

Personal Injury 2023

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1. What are the main laws governing the main duties of an employer as regards to employee safety in this jurisdiction?

The health and safety legal regime in the Kingdom is principally derived from the laws and orders below (as amended). This list is non-exhaustive as there are various laws/orders governing the duties of an employer as regards to employee health and safety in the Kingdom applicable to specific professions or industry sectors. Employers are advised to seek further advice on the applicable laws and regulations.

- Bahrain Law No. 36/2012 (the Labour Law)
- Bahrain Law No. 24/1976 (the Social Insurance Law)
- Implementing Regulations of the Social Insurance Law issued by Bahrain Ministerial Order No. 6/1976 (the Social Law Implementing Regulations)
- Bahrain Law No. 19/2001 (the Civil Code)
- Bahrain Law No. 32/2015 concerning the Environmental Requirements and Standards in Workplaces
- Bahrain Law No. 34/2018 (the Public Health Law)
- Bahrain Minister of Health Ministerial Order, Bahrain Ministerial Order No. 5/1976 with respect to Occupational Illnesses and Causing Actions
- Bahrain Ministry of Health Order, Bahrain Ministerial Order No. 7/1976 with respect to the Contents of the First Medical Aid Box, its Quantity, the Means of Preserving It, and the Conditions for those who carry out the first aid
- Bahrain Minister of Health Ministerial Order, Bahrain Ministerial Order No. 3/1978 with respect to the Organisation of Preventative Measures for Occupational Illnesses and Precautionary Measures for the Protection of Workers
- Bahrain Minister of Health Ministerial Order, Bahrain Ministerial Order No. 3/2001 with respect to the Periodical Health Check-up of Workers Susceptible to Work Related Injuries and Illnesses
- Bahrain Minister of Labour Order, Bahrain Ministerial Order No 25/1977 with respect to the Specification and Organisation of the Services and Precautions Necessary to Protect Workers in the Place of Work
- Bahrain Minister of Labour Ministerial Order, Bahrain Ministerial Order No. 29/2007 with respect to the Organisation of and Specialities of the High Committee for Occupational Health and Safety
- Bahrain Minister of Labour Order, Bahrain Ministerial Order No. 8/2013 with respect to the Regulation of Occupational Health and Safety in Establishments
- Bahrain Minister of Labour Ministerial Order, Bahrain Ministerial Order No. 12/2013 with respect to the Procedures for Notification of Work Related Injuries and Illnesses
- Bahrain Minister of Labour Ministerial Order, Bahrain Ministerial Order No. 30/2013 with respect to Compensation for Work Related Injuries
- Bahrain Minister of Labour Ministerial Order, Bahrain Ministerial Order No. 29/2014 with respect to the determination and regulation of the basic health care of the facility workers, as amended by Ministry of Labour, Bahrain Ministerial Order No. 6/2015
- Bahrain Council of Ministers, Bahrain Ministerial Order No. 2/2015 with respect to the High Committee for Occupational Health and Safety
- The Occupational Safety and Health Convention No. 155/1981 ratified by the Kingdom of Bahrain by virtue of Bahrain Legislative Decree No. 25/2009
- The Arab Labour Convention No. 7/1977 and Recommendation No. 1/1977 with respect to Occupational Health and Safety ratified by the Kingdom of Bahrain by virtue of Bahrain Legislative Decree No. 2/1994

The Bahraini Ministry of Labour has also issued various Ministerial Orders and instructions that are specific to certain industries, working conditions or risks. To illustrate, there are various Ministerial Orders that set out the requirements for the protection of their employees from fire, electric or chemical dangers, or those specific to employees in construction and civil engineering works, or working with lifting equipment. Employers are advised to seek legal advice for their specific industry to ensure compliance with the Law.

Employers should be aware of the applicable obligations regarding employee health and safety under local law and consider the potential liability arising from employment injury. Employers should ensure that appropriate safety measures are applied and that training is provided to employees regarding the procedure to be followed when a workplace accident occurs.

2. What are the main differences on an employer's duty towards employee safety here - compared to those in other major jurisdictions?

We are not in a position to comment on any jurisdiction other than Bahrain. However, Bahrain is increasingly imposing comprehensive duties on employers regarding employee health and safety in line with international standards and is focused on being a leader in setting the health and safety standards in the region.

One of the main differences is that employers in Bahrain are under a duty to ensure all employees who are subject to the Social Insurance Law against employment injury and occupational disease, including death, as well as unemployment with the

Bahrain Social Insurance Organisation (SIO). Currently, for non-Bahrainis, this is 4% of the monthly salary of which 3% is payable by the employer and 1% is payable by the employee and may be deducted at source. Under the Social Insurance Law, the SIO pays the injured or deceased employee's compensation on a strict liability/no fault basis.

Compensation is calculated as a lump sum or proportion of the monthly salary of the employee in line with the provisions of the Social Insurance Law and the relevant schedules to the Law.

Employers are also under an obligation to take appropriate precautionary measure to prevent injuries at the place of work /company premises. Among other things, employers will be required to establish a health and safety department and to appoint qualified health and safety officers, in line with Article 28 of Bahrain Ministerial Order No. 8/2013. In addition, depending on the number of workers and whether the facility is classified as medium or high risk, employers may also be required to appoint a full-time occupational health and safety officer.

