

LHAG INSIGHTS

EMPLOYMENT & INDUSTRIAL RELATIONS

11 SEPTEMBER 2026

EMPLOYERS' DUTY TO IMPLEMENT SAFETY MEASURES UNDER OSHA 1994

by Shariffullah Majeed, Arissa Ahrom & Sarah Heyrissa

EXXONMOBIL EXPLORATION AND PRODUCTION MALAYSIA INC. v MUHAMMAD ABDULLAH

(KUALA LUMPUR HIGH COURT CIVIL APPEAL
NO.: WA-16A-102-08/2024)

The COVID-19 pandemic and the scale to which it affected the world was unprecedented. It served as a reminder that employers must remain prepared to implement appropriate safety and health measures to protect their workforce in any situation of a public health crisis. At the same time, the implementation of such measures raises important considerations concerning the fundamental rights of employees, which cannot be disregarded by employers in the pursuit of a safe working environment. This issue was recently considered in an appeal to the Kuala Lumpur High Court in **EXXONMOBIL EXPLORATION AND PRODUCTION MALAYSIA INC. v MUHAMMAD ABDULLAH**, where the High Court quashed the Industrial Court's decision in

LHAG

KEY LAWYERS

SHARIFFULLAH MAJEED
Partner
sha@lh-ag.com



ARISSA AHROM
Partner
aa@lh-ag.com



SARAH HEYRISSA
Pupil
heyrisa@lh-ag.com



recognising among others, that the Occupational Safety and Health Act 1994 (“**OSHA 1994**”) places a duty on employers to implement appropriate safety and health measures.

The appeal arose from Industrial Court Award No.: 988 of 2024, where the Employee was employed by the Company as a Mechanical Technician and was stationed at Lawit-A, an offshore oil and gas platform operated by the Company under a production sharing contract with PETRONAS. His role required him to work in an offshore environment where employees operated within a contained workplace setting. At the height of the COVID-19 pandemic, the Company introduced a requirement for employees to be fully vaccinated against COVID-19 as a condition for accessing the Company’s facilities (“**COVID-19 Full Vaccination Requirement**”). This requirement was implemented in line with PETRONAS’ “Green Bubble” requirements for personnel working in the upstream oil and gas industry.

Despite being given opportunities to provide clarifications or submit any medical justification for preventing him from receiving the vaccination, the Employee maintained his refusal to comply with the COVID-19 Full Vaccination Requirement without any valid reason. The Company terminated the Employee on the basis that his refusal amounted to misconduct and insubordination, as he had failed to comply with the Company’s safety policies. The Industrial Court held among others, that although the Company’s COVID-19 Full Vaccination Requirement was understandable given its obligations as a Petroleum Arrangement Contractor (“**PAC**”) to PETRONAS, it was unreasonable as the Government had not made COVID-19 vaccination mandatory.

On appeal, the High Court found that the Industrial Court had failed to sufficiently consider the statutory obligations imposed on the Company as an employer. The High Court recognised that an employer’s obligation is not limited to reacting to workplace risks after they arise. Instead, employers have a proactive duty under section **15 (1)** of OSHA 1994, as follows:

“(1) It shall be the duty of every employer to ensure, so far as is practicable, the safety, health and welfare to work of all his employees.”

The Employee’s nature of employment was critical as it is an offshore facility where employees operated within a contained environment and worked in close proximity with one another. The High Court accepted that the Employee’s failure to be vaccinated posed a substantial health and safety risk to other employees at the workplace and affected the Company’s ability to discharge its obligations under section **15** of OSHA 1994. The Company’s COVID-19 Full Vaccination Requirement was therefore not merely an internal workplace rule, but a measure introduced as part of its statutory responsibility to provide a safe working environment. The High Court further accepted that the Employee’s own witness had acknowledged that the risk of contracting COVID-19 was higher due to the nature of offshore work, which involved working in a closed

environment and close contact with colleagues. Accordingly, the Company's implementation of the vaccination requirement was consistent with its obligation to eliminate or reduce workplace risks as far as practicable.

