Managing liability for worksite accidents

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Managing Liability for Worksite Accidents

Jeremie Witt and Antonia Birt, 28 April 2014
Overview

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2. Statistics
3. Sources of Liability and the Legal Framework
4. Crisis management techniques
5. Accident Reporting: Procedures
6. Police Investigations
7. Steps to Minimise Liability
Recent headlines

Gulfnews.com
UAE | General
Construction deaths and accidents leap

The Guardian
Qatar World Cup: 185 Nepalese died in 2013 – official records
Death toll in 2013 likely to rise as new cases revealed, sparking fresh wave of concern over treatment of migrant workers

New Statesman
Published on New Statesman (http://www.newstatesman.com)

400 Nepalese construction workers have died since Qatar won the World Cup bid

Construction Week Online
Four workers dead in UAE scaffolding collapse

More Than 900 Workers Have Already Died Building Qatar’s World Cup Infrastructure
The International Trade Union Confederation says that if conditions don’t improve, at least 4,000 migrants will die before kick-off

24-year-old Indian construction worker falls to death in Sharjah
Afkar Abdullah (afkarali@khaleejtimes.com) / 28 January 2014

Freshfields Bruckhaus Deringer
Dubai Municipality’s Environment and Safety Department has reported:

• There has been an overall decline in construction fatalities based on the strict implementation of the 2009 ‘Code of Construction Safety Practice’;
• Dubai Municipality has been more focused on personal protection and proper training of people working at sites;
• The fatality rate in Dubai was 5.6 people per 100,00 workers in 2009; and
• This is lower than the US at 10.8 per 100,000 workers but higher than the UK rate of 3.7 per 100,00 people.
Other statistics are less optimistic

- 69% of construction companies have a serious lack of understanding of Health and Safety policy importance.
- Medium construction companies tend not to have a specialised health and safety officer.
- Most small construction companies as well as majority of medium-sized construction companies do not have a written health and safety policy.
- Only 18% of construction companies conduct continuous health and safety training with their employees.
Companies and individuals may incur civil and criminal liability from worksite accidents

To manage such risks, it is advisable to:

• introduce and update HSE Plans
• educate the workforce with an education program / training
• insist on risk assessments and method statements
• introduce an appropriate Accident Response Plan

• and know the law…
Sources of Liability

There are 3 primary sources of liability in the UAE for worksite accidents:

• Criminal Liability under the Penal Code;
• Civil Liability under the Civil Code; and
• Sanctions under the Labour Code.

Individuals may be held personally liable under both the Penal Code and the Civil Code if an accident results in injury or death.
Legal Framework

Most of the applicable laws are capable of being divided into 5 categories:

• Prevention of accidents through *training* and use of proper equipment;
• Site practices and *procedure*;
• Incident *reporting* requirements;
• *Compensation* and treatment for injured employees; and
• *Penalties* for owners, employers and site management (including safety coordinators) in the event of breaches.
Legal Framework - Summary

<table>
<thead>
<tr>
<th>Law</th>
<th>Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision</td>
<td>Ministerial Decision No. 37/2 of 1982.</td>
</tr>
<tr>
<td>Resolutions</td>
<td>Ministerial Resolution No. (44 / 1) of the Year 1980; Ministerial Resolution No. 32 of 1982; Cabinet Resolution No. 13 of 2009; Resolution No. 443 of 2010; Ministerial Resolution No. 471 of 2012; Resolution No. 688 of 2013.</td>
</tr>
<tr>
<td>JAFZA EHS Regulations</td>
<td>Sections 4.1-4.32 (Construction Safety Regulations).</td>
</tr>
</tbody>
</table>

Certain provisions are re-enacted on a regular basis e.g. midday break during summer.
Penal Code – Overview

Imprisonment and/or fines:
• Persons causing death or injury
• Individuals who are found to have caused death or injury due to a failure to perform their professional duties

(Civil damages claims:
• Any guilty judgment delivered by a criminal court in the UAE will be considered conclusive evidence of liability for the purposes of a civil damages claim)
## Penal Code Penalties

