

Duties of Occupier of Premises

Occupier of premises means a person who has any degree of control over the premises where a workplace is located. If an employee's workplace is located on premises that are not under the control of his employer, occupier of the premises has the duties to ensure that the premises, the means of access to and egress from the premises and any plant or substances kept at the premises are, so far as reasonably practicable, safe and without risks to health.

For example, the consignment counters selling proprietary products in an emporium, where the sales persons are not employees of the emporium, the persons' safety and health at work shall be the responsibility of their employer while operator of the emporium shall have the duties of occupier of the premises. The operator shall have the duties to make overall arrangements for safety and health at the premises like fire prevention, means of escape, ventilation, first aid, sanitary facilities etc.

Duties of Employees

An employee must so far as reasonably practicable, take care for the safety and health of himself and of other persons who are at the workplace. He must also co-operate with his employer or other person so far as may be necessary to enable safety and health requirements are complied with.

“Reasonably Practicable”

“So far as reasonably practicable” must assess, on the one hand, the risks of a particular work activity or environment and on the other hand, the physical difficulties, time, expenses and even “trouble” which would be involved in taking steps to avoid the risks.

3

Improvement Notice and Suspension Notice

The Commissioner for Labour may serve on employer or occupier

- 1 Improvement Notice requiring the rectification of contravention against safety legislation within specified period ; and
- 2 Suspension Notice requiring suspension of an activity or use of premises or of any plant or substance where there is imminent risk of death or serious bodily injury.

Employer or occupier served with a Suspension Notice has the right of applying to the Commissioner for a review. He may also appeal to the Administrative Appeals Board if he is affected by the decision of the Commissioner. However, during the review or appeal, the Suspension Notice remains in force.

Reporting Workplace Accidents and Other Matters

Workplace Accidents

Responsible person of a workplace is required to notify workplace accidents.

For accident that causes the death of, or serious bodily injury to an employee, he is required to:

- notify an occupational safety officer of the Labour Department within 24 hours after the accident and follow it with a written report within 7 days after the date of the accident if no written notification has ever been given.

For accident that results in the employee being incapacitated from working for at least 3 days, he is required to :

- report the accident in writing to an occupational safety officer of the Labour Department within 7 days after the date of the accident.

4

Serious bodily injury includes any bodily injury that results in the victim's admission at a hospital or clinic for treatment or observation.

Written report of accident is not required if notice of the accident has been given within the specified period in accordance with Section 15 of the Employees' Compensation Ordinance (Cap 282).

Dangerous Occurrences

The occupier of premises where a workplace is located is required to report Dangerous Occurrence occurred at the workplace to an occupational safety officer of the Labour Department. The report must be in writing and lodged within 24 hours after the Dangerous Occurrence.

Notifiable Occupational Diseases

A medical practitioner who finds or suspects that an employee is or was suffering from a notifiable occupational disease and believes that the disease was or may have been attributable to the occupation of the employee must notify his finding or suspicion to the Commissioner as soon as practicable.

Occupational Safety Officers

Each Occupational Safety Officer of the Labour Department is issued with a certificate of authority by the Commissioner for Labour. He is empowered to enter and inspect premises being used as a workplace without warrant and to —

- seize any article he believes to be evidence of contravention of the Ordinance;
- conduct tests and examinations and take photographs of any plant or substance found on the premises;
- take samples of substance for analysis;

5

- require occupier of the premises or employee to provide such assistance or facilities as may be necessary for him to perform his duties;
- require person found on the premises to produce for inspection his identity card;
- require the production for inspection records relating the safety and health of employees;
- request a person to provide relevant information;
- require the exhibition of specified notice in a workplace;
- make copies of all or any part of records or statement.

A person commits an offence for refusing to give information, or giving false or misleading information to an occupational safety officer. It is also an offence to obstruct or delay an occupational safety officer who is performing his functions under the Ordinance.

