

# HONG KONG SAFETY SNAPSHOTS: EMPLOYER LIABILITY FOR EMPLOYEES WORKING FROM HOME

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Legal Briefings - By **Gareth Thomas and Tess Lumsdaine**

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As working from home becomes the new normal, businesses and employees should remember their key obligations under Hong Kong's safety laws in respect of employees working away from the office.

In Hong Kong, an employer has a duty to “so far as reasonably practicable”, ensure the safety and health at work of all its employees. A person is “at work” only when he/she is at a “workplace” which is defined broadly to include “any place where employees work” with only limited exceptions.

This means that, where employees are performing work from home, their home will generally be a “workplace” and their employer will be liable, to a degree, for their safety and health while working at home.

## WHAT WILL EMPLOYERS BE LIABLE FOR?

The test of liability under Hong Kong safety laws centres around the requirement of reasonable practicability. The onus rests on the employer to establish, on the balance of probabilities, that compliance with the relevant requirement or obligation was not reasonably practicable, or that reasonably practicable steps were taken to comply with the requirement or obligation.

What is reasonably practicable depends on a consideration, in light of all the circumstances at the relevant time, whether the time, trouble and expense of precautions are disproportionate to the risks involved, and an assessment of the degree of security which the measures may afford. For instance, a court may find that a particular precaution is not reasonably practicable where the risk that the precaution aims to address is very rare, and there is considerable trouble and expense required to implement the precaution.

An employer who fails to ensure the safety and health of its employees as reasonably practicable may be found to commit an offence and may be liable on conviction to a fine of HK\$200,000 and an employer who fails to comply with such obligation intentionally, knowingly or recklessly commits an offence and is liable on conviction to a fine of HK\$200,000 and to imprisonment for six months. Practically, of course, there are also significant employee and public relations issues likely for employers who are found guilty of these offences, particularly in the unfortunate context of workplace injuries or worse.

## WHAT SHOULD EMPLOYERS DO?

**Have a remote working policy:** employers should have a policy that sets out the requirements for employees when working away from the office. It may include a safety checklist, guidelines for notifying the employer of any injuries as well steps to protect company property and confidential information.

**Ensure the workspace is suitable:** a policy alone may not be sufficient, and therefore employers might wish to take certain steps to ensure that an employee's working environment is in fact safe such as guidance and support on work station set up and safe use of any equipment used at home, and conducting onsite checks where appropriate.

**Remind employees of their duties:** Employees also have a duty, so far as reasonably practicable, to co-operate with safety measures such as those in the company policy.

**Revisit insurance policies:** Employers should ensure that their insurance coverage extends to employees who are working away from the office.

**Be ready to respond to an accident:** If an employee is injured while working from home, certain notification obligations may be triggered. Ordinarily, the employee will be entitled to compensation under the Employees' Compensation Ordinance.

Our next Safety Snapshot will consider the obligations which arise following a workplace accident.

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## **READ MORE**

[Hong Kong Safety Snapshots: Notification obligations following a workplace accident](#)

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## **KEY CONTACTS**

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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