



**MINISTRY OF HUMAN RESOURCES
DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH**

GUIDANCE ON EMPLOYEES' RIGHTS

FOR THE IMPLEMENTATION OF SECTION 26A

**OCCUPATIONAL SAFETY AND HEALTH
ACT 1994**

2024

First Printing

Guidance on Employees' Rights for the Implementation of Section 26
Occupational Safety and Health Act 1994 (OSHA 1994)
2024

All rights reserved.

No part of this publication may be reproduced or used in any form or method, whether electronically or mechanically, including photocopies or transmission via the internet or intranet, without prior written permission, unless otherwise stated or required in the context of its implementation.

Guidance on Employees' Rights for the Implementation of Section 26
Occupational Safety and Health Act 1994 (OSHA 1994)
2024

Publisher
Department of Occupational Safety and Health Malaysia
(Ministry of Human Resources)
Level 1, 3, 4 and 5,
Setia Perkasa 4, Setia Perkasa Complex,
Federal Government Administrative Centre,
62530 Putrajaya



Preface

This guidance is titled Guidance on Employees' Rights for the Implementation of Section 26A of the Occupational Safety and Health Act 1994 (OSHA 1994).

The purpose of this guidance is to assist employers and employees on the implementation of provisions related to employees' rights specifically concerning occupational safety and health (OSH) under Section 26A of the OSHA 1994, as introduced through the Occupational Safety and Health (Amendment) Act 2022.

Employees are an important asset to the nation, as they contribute to productivity not only within an organization or company but also to the economic growth of the country. A safe, healthy, and conducive working environment fosters well-being and motivates employees to enhance competitiveness and productivity.

Working in a safe and healthy environment is a fundamental right of employees, as it is included in the International Labour Organization's framework of fundamental principles and rights at work.

This guidance is expected to indirectly assist employers in ensuring the safety, health, and welfare of their employees at work, as outlined in the employer's responsibilities under Section 15 of the OSHA 1994. It will also raise employees' awareness of the importance of OSH in the workplace, thereby contributing to the reduction of the rate of workplace accidents, poisoning, and occupational diseases.

I would like to express my gratitude and appreciation to all who have contributed to the development of this guidance.

Ir. Haji Mohd Hatta bin Zakaria
Director General
Department Of Occupational Safety And Health
Malaysia
2024

ACKNOWLEDGMENT

The Department of Occupational Safety And Health Malaysia extends its appreciation to the following individuals for their direct and indirect contributions in development of this guidance. The Guidance on Employees' Right for the Implementation of Section 26A of the Occupational Safety and Health Act 1994 was prepared by:

- | | | |
|-----|---------------------------------------|------|
| 1. | Ts. Salina binti Tukimin | DOSH |
| 2. | Hajah Noor Azurah binti Hj Abd Rahman | DOSH |
| 3. | Zainul Azereen bin Zaini | DOSH |
| 4. | Norsalnita binti Md Noor | DOSH |
| 5. | Azhan bin Ab Majid | DOSH |
| 6. | Noor Zarith Iffah binti Jasmani | DOSH |
| 7. | Ts. Mohd Rafiah bin Ismail | DOSH |
| 8. | Wan Ahmad Jaziila bin Wan Hassan | DOSH |
| 9. | Mohd Faizal bin Mohd Hatta | DOSH |
| 10. | Musna binti Rappe | DOSH |

	PREFACE	1
	ACKNOWLEDGMENT	2
1.0	INTRODUCTION	4
2.0	PURPOSE	5
3.0	LEGAL REQUIREMENTS	5
4.0	INTERPRETATION	6
5.0	ROLE AND RESPONSIBILITY	6
6.0	IMPLEMENTATION PROCEDURE	7
7.0	PROTECTION FOR EMPLOYEES EXERCISING THEIR RIGHTS IN ACCORDANCE WITH SECTION 26A OF THE OSHA 1994	8

APPENDIX 1 :

SERIOUS BODILY INJURIES

9

APPENDIX 2 :

FLOWCHART FOR THE
IMPLEMENTATION PROCEDURE TO
ADDRESS IMMINENT DANGER
SITUATIONS

10

CONTENT

1.0 INTRODUCTION

- 1.1 Accidents, poisoning and occupational diseases that occur in the workplace have negative impact on the affected employees as well as on the organization, which bears both direct costs (such as medical expenses and compensation) and indirect costs (such as loss of productivity, cost of hiring new employees, and damage to the organization's image). Moreover, these incidents also have negative impacts on the nation's economy and productivity.
- 1.2 A safe, healthy and conducive working environment is essential to prevent or reduce the occurrence of occupational accidents, poisoning and diseases in the workplace. It also indirectly contributes to the improvement of employees' productivity, as well as the quality of the products produced or services provided by a company or organization.
- 1.3 Working in a safe and healthy working environment is a fundamental right of employees, as included in the framework of fundamental principles and rights at work established by the International Labour Organization at the 110th International Labour Conference in 2022.
- 1.4 Employees' rights related to occupational safety and health (OSH) are specifically stated in Article 13 of the Occupational Safety and Health Convention, 1981 (No. 155) / C155, established by the International Labour Organization (ILO). Article 13 states as follows-

Article 13. C155

A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice.