Miscellaneous

It is an offence under the Ordinance for:

- 1 a person to interfere with, or misuse, an article provided for the safety or health of employees.
- 2 an employer to impose a charge on his employees for anything done or provided under or for the purpose of the Ordinance.
- 3 a person to prevent, obstruct or delay the giving or receiving of aid in respect of an illness or injury of an employee at a workplace.

Penalty

An employer or occupier who commits an offence under the Ordinance is liable on conviction to a maximum fine of \$500,000 and imprisonment for 12 months.

An employee or other person who commits an offence under the Ordinance is liable on conviction to a maximum fine of \$50,000 and imprisonment for 6 months.

6

Workplace Codes of Practice

The Commissioner may issue codes of practice for the purpose of providing practical guidance to employers and employees, and to occupiers of workplaces. A code of practice may consist of a code, standard, rule, specification or provision relating to occupational safety and health approved by the Commissioner.

The Commissioner will publish in the Gazette notice of the issue, amendment or revocation of workplace codes of practice.

A person does not incur a civil or criminal liability for failing to observe any provision given in a workplace code of practice. However, a code is admissible as evidence in legal proceedings in the determination of whether or not a person has breached any of the provisions of the Ordinance to which the code relates.

Enquiry

This pamphlet is written as simple as possible in order that you can easily understand. In case of any inconsistency with the Ordinance, the Ordinance itself shall prevail.