<table>
<thead>
<tr>
<th>Offense Description</th>
<th>Maximum penalty</th>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unintentional assault causing death</td>
<td>Max 10 years imprisonment</td>
<td>336</td>
</tr>
<tr>
<td>Intentional assault causing permanent disability</td>
<td>Max 7 years imprisonment</td>
<td>337</td>
</tr>
<tr>
<td>Assault which results in the victim’s inability to carry on his personal activities</td>
<td>Max 1 year imprisonment and a fine of max AED10,000</td>
<td>339</td>
</tr>
<tr>
<td>Death resulting from the offender’s failure to perform professional duties</td>
<td>Min 1 year and a fine</td>
<td>342</td>
</tr>
<tr>
<td>More than three deaths resulting from failure to perform professional duties</td>
<td>Min 2 years / max 5 years imprisonment and a fine</td>
<td>342</td>
</tr>
<tr>
<td>Injury to physical integrity resulting from the offender’s failure to perform</td>
<td>Max 1 year imprisonment and/or a max fine of AED10,000</td>
<td>343</td>
</tr>
<tr>
<td>professional duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injury to physical integrity of more than three people resulting from failure to</td>
<td>Mandatory imprisonment</td>
<td>343</td>
</tr>
<tr>
<td>perform professional duties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intentionally committing an act susceptible to exposing life, liberty or safety to</td>
<td>Confinement in the case of injury without prejudice to more severe penalties found in other laws</td>
<td>348</td>
</tr>
<tr>
<td>danger</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
“Diya”

• Blood money (Article 29 of the Penal Code)
• Additional compensation through civil courts (Articles 282, 292 and 293 of the Civil Code and Principle 2007/651 of the Dubai Court of Cassation)
Labour Code Compensation and Sanctions

- Compensation payable:
  - for members of the deceased family (Article 149);
  - in case of employee accidents or diseases (Article 150).
- Amount of compensation governed by Article 151.
Civil Liability under the Civil Code

- Liability for damages to an injured party (Article 282);
- Contributory liability (Article 290);
- More than one person to be held liable for the same act (Article 291);
- Making the injured party reasonably whole (Articles 292, 295);
- Moral Damages (Article 293(2)); and
- Liability for the harm caused by a third party (Article 313).
Crisis management

- Contract and insurance review
- Training and stress testing
- Crisis manual
- Ethics and culture
- Sources of liquidity
- Governance and risk management
- Identifying business risks
- Spotting and escalating issues
The many audiences of a crisis

- Consistent message
- Disclosure obligations
- Markets
- Counterparties and insurers
- Regulators
- Customers
- Employees
- Media
- Leaks
Crisis management – First response

- Activate response team
- Implement document protocols
- Targeted root-cause analysis
- Initial comments
- Early contractual issues

- Confirm key roles and reporting lines
- Early risk mitigation measures
- Disclosure obligations
- Assess and confirm insurance cover
Accident Reporting: Steps

When an accident occurs, the following steps should be taken:

• Where **serious injury** occurs and transport to a hospital required, call the (i) Police on 999 (ii) the responsible engineer and then (iii) Dubai Municipality on 800900;

• Where an **explosion, structure collapse or breakdown of any machinery that could endanger lives** occurs, call (i) the Police (ii) the Civil Defence Department on 997 (iii) the responsible engineer and then (iv) Dubai Municipality on 800900;

• Within 72 hours, the contractor and relevant sub-contractors must submit the approved form to the Specialised Department in Dubai Municipality; and