Article 19. C155 also explains the arrangements that need to be implemented in the event of an imminent danger at the workplace, as stated as follows:

Article 19. C155

There shall be arrangements at the level of the undertaking under which—

.....

(f) a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.

- 1.5 The decision to include a provision on employees' rights related to OSH in the Occupational Safety and Health Act 1994 (OSHA 1994) was reached through consultation session among the government, trade union and employers' associations, conducted by the Technical Committee under the National Labour Advisory Council (NLAC) on 13 January 2019.

- 1.6 Thus, through the Occupational Safety and Health Act (Amendment) 2022, a provision on employees' rights related to OSH was introduced as one of the government's efforts to protect employees' rights to work in a safe, healthy and conducive working environment.
- 1.7 With the introduction of this new provision on employees' rights, Malaysia has successfully ratified the Occupational Safety and Health Convention, 1981 (No. 155) / C155 on 11 June 2024 during the 112th International Labour Conference in Geneva, Switzerland.

2.0 PURPOSE

- 2.1 The purpose of this guidance is to provide an explanation on the implementation of Section 26A of the OSHA 1994 related to the actions that needs to be taken by employers and employees when faced with situations of imminent danger in the workplace.

3.0 LEGAL REQUIREMENTS

- 3.1 Amendments to the Occupational Safety and Health Act 1994 have been made through the Occupational Safety and Health (Amendment) Act 2022, among others by introducing a provision concerning employees' rights under Section 26A as follows –

Section 26A

- 26A.** (1) *An employee, after informing his employer or his representative that he has reasonable justification to believe there exist an imminent danger at his place of work, shall have the right to remove himself from the danger or the work if the employer fails to take any action to remove the danger.*
- (2) *An employee who removes himself from the danger in accordance with subsection (1) shall be protected against undue consequences and shall not be discriminated against.*
- (3) *For the purposes of this section, "imminent danger" means a serious risk of death or serious bodily injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard.*

- 3.2 According to section 26A of the OSHA 1994, if an employee, after informing the employer or their representative, has a reasonable justification to believe that there is an imminent danger to safety and health occur at the workplace, the employee has the right to remove himself from the danger or work activity if the employer fails to take any action to eliminate the danger.
- 3.3 An employee who removes himself from danger in accordance with this provision shall be protected from undue consequences and shall not be discriminated against.
- 3.4 This legal provision concerning employees' rights is in line with Article 13 of the Occupational Safety and Health Convention 1981 (No. 155) / C155 by the International Labour Organization (ILO).

4.0 INTERPRETATION

4.1 According to Section 26A of the OSHA 1994, "imminent danger" means a serious risk of death or serious bodily injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard.

As a guide, the criteria that need to be considered for "imminent danger" are:

- (i) There is a risk of death and serious bodily injury, where 'serious bodily injury' is as specified in the Fourth Schedule of the OSHA 1994. (Refer to Appendix1); and
- (ii) In such situation, the death or serious bodily injury may occur immediately or within a short period of time.

4.2 Meanwhile, as a guide the meaning of "have reasonable justification to believe that there is an imminent danger" is–

- (i) the employee has verifiable grounds for the existence of the "imminent danger"; and
- (ii) the employee genuinely and in good faith believes that he or she is exposed to an "imminent danger" that may result in death and serious bodily injury.

5.0 ROLE AND RESPONSIBILITY

5.1 Employer's responsibility

As a guide for employers in implementing the provision of Section 26A of the OSHA 1994, the steps to be taken include the following:

- (i) Identify locations and work activities where "imminent danger" is likely to exist in the workplace;

Note: As a guide, this information can be obtained from the results of the risk assessment conducted at the workplace.

- (ii) Establish procedures to address situations where "imminent danger" occurs in the workplace;
- (iii) Provide information and training to employees on:
 - a) Employees' rights in accordance with Section 26A of the OSHA 1994;
 - b) The "imminent danger" present in the workplace and its associated risks; and
 - c) The procedures to be followed when facing the situation;

- (iv) Take immediate corrective actions when "imminent danger" occurs in the workplace, and if necessary suspend the work activity until the "imminent danger" can be eliminated; and
- (v) Maintain records related to "imminent danger", such as records on workplace incidents, training record and other relevant documentation.

