



Failure of Duty Holders – A Legal Perspective

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WSH Symposium



Failure of Duty Holders – A Legal Perspective

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Legislation in Singapore

- ▶ **Law covering workplace safety and health**
 1. Work Injury Compensation Act
 2. **Workplace Safety and Health (WSH) Act**



What is this Workplace, Safety and Health Act?



- ▶ Legislation in Singapore
 - ▶ Addresses Requirements for Safety and Health in Singapore's workplaces.
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Reasons for incorporating the WSH Act

- ▶ Workplace Tragedies in 2004
- ▶ Collectively claimed 13 lives
 1. Nicoll Highway
 2. Ahmudina Flash Fire
 3. Accident at Fusionpolis



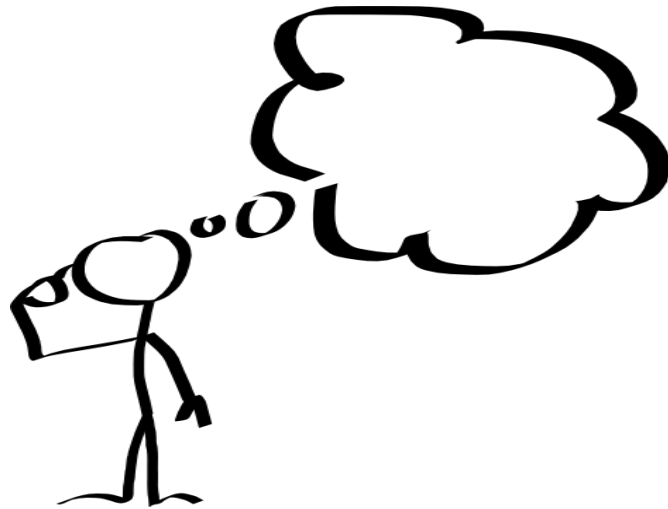
- ▶ Fundamental reforms to improve safety at the workplace
- ▶ Replaced Factories Act in 2006



What is a workplace?



- ▶ A place where a person carries out work or is to work
- ▶ Factories



Principles of the WSH Act

1. Reduce risk **at the source** by requiring **all stakeholders** to *remove or minimize the risk* they create
2. Encourage industries to **adopt greater ownership** of safety and health outcomes
3. Impose **higher penalties** for *poor safety management and outcomes*

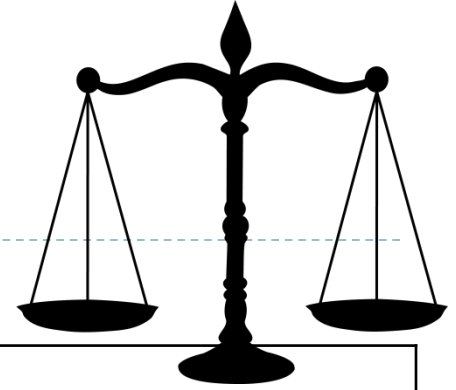


Who does it cover?

- ▶ All workplaces, *unless exempted*
- ▶ **Occupiers**
- ▶ **Employers**
- ▶ **Principals**
- ▶ **Self-Employed Persons**
- ▶ Suppliers
- ▶ Manufacturers
- ▶ Designers
- ▶ Persons at work



Occupiers



- ▶ Entrenched in Section 11 of the WSH Act

Duties of Occupiers of Workplace

11. It shall be the duty of every occupier of any workplace to take, **so far as is reasonably practicable**, such measures to ensure that –

- (a) The workplace;
- (b) All means of access to or egress from the workplace and
- (c) Any machinery, equipment, plant or article or substance kept on the workplace,

Are safe and without risks to health to every person within those premises, whether or not the person is at work or is an employee of the occupier

Who is an **Occupier**?



- ▶ Person who holds certificate of registration / control of the premises
- ▶ In essence, duty to ensure that the workplace, pathways, machinery are safe and do not pose a risk to anyone within premises
- ▶ Responsible for common areas used by employees and contractors (i.e electric generators, hoists and lifts, entrances)

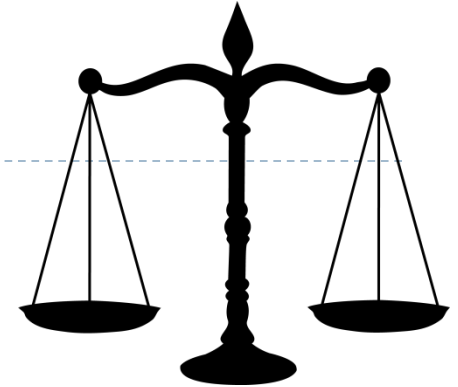


What is meant by *reasonably practicable*?



