

HONG KONG SAFETY SNAPSHOTS: NOTIFICATION OBLIGATIONS FOLLOWING A WORKPLACE ACCIDENT

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Legal Briefings – By **Gareth Thomas, Tess Lumsdaine and Sophia Li**

Responding to a workplace incident presents particular challenges to organisations as a number of complex actions must be commenced, often immediately and often simultaneously. While the health and safety of the injured person and others is the most immediate concern, organisations need to be aware of and adhere to their notification obligations. This safety snapshot outlines the key notification obligations under Hong Kong safety laws.

NOTIFICATIONS TO THE COMMISSIONER FOR LABOUR

The Employees' Compensation Ordinance (**ECO**) requires an employer to give notice to the Commissioner for Labour of any accident resulting in an employee's injury within 14 days of the accident or within 14 days of becoming aware of the accident. A notification must be made regardless of whether the accident gives rise to any liability to pay compensation under the ECO. For fatal work-related accidents, employers are required to report within seven days after the accident or within seven days of becoming aware of the death.

What constitutes an "accident" may not always be straight forward. There will need to be an identifiable triggering and unexpected event that causes the relevant injury to the employee. For instance, an injury caused by a continuous process such as exposure to loud noise over a prolonged period of time may not qualify as an accident (however, it may be an "occupational disease").

An employer needs to report the accident irrespective of whether it is liable for compensation. Any employer who delays or fails to give notice of an accident without reasonable excuse or makes or furnishes false or misleading statement to the Commissioner for Labour is liable to prosecution and, on conviction, to a maximum fine of HK\$50,000. Reporting the case will not necessarily amount to an admission of liability although care should be taken when doing so given the potential for prosecution which may follow.

NOTIFICATIONS TO THE OCCUPATIONAL SAFETY OFFICER

Mandatory notifications may also be required to be made by the “person responsible for a workplace”. The person responsible for a workplace can be the employer, or if the employer does not exercise any degree of control over the workplace, the “occupier” who controls the premises where the accident occurred. For example, where if an employee of a contractor is injured while working on a construction site, the site operator may be required to make the notification because they have control over the site.

If an accident at a workplace results in the death or serious bodily injury (being an injury that results in the employee’s admission at a hospital or clinic for treatment or observation) of an employee, the person responsible for the workplace must notify an Occupational Safety Officer at the Labour Department within 24 hours of the accident, and report the accident in writing within seven days to an Occupational Safety Officer.

Where an accident results in the employee being incapacitated from working for at least three days, the person responsible for the workplace is required to report in writing to an occupational safety officer within seven days after the date of the accident.

The report must include certain details such as the details of the activities carried on at the workplace and the particulars of the accident. This report will not be required if a notice of the accident has already been given in accordance with the ECO as set out above.

In addition, if a victim of an accident at a workplace dies after the accident has been notified or reported to an Occupational Safety Officer, the person responsible for the workplace, must report the death within 24 hours after becoming aware of the death to both the Labour Department and to the police.

Failure to comply with the above notification requirements can also amount to an offence and liability for a fine up to HK\$50,000.

WHAT SHOULD EMPLOYERS DO?

Employers should all have in place an incident response plan to enable them to move quickly and confidently to manage the immediate site risks, investigate the causes, manage internal communications and comply with all statutory notification requirements when an incident does occur.

It is critical that supervisors and key employees are trained on and understand their responsibilities under the incident response plan. In relation to internal and external reporting, there should be clear details of what type of accidents need to be reported and to whom, how reporting is to occur, the timing of such reporting and who is responsible for managing any ongoing communications. Employees should also be required to give notice to their employer as soon as practicable after any accident.

Employers in regulated sectors will also need to ensure they comply with any specific notification obligations. For example, in 2012 the Hong Kong Securities and Futures Commission issued a circular indicating that licensed corporations should inform them immediately if any of their staff was either suspected of having or was diagnosed as having human swine influenza.

We work with clients on all areas of incident response including the conduct of effective internal investigations, assisting when corporate entities and officers face investigations and potential prosecutions.

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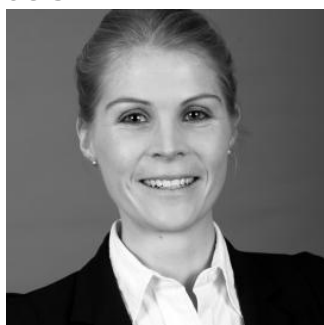
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KEY CONTACTS

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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