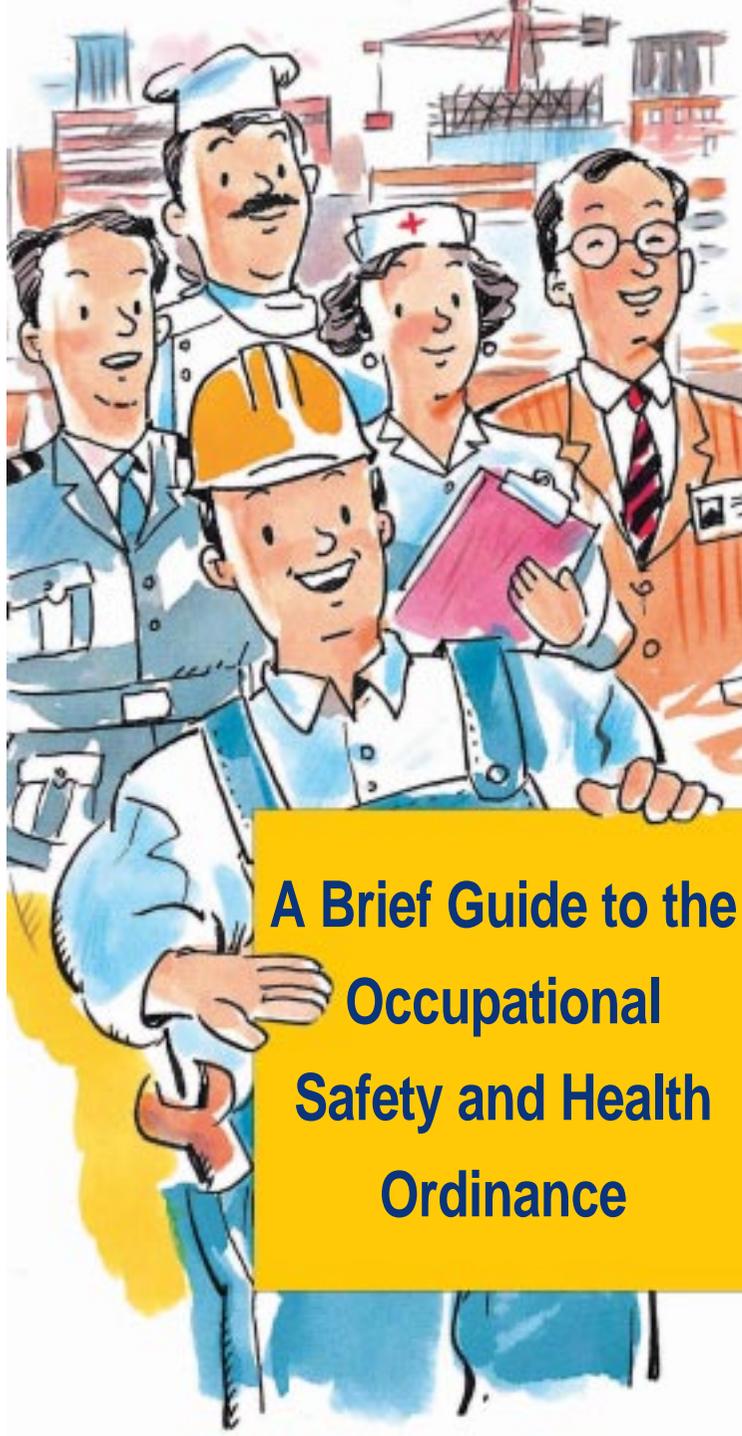
Enquiry Service

Telephone : 2559 2297

Fax : 2915 1410

E-mail : enquiry@labour.gov.hk

Information on the services offered by the Occupational Safety & Health Council can be obtained through hotline 2739 9000.



Purposes of the Ordinance

- 1 To ensure the safety and health of employees when they are at work;
- 2 To prescribe measures that will make the workplaces of employees safer and healthier for them;
- 3 To improve the safety and health standards applicable to certain hazardous processes, plant and substances used or kept in workplaces; and
- 4 To improve the safety and health aspects of working environments of employees.

The Ordinance is applicable, with only a few exceptions, to all employers and occupiers of premises where workplaces are located. It also binds the government. Domestic premises where the only employees are domestic servants, and places where only self-employed persons work are not workplaces under the Ordinance.

An employee is at work only during the time when he is actually at a workplace. An employee is not regarded at work when he is being conveyed as a passenger in a car, ferry or other vehicle in circumstances no different from that of an ordinary passenger.

This pamphlet outlines some of the major provisions of the Occupational Safety and Health Ordinance in order to let you have a preliminary understanding of the Ordinance. If you wish to know more about the Ordinance, you can either refer to the original text or contact the Occupational Safety and Health Branch of the Labour Department. Enquiry numbers of the Occupational Safety and Health Branch are at the back of this pamphlet.

General Duties of Employers

Every employer must, so far as reasonably practicable, ensure the safety and health at work of all his employees. His duties include:

- 1 provide and maintain plant and system of work that are safe and without risks to health;
- 2 make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant or substances;
- 3 provide information, instruction, training and supervision as may be necessary to ensure the safety and health at work;
- 4 maintain workplace including the means of access to and egress from the workplace in a condition that is safe and without risks to health; and
- 5 provide and maintain workplace and working environment that are safe and without risks to health.

Corrigendum to A Brief Guide to the Occupational Safety and Health Ordinance

(1st edition)

(23 June 2023)

Item	Page	Current Version	Amendment
1	6	<p>Miscellaneous</p> <p>Penalty</p> <p>An employer or occupier who commits an offence under the Ordinance is liable on conviction to a maximum fine of \$500,000 and imprisonment for 12 months.</p> <p>An employee or other person who commits an offence under the Ordinance is liable on conviction to a maximum fine of \$50,000 and imprisonment for 6 months.</p>	<p>Miscellaneous</p> <p>Penalty</p> <p>An employer or occupier who commits an offence under the Ordinance is liable –</p> <p>(a) on summary conviction—to a maximum fine of \$3 million and to imprisonment for 6 months; or</p> <p>(b) on conviction on indictment — to a maximum fine of \$10 million and to imprisonment for 2 years.</p> <p>An employee or other person who commits an offence under the Ordinance is liable on conviction to a maximum fine of \$150,000 and to imprisonment for 6 months.</p>

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