Duties of **Employers**

- ▶ Entrenched in Section 12 of the WSH Act



Duties of Employers

12. – (1) It shall be the duty of every employer to take, **so far as is reasonably practicable**, such measures as are necessary to ensure the safety and health of his employees at work



Employers



- ▶ Conduct risk assessments
- ▶ Make sure work environment is safe, adequate safety measures are taken for any articles used
- ▶ Develop and implement systems for dealing with emergency
- ▶ Ensure workers are provided sufficient instruction and supervision to work safely



Liabilities & Penalties under the Workplace Safety and Health Act



Higher penalties

▶ Penalties under WSH Act

Type of offender	Maximum fine	Maximum imprisonment	Conditions
Individual	First conviction: \$200,000 Repeat offender: \$400,000	2 years	Either or both
Corporate body	First conviction: \$500,000 Repeat offender: \$1 million	N.A.	N.A.



Application of the **WSH Act** in Singapore Law



Case 1: PP v ABC

- ▶ The accused is a sole proprietor of a frozen food supplier business.
 - ▶ He operates a cold room where the frozen food are stored.
 - ▶ Within the cold room, there were various metal racks reaching 7m height.
 - ▶ At 4:30hrs, an employee decided to climb up the rack instead of using a ladder to retrieve a box of frozen chicken.
 - ▶ While descending, the said employee slipped and fell from a height of about 1.75m to the ground. He eventually died in the hospital.
 - ▶ There were no handholds or footholds on the rack for support but there were ladders, non-slip boots, forklifts provided.
 - ▶ Accused was charged as **occupier**.
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Case 2: PP v DEF

- ▶ The accused company is in the business of building construction.
 - ▶ The accused company was engaged by the Land Transport Authority (LTA) to design and construct the station boxes and tunnels.
 - ▶ The accused company subcontracted the earthworks.
 - ▶ A worker employed as an excavator operator by the subcontractor was tasked to remove, by hacking, an overhead concrete block.
 - ▶ At 3:30hrs, the said worker walked underneath the said concrete block in order to reach the open area for his break.
 - ▶ A part of the concrete block suddenly fell on the said worker and he was crushed to death.
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Case 2: PP v DEF

- ▶ The hazard posed by the unsupported concrete block was unknown to the accused company prior to the accident.
- ▶ The accused company had issued a Permit-To-Work (PTW) for the above demolition works and allowed the works to proceed.
- ▶ Both the accused company and construction manager were charged.



Case 3: PP v GHI

- ▶ The accused company is in the business of building construction.
- ▶ The accused company was engaged to erect an 11-storey tower and an 18-storey tower.
- ▶ The accused company wanted to move the loading platform from Tower B level 10 to Tower A level 8. At the same time, the structural sub-contractor requested the accused company's help to move an air compressor (using the loading platform) from Tower A level 7 to Tower A level 8.
- ▶ Five workers of the accused company were instructed by the foreman to load the air compressor onto the loading platform at Level 7 of the tower.



Case 3: PP v GHI

- ▶ The loading platform was not installed at Level 7 but suspended at the edge of Level 7 by a tower crane.
- ▶ When the air compressor was loaded onto the loading platform, it rolled away from the edge of the building, which caused the loading platform to tilt.
- ▶ Two workers who were in the path of the air compressor, could not move away in time and fell out of the loading platform together with the air compressor. Both workers died.
- ▶ The accused company was charged as an Employer.



How are fines determined?

Sentencing Guidelines

I. Principle Factors:

- a. The culpability of the offender; and
 - i. The number of breaches or failures in the case;
 - ii. The nature of the breaches;
 - iii. The seriousness of the breach – minor departure from/ complete disregard of established procedure;
 - iv. Whether the breaches were systemic or part of isolated incident; and
 - v. Whether the breaches were intentional, rash or negligent.
- b. The harm that could potentially have resulted
 - i. Seriousness of the harm risked; and
 - ii. Likelihood of the harm arising.



How are fines determined?

Sentencing Guidelines

		Culpability		
		High	Medium	Low
Potential for harm	High	\$300,000 - \$500,000	\$150,000 - \$300,000	\$100,000 - \$150,000
	Medium	\$100,000 - \$150,000	\$80,000 - \$100,000	\$60,000 - \$80,000
	Low	\$40,000 - \$60,000	\$20,000 - \$40,000	Up to \$20,000



How are fines determined?

- ▶ Key Learning Points?
- ▶ Potential for harm for “*fall from height*” accidents is likely to be “*High*”.
- ▶ Stakeholders can reduce the “*Culpability*” factor by taking the appropriate preventive measures.



Different fine regime for different stakeholders

- ▶ Range of fines imposed for workplace fatal accidents for year 2017.
 - ▶ Against Occupier: S\$75,000 to S\$220,000
 - ▶ Against Employer: S\$95,000 to S\$400,000



In summary, the Act...

1. Places responsibility on stakeholders who have it within their control to ensure safety at the workplace
2. Focuses on workplace safety and health systems and outcomes, rather than merely on compliance
3. Facilitates effective enforcement through issuance of remedial orders
4. Imposes higher penalties for non-compliance and risky behavior



THANK YOU

