministry of Labour of 8 March 2019 called on employers not to assign work that may cause a hazard to health and safety to the elderly workers.

### Other hazards and risks

32 | Are there any notable rules, restrictions or procedures applicable to other occupational hazards and risks in your jurisdiction?

Apart from OSHA, specific occupational hazards and risks can be addressed by other laws related to specific industries or characteristics of workers, for example:

- the Occupational Diseases and Environmental Diseases Control Act of 2019;
- the Fuel Oil Control Act of 1999;
- the Nuclear Energy for Peace Act of 2016;
- the Labour Protection in Fisheries Act of 2019; and
- the Protection of Employee in Home-based Work Act of 2010.

## ENFORCEMENT

### Inspections and investigations

33 | What rules and procedures govern the enforcement authorities' inspection of workplaces and investigation of employers for health and safety violations?

Under the Occupational Safety, Health and Environment Act of 2011 (OSHA), a safety inspection authority appointed under OSHA is empowered to enter an establishment or office of an employer during working hours or when there is an incident, to inspect the working conditions, machinery or equipment, or to enquire about facts or investigate any matters within the scope of power. If any health and safety violations are found, the safety inspection authority has the power to order such person to stop such violating acts or to rectify, improve or comply accurately or properly within the prescribed time.

### Cooperating with authorities

34 | What best practices and practical considerations should employers bear in mind when cooperating with and responding to inspections and investigations by the health and safety authorities?

Upon an ordinary inspection performed by safety inspection authorities, officers will request documents or evidence of employers' compliance with the laws. Officers are also authorised under OSHA to take photographs, a statement from employees as well as to issue instructions and warnings to employers. It is strongly recommended for employers to adhere to the official instruction or warning to reduce any scrutiny from a law enforcement officer. Before imposing the actual criminal penalty upon the employer, a law enforcement officer may order an official warning and designate a time frame for the employer to rectify its violation. Once the employer complies with the order within the time frame, the criminal charge against the employer will be dropped according to OSHA.

Further, in the case that the employer fails to adhere to the official warning and the employer's violation may cause imminent danger, the Director-General of the Department of Labour Protection and Welfare under the Ministry of Labour (DLPW) is authorised to order officers or any person to enter the employer's establishment to enforce the official order to eliminate the danger. In such a case, the employer must be responsible for all actual expenses incurred by the authority.



## Penalties and notices

### 35 | What administrative penalties and notices may the authorities impose on employers for health and safety violations? Can these be appealed?

Under OSHA, if any health and safety violation is found, a safety inspection authority shall have the power to order such person to stop such violating acts or to rectify, improve or comply accurately or properly within 30 days. Such time frame can be extended no more than twice. Also, if necessary, upon the permission of the Director-General of the DLPW, or a person entrusted by the Director-General, the safety inspection authority may order to stop the use of the machinery, equipment, premises or to bind and seal items that may cause severe danger to employees, in whole or in part, until the employer has rectified and improved in compliance with the order of the safety inspection authority.

The appeal against such order of safety inspection authority may be lodged by the employer to the Director-General of the DLPW or the official committees established under OSHA, as the case may be, within 30 days from the date of acknowledgement of the order. The Director-General of the DLPW or the official committee, as the case may be, shall decide the appeal within 30 days from the date of receipt and the decision thereof shall be final.

## Civil liability

### 36 | What is the extent of the employer's civil liability for health and safety violations? Can this liability be limited in any way? What defences apply?

Presently, OSHA imposes no civil liability for health and safety violations. However, if such a violation causes any damage, the victim may be entitled to claim compensation by tort liability under the Civil and Commercial Code. To seek indemnification from the proprietors, the victim has a burden to prove that the proprietor's actions:

- were wilful or negligent;
- were unlawful;
- resulted in injury; and
- resulted in damages caused by such an unlawful act.