5.2 Employee's Responsibility

As a guide for employees in implementing the provision of Section 26A of the OSHA 1994, the steps to be taken include the following:

- (i) Always be alert to locations and work activities where "imminent danger" is likely to exist in the workplace;
- (ii) Immediately inform the employer or employer's representative if an "imminent danger" situation occurs in the workplace; and
- (iii) Follow the procedures established to address situations where the "imminent danger" occurs in the workplace.

6.0 IMPLEMENTATION PROCEDURE

6.1 As a guide for employers and employees in implementing the provision of Section 26A of the OSHA 1994, the steps to be taken to address "imminent danger" situations include the following:

- (i) The employee immediately inform the employer or the employer's representative about the "imminent danger", if he or she has reasonable justification to believe that such danger exists in the workplace;
- (ii) The employer or the employer's representative immediately inspect and take appropriate actions to eliminate the danger;
- (iii) If the employer is able to eliminate the danger immediately,
 - a) the employer should ensure that the workplace is safe and the danger will not recur when employees return to work; and
 - b) the employer may allow employee to resume work;
- (iv) If the employer is unable to eliminate the danger immediately,
 - a) the employer or the employer's representative should take appropriate measures to eliminate the danger, if necessary suspend any work activities involving the "imminent danger", until the danger can be eliminated;
 - b) the employer shall not permit the employees to resume work; and
 - c) in this situation, the employee has the right to remove himself or herself from the work activity.

- 6.2 Notwithstanding the provision in paragraph 6.1, if an employee has made every effort and in good faith to immediately inform the employer or the employer's representative about the "imminent danger" but is unable to contact them, the employee has the right to remove himself or herself from the work activity and move to a safe location to protect himself or herself.

Subsequently, the employee needs to continue making effort to inform the employer or the employer's representative about the "imminent danger" so that the employer can take appropriate measures to eliminate the danger.

Refer to the Flowchart on the Implementation Procedure to Address Imminent Danger Situations in Appendix 2.

- 6.3 In addition, the employer should take prompt and appropriate actions if the "imminent danger" at the workplace worsens, such as becoming uncontrollable or in emergency situations where the emergency response plan should be activated.

7.0 PROTECTION FOR EMPLOYEES EXERCISING THEIR RIGHTS IN ACCORDANCE WITH SECTION 26A OF THE OSHA 1994

- 7.1 An employee who remove himself or herself from danger in accordance with the provisions of Section 26A of the OSHA 1994 shall be protected from any undue consequences and shall not be discriminated against by the employer or any other person, such as being terminated, injured, having his or her position changed (demoted) or subjected to any others adverse action.

- 7.2 If discrimination occurs by the employer against an employee who has exercised his or her rights under Section 26A of the OSHA 1994, the matter will be dealt with under the Industrial Relations Act 1967 [Act 177].



SERIOUS BODILY INJURY
Fourth Table
[Subsection 3(1) of the OSHA 1994]

Appendix 1

1. Emasculation
2. Permanent privation of the sight of either eye
3. Permanent privation of the hearing of either ear
4. Privation of any member or joint
5. Destruction or permanent impairing of the powers of any member or joint
6. Permanent disfiguration of the head or face
7. Fracture or dislocation of a bone
8. Amputation of the arm, hand, finger, thumb, leg, foot or toe
9. Any crush injury to the head or torso causing damage to the brain or internal organs in the chest or abdomen
10. Any burn injury (including scalding/any injury to the scalp) which—
 - a) covers more than 10% of the whole total body's surface area; or
 - b) causes significant damage to the eyes, respiratory system or other vital organs
11. Any degree of scalding which requires treatment by a registered medical practitioner
12. Any other injury arising from working in an enclosed space which leads to hypothermia or heat-induced illness
13. Loss of consciousness caused by head injury or asphyxia (lack of oxygen)
14. Electrical injury
15. Loss of consciousness or acute illness from absorption, inhalation or ingestion of any substance which requires treatment by a registered medical practitioner
16. Any case of acute ill health where there is reason to believe that this resulted from exposure to isolated pathogen or infected material
17. Any other work related injury or burn injury which results in the person injured being admitted immediately into hospital for more than 24 hours

**FLOW CHART
IMPLEMENTATION PROCEDURE TO ADDRESS IMMINENT DANGER SITUATIONS**

Appendix 2

