

# LHAG INSIGHTS

## EMPLOYMENT & INDUSTRIAL RELATIONS

# LH AG

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### NO COMPLAINT, NO KNOWLEDGE, NO LIABILITY: WHY PROPER REPORTING SYSTEMS ARE THE FIRST LINE OF DEFENCE?

by Shariffullah Majeed, Arissa Ahrom & Sarah Heyrissa

*AMAR JAZLI JAMAL v GARDENIA BAKERIES (KL) SDN BHD*  
(Writ Saman No.: BA-23NCvC-11-03/2023)

It is trite that employers have a general duty to ensure a safe and secure working environment for all employees, including taking reasonable measures to prevent violence, maintain workplace discipline, and protect the well-being of all personnel under its care<sup>1</sup>. In Malaysia, this duty is governed by both statutory law, primarily the Occupational Safety and Health Act 1994 (“**OSHA 1994**”), and the common law duty of care owed by an employer to its employees. Importantly, the duty to ensure a safe and secure working environment is not confined to preventing physical injury alone. Such a duty extends to preventing psychiatric injuries, such as depression, anxiety, or post-traumatic stress disorder (“**PTSD**”), allegedly arising from bullying, harassment, or other psychosocial risks at work.

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[1] INTHIRAN BATHUMALAI v KUALA LUMPUR KEPONG BERHAD [2025] 2 ILR 588

In the United Kingdom, the Court of Appeal in **HATTON v SUNDERLAND [2002] 2 All ER 1** held that an employer may be held liable for psychiatric injury arising from workplace stress, applying the ordinary principles of tort where such injury is reasonably foreseeable and the employer failed to take reasonable steps to prevent it. Similarly, in **GOPAL K VEERAPPAN v GALA TRACK SDN BHD [2026] ILJU 32**, the Industrial Court recognised that an employer's duty which is rooted in the implied term of mutual trust and confidence is not only confined to ensuring an employee's physical safety but extends equally to the protection of employees' mental health, including protection from psychiatric injury. The crucial question is when does an employer become responsible for such workplace risks?

This was addressed by the Shah Alam High Court in **AMAR JAZLI JAMAL v GARDENIA BAKERIES (KL) SDN BHD**, where the Plaintiff, a former General Worker based at the Company's Puchong Plant, alleged that he had been bullied by his co-workers, causing him to suffer depression and PTSD. The Plaintiff's case was premised on his contention that the Company, as his employer, had failed to provide a healthy and safe working environment. While the High Court accepted that the Company owed both a common law duty of care and a statutory duty under Section 15 of OSHA 1994, the High Court was not satisfied that the Company had breached that duty.

A key reason for the Court's finding was that the Company had no notice of the alleged bullying prior to February 2022. There was no written complaint, report, or supporting documentation showing that the Plaintiff had raised the issue with management earlier, even when he submitted leave applications or SOCSO claims. The Plaintiff also admitted during cross-examination that, although he had opportunities to raise workplace issues with management, he did not do so. The High Court therefore found that, without any complaint being communicated to management, it would not have been possible for the Company to have knowledge of the alleged incidents or to take investigative action. When the Plaintiff eventually raised the issue on 14 February 2022, the Company took immediate steps to investigate the allegations.

The High Court also held that the Plaintiff had failed to prove the alleged bullying. He did not call the alleged perpetrators or key witnesses, and there was insufficient corroborative evidence to support his allegations. Although the Plaintiff had been diagnosed with depression and PTSD, the High Court was not satisfied that the condition was caused by the Company's conduct. This case demonstrates the significance of internal reporting systems being the employer's first line of defence. In this case, the Company had in place a clear avenue to raise complaints, allowing it to identify, investigate, and address workplace risks before they escalate.

Thus, the Company had taken all the necessary steps to fulfil its common law and statutory duty to ensure a safe and secure working environment for all its employees. Since there was no complaint, no report, and no prior indication of the alleged risk, the Company was able to establish that it had no reasonable opportunity to intervene. Nevertheless, employers should continuously assess its internal policies and ensure that the following mechanisms are in place:

- (1) a written policy setting out the procedure for employees to report bullying, harassment, threats, intimidation, workplace violence, victimisation, discrimination, or other misconduct, including the available reporting channels and the persons or departments responsible for receiving such complaints;
- (2) multiple accessible reporting channels which are not limited to an employee's immediate superior, such as Human Resources, a designated complaints officer, senior management, or a whistleblowing channel;
- (3) proper communication of the reporting procedure to all employees through handbooks, internal circulars, briefings, training sessions, or written acknowledgements;
- (4) proper documentation of all complaints, including the date of the complaint, the complainant's details, the nature of the allegation, the persons involved, the steps taken by the employer, and the outcome of the investigation;
- (5) prompt and fair investigation once a complaint is received, where the complainant, the alleged wrongdoer, and relevant witnesses are given an opportunity to provide their respective versions of events;
- (6) interim protective measures, where necessary, such as separating the employees involved, adjusting reporting lines, temporarily changing duties, granting leave, or imposing temporary restrictions pending the outcome of the investigation; and
- (7) confidentiality and protection against retaliation or victimisation, so that employees are encouraged to raise complaints in good faith without fear of adverse consequences.

The Company was represented in the Shah Alam High Court by Partners, Shariffullah Majeed and Arissa Ahrom, of Lee Hishammuddin Allen & Gledhill.

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