Moreover, if such violation concerns a pollution leak, the employer, as the owner of the pollution source, may be subject to civil liability against the employee, any third party or the state under the Enhancement and Conservation of the National Environmental Quality Act of 1992 regardless of whether such pollution is the result of a wilful or negligent act of the employer, except the case of:

- force majeure;
- acting under the instruction of the government; and
- when the pollution is caused by a third party.

In principle, tort liability cannot be limited and the liable party shall be required to pay compensation as proven by the victim and ordered by the court. The amount of compensation can be settled between the proprietor and the victim by an in court-agreement, given that such amount is fair and appropriate to restore the damage.

## Criminal liability

### 37 | May employers be criminally liable for health and safety violations? What defences apply?

Employers' failure to comply with OSHA as well as any Ministerial Regulations and official notification issued thereof will be subject to criminal penalties under OSHA. It must be noted that the criminal penalties under OSHA are considerably high compared to other laws

of similar nature. Some offences under OSHA can be settled by fine payment and criminal charges will be dismissed once the fine is paid.

If any violation of the law is discovered by the inspection authority, officers may choose to issue a warning to the employer before imposing a criminal penalty upon the employer. The employer who can comply with the officer's warning and rectify its violation within the designated time frame will be released from criminal charges according to section 43 of OSHA.

It can be relatively difficult for employers to defend themselves against OSHA violation charges, even if the accident might be caused by employees' own negligence. This is because employers are obliged to monitor and supervise their employees to follow safety instructions and accidents can be viewed as the result of employers' failure to perform their supervising duty. On the other hand, employers may defend themselves from liability if it can be proven that employers have used their best effort to prevent the accident, for example, the employer has issued a warning against an employee who fails to wear protective equipment or suspend such employee from working, but the employee still ignores the instruction.

## Director and officer liability

### 38 | To what extent may company directors and officers be held liable for health and safety violations?

Under section 69 of OSHA, if the violator of the law is a legal person and such violation is caused by orders or actions, or from failure to give order or omission of duties that must be performed by the managing director or responsible person in the juristic person, such as an authorised director in a company or a supervisor in charge, etc, the said person shall be liable for the same penalty as the juristic person.

## UPDATE AND TRENDS

### Recent developments

### 39 | What have been the most significant recent occupational health and safety developments in your jurisdiction, including any notable court decisions and regulatory actions?

In recent years, the government ratified International Labour Organisation (ILO) Convention No. 187 on the Promotional Framework for Occupational Safety and Health 2006, which came into force on 23 March 2017 and ILO Convention No. 188 on Work in Fishing 2007, which came into force on 30 January 2020. ILO Convention No. 187 is an international labour standard concerning health and safety in the workplace, while ILO Convention No. 188 is an international labour standard concerning health and safety regarding work in the fishing sector. Due to such rectifications, Thailand, as a ILO member state, is committed to improving working and living conditions for workers in compliance with the relevant ILO conventions that appeared in a Statement of the National Agenda Decent Safety and Health for Workers – Phase II 2017–2026) and the 2nd National Master Plan on Occupational Safety, Health and Environment – Phase II 2017–2026), announced by the government. Moreover, Thailand has enacted the Labour Protection in Fisheries Act of 2019 to comply with ILO Convention No. 188.

**Covid-19**

40 | What occupational health and safety measures have the authorities in your jurisdiction taken in response to the covid-19 pandemic? How have employers complied with these measures to protect their employees?

During the covid-19 pandemic, authorities in Thailand have issued many regulations and guidelines for employers and business operators to deal with the crisis. For example, Guideline in monitoring and the protection against the widespread of covid-19 in the workplace issued by the Department of Labour Protection and Welfare or the Guideline for the business operator concerning covid-19 issued by the Department of Disease Control. These guidelines have similar content (eg, the assessment before entering into the workplace and social distancing). As these guidelines have no enforcement, employers may pick and choose any topic in the guidelines for adoption in their workplace. In practice, it is apparent that many employers tend to comply with the guidelines announced by authorities to prevent the suspension of their business due to infections in workplaces.

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