• The contractor shall inform the Specialised Department of the results of the investigations carried out by the relevant authorities e.g. the Police and Civil Defence Department.
Accident Reporting: Form to be submitted

```
Form No. 1: Work Accidents

Name of injury: [Field]
Occupation: [Field]
Date of Employment: [Field]
Department: [Field]
Imm. Supervisor: [Field]
Tel. No.: [Field]
Date of Acc.: [Field]
Time of Acc.: [Field]
Location: [Field]

Status of the injured employee at the time of accident: [Yes] [No] [N/A]

Was the accident occurred during official working hours? [ ] [ ] [ ]
Was the injured employee authorized to carry out this job? [ ] [ ] [ ]
Was the injured employee trained on doing this job? [ ] [ ] [ ]
Was the injured employee being supervised at the time of accident? [ ] [ ] [ ]
Was the correct equipment, tool(s)/material used? [ ] [ ] [ ]
Was the injured employee using the proper PPE? [ ] [ ] [ ]
Was machine guarded? Was guard in place at the time of accident? [ ] [ ] [ ]
Was the energy source (electricity, compressed air, etc.) on machinery, [ ] [ ] [ ]
Which the employee was servicing, isolated at the time of accident? [ ] [ ] [ ]
Was the injured employee working on a scaffold, platform, stairs, roof? [ ] [ ] [ ]
Was the height of the scaffold, platform, stairs, roof more than 2 m (6 feet)? [ ] [ ] [ ]

What was the procedure taken during the occurrence of the accident? [Field]

First aided at the location [ ] Accident [ ]
Transferred to a hospital [ ] Fatality [ ]
Transferred to home [ ] Near Miss [ ]
Returned to work [ ] Lost-time injury [ ]
Moved to perform another work [ ] Serious Injury [ ]
Others (specify) [ ]

Environmental Conditions:
Atmosphere: wet [ ] dry [ ] hot [ ] cool [ ] storm [ ] rain [ ] mist [ ]
Lighting in accident location: good [ ] weak [ ] natural [ ] artificial [ ]
Land surface: level [ ] uneven [ ]
Land is dirtied with water [ ] dye [ ] construction material [ ] others [ ]

Describe the accident in details (Use additional sheets if needed)

Accident causes:
Unsafe practice by the injured employee:

Unsafe working conditions:

Recommended corrective actions to prevent occurrence of similar accidents:
```
Accident Reporting: Record-Keeping

Contractor must:

• Maintain an accident record as required by Specialised Department.
• Constantly assess safety levels in its worksite.
• Constantly update its policies to protect the health and safety of employees.
## Accident Reporting: Precedent

**Form No. 2: Annual Record of Work Accidents**

<table>
<thead>
<tr>
<th>Project:</th>
<th>Project No:</th>
<th>Year:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contractor Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultant Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and Safety Employee Name:</td>
<td>Project Manager Name:</td>
<td></td>
</tr>
<tr>
<td>Accidents/Injuries</td>
<td>Total No. from 1/1/... To 31/12/...</td>
<td>Lost Days</td>
</tr>
<tr>
<td>Total Reported Accidents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Reported Fatalities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Reported Near Misses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Reported Lost-Time Injuries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Reported Serious Injuries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of employees working in the project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total annual working hours per employee from 1/1/... to 31/12/...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total annual working hours of all employees in the project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frequency of Accidents</td>
<td>Project Manager:</td>
<td></td>
</tr>
<tr>
<td>Severity of Injury</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\[
\text{Frequency of Accidents} = \frac{\text{No. of injuries per year} \times 1000000}{\text{Actual total working hours per year}}
\]

\[
\text{Severity of Injury} = \frac{\text{Lost days because of injuries per year} \times 1000000}{\text{Actual total working hours per year}}
\]
Police Investigations

Police powers:

• limited set of powers.
• must receive formal complaint to investigate.
• no powers of search and seizure without written approval.

During an investigation be aware of the following:

• no right to legal counsel before giving of a statement to police or an interview.
• a right to remain silent, but adverse inferences may be drawn.
• right to make a phone call will depend on circumstances.
Things to be aware:

• “Law Enforcement Official” includes Police, Municipal Inspectors, Civil Defense and Inspectors of the Ministry of Labor and Social Affairs.
• Only relay firsthand information.
• Do not volunteer additional information.
• Notify management if requested to give a statement at the police station.
• Witness statements are written in Arabic.
• If you cannot read Arabic, do not sign the statement.
• Police may hold passport pending investigation.
• Criminal charges brought under Articles 342 or 343 of the Penal Code.
• Criminal conviction = Deportation.
• If sentenced to six months or more, may be prohibited from practicing profession (Article 126 of the Penal Code).
Steps to Minimise Liability

Steps to take to minimise liability:

• Review the HSE Plans regularly.
• Educate the workforce.
• Risk assessments and method statements must be in place.
• Review and update the emergency rescue plan regularly.
• Implement a communications plan.
• Accident reports are reviewed carefully.
• Limit the personnel authorised to speak.
• Understand difference between a police and client investigation.
• Ask for questions to be posed in writing.