Malaysian courts have consistently recognised the importance of employers' duty to safeguard workplace health and safety. In **MAZUNA BEGUM KADIR MIRA v MALAYSIA AIRLINES BERHAD [2024] ILRU 0196**, the Industrial Court took judicial notice of the posture of the Government of Malaysia at the material time in encouraging employers to introduce predictive and prescriptive preventive management policy to manage the spread of COVID-19. Similarly, in **MOHAMAD HAFIZ HAJI HUSEN v AIRASIA BERHAD (AWARD NO.: 2349 OF 2023)** and **AMIR HIRMAN SULAIMAN v AIRASIA BERHAD (AWARD NO.: 2363 OF 2023)**, the Industrial Court recognised the employer's right to adopt higher public health standards at the workplace to make sure its employees are not exposed to or do not expose others to any health risks.

In the present appeal, the Company's COVID-19 Full Vaccination Requirement formed part of the Employee's contractual obligations, as the Employee had expressly agreed to be bound by the Company's policies, including its Health Policy and Safety Policy. These policies required the Company to comply with all applicable laws and regulations and to apply responsible standards where such laws and regulations did not exist. Further, it was not disputed that the Company, as a PAC operating within Malaysia's upstream oil and gas industry, was subject to PETRONAS' requirements and directives. By virtue of its production sharing contracts and the regulatory framework under the Petroleum Development Act 1974 and the Petroleum Regulations 1974, the Company was legally and contractually bound to comply with PETRONAS' guidelines and directives.

Against this background, the Employee's refusal to comply with the COVID-19 Full Vaccination Requirement, without any medical exemption or reasonable justification provided for the Company's consideration, could not be viewed merely as an exercise of personal choice. The refusal placed the Employee's personal preference above the Company's statutory obligations under OSHA 1994 and its legal and contractual obligations to PETRONAS. The High Court therefore found that the Employee's conduct amounted to insubordination, as he had refused to comply with a lawful and reasonable instruction issued by the Company in the discharge of its workplace safety obligations under OSHA 1994.

An employer's duty is not simply to respond to workplace risks after they occur, but to take reasonable and practicable steps to anticipate and manage those risks before they result in harm. Unexpected workplace risks can emerge and have far-reaching consequences. Therefore, employers must remain prepared to implement appropriate safety policies and protocols. Ultimately, a safe workplace is sound

business. In implementing workplace safety and health protocols, employers should consider the following:

- (1) assessing the nature of their operations and the specific workplace risks before introducing safety measures, including considering factors such as the working environment, the nature of employees' duties, the level of interaction between employees and the potential impact of the identified risks on workplace safety;
- (2) engaging and communicating with employees when introducing significant workplace safety policies, including explaining the rationale behind such measures, providing employees with an opportunity to raise concerns, and establishing appropriate channels for employees to provide relevant information or seek clarification;
- (3) ensuring that the safety protocols are clearly documented and communicated so that employees understand the requirements imposed and the consequences of non-compliance; and
- (4) ensuring that the safety protocols are aligned with the employer's statutory duties under OSHA 1994, as well as any applicable industry requirements, regulatory directives or contractual obligations.

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

If you have any queries, please contact [Shariffullah Majeed](mailto:sha@lh-ag.com) (sha@lh-ag.com) or [Arissa Ahrom](mailto:aa@lh-ag.com) (aa@lh-ag.com).

Head Office

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122

Johor Office

Suite 21.01
21st Floor, Public Bank Tower
No.19, Jalan Wong Ah Fook
80000 Johor Bahru, Johor
Tel: +607 278 3833
Fax: +607 278 2833

Penang Office

51-12-E, Menara BHL Bank,
Jalan Sultan Ahmad Shah,
10050 Penang
Tel: +604 299 9668
Fax: +604 299 9628

Email

enquiry@lh-ag.com

Website

www.lh-ag.com

Published by Employment & Industrial
Relations Practice © Lee Hishammuddin
Allen & Gledhill All rights reserved.