The definition of "employment injury" under Article 4 of Bahrain Law No. 24/1976 is wide and will include any occupational diseases listed in Schedule 3 of the Social Insurance Law, any accident arising from or during the performance of the employment or as a result of his work, any accident sustained by the employee on the way to or back from work or break, provided there is no diversion from the normal route, and any travel made on the instructions or authorisation by the employer.

3. What are the main laws governing public liability for personal injury in this jurisdiction?

The main law governing public liability for personal injury in Bahrain is the Civil Code.

In particular, Chapter Three of the Civil Code deals with Liability Arising from Unlawful (Detrimental) Acts. Section 1 is titled Circumstances of Liability for Unlawful Acts and is subdivided into

As the name suggests, Liability for Personal Acts relates to acts with a wrongful or deliberate element which has caused the damage. Liability for Acts of Others includes the employer's liability for the wrongful or deliberate acts of its employees arising from or in connection with the performance of their contract of employment. Liability arising from things relates to damage caused by property requiring special care (e.g. vehicle, equipment, buildings, dangerous matter or material). Whether or not an employer has implemented reasonable measures to prevent damage is a question of fact to be assessed considering, inter alia, the requirements imposed by law, custom and best practice. Employers must therefore be aware of legislation which may affect their health and safety obligations to ensure their business conforms to the basics.

In addition, Bahrain Law No. 15/1976 (the Penal Code) imposes criminal liability in certain circumstances as a result of acts and omissions causing personal injury or death. In such event, the employer and/or his representatives may face criminal action and be held personally liable.

4. How are "low value" personal injury claims generally dealt with in this jurisdiction?

The Social Insurance Law deals with insured employee injury and claims of any value must be made to the Bahrain Social Insurance Organisation (SIO). Under the Social Insurance Law, the SIO pays the injured or deceased employee's compensation on a strict liability/no fault basis.

In circumstances where the Social Insurance Law does not apply for whatever reason, Articles 87 and 91 of the Labour Law provide that where an employee sustains an employment injury, the employer must pay for the cost of the employee's treatment (and related expenses) and must pay the employee the full salary for the first six months, and thereafter half the salary, until the employee recovers or disability is confirmed.

In circumstances where the injured person can prove that the injury (whether or not work related) was caused by an Unlawful (Detrimental) Act, as set out in Chapter Three of the Civil Code and discussed above, the injured person can claim compensation for the injury suffered with the appropriate court of jurisdiction. For low value claims of less than 5,000 Dinars the lower civil courts will have jurisdiction.

If the personal injury arises from a car accident or other insured risk, the injured person can claim against both the person responsible and/or the insurers.

5. Are there any specific reporting requirements to the authorities when an employee is killed or injured in the course of their work here?

The Social Insurance Law and the Labour Law impose a number of obligations on employers regarding managing employee injury, including reporting obligations.

Specifically, under the Social Insurance Law, where an employee sustains an employment injury or contracts an occupational disease, which necessitates the employee (the insured) to discontinue work for treatment, the employer must immediately report the matter to the police and the Bahrain Social Insurance Organisation (SIO) within 24 hours (Article 63).

There is also a requirement to report to the Ministry of Labour, under Bahrain Ministerial Order No. 12/2013, any matter which caused:

- (1) the death of an employee;
- (2) the serious injury of an employee;
- (3) any employment injury, which results in the employee being unable to return to work for seven continuous days not including the date of the injury; or
- (4) vehicle accidents which occur within the establishment or the area of business.

Employers must report either (1) or (2) matters above to the Ministry of Labour within 24 hours and must report either (3) or (4) matters above within 15 days. Employers must also report any occupational illness within 10 days of knowledge to the Ministry of Labour.

Employers are also required to post in a prominent place the procedures to be followed in case of any injury/death. Penalties may be imposed on the employer in line with Article 305 of Bahrain Law No. 15/1976 and Article 189 of Bahrain Law No. 36/2012, where the employer fails to comply with its reporting obligations outlined above or where the employer fails to take measures against a danger threatening the health and safety of employees without justification.

In addition, the Ministry of Labour may conduct safety inspections on employers at any given time. In the event of evidence of non-compliance with the Labour Law in this regard, penalties may be enforced against the employer.

6. Are there any specific reporting requirements to the authorities when a member of the public is killed or injured in a company's premises?

There are no specific reporting requirements when a member of the public is killed or injured. However, if a member of the public is killed or injured in a company's premises, the company should immediately report the injury or fatality to the police so that they may carry out their preliminary investigation.

7. Are there any specific reporting requirements to the authorities when a member of the public is killed or injured as a result of a company's products or services?

There are no specific reporting requirements when a member of the public is killed or injured. However, in line with Article 7 of Bahrain Law No. 35/2012 (the Consumer Protection Law), a company is required to report to the Consumer Protection Directorate any defect in its product or service which caused the injury or fatality and must cease to supply the product or service or remedy the defect.

8. Are there any specific rules governing the death or injury of specific classes of people, e.g. young people, people of a specific sex, workers in specific industries etc.

Certain classes of people are inherently more vulnerable and/or at risk, such as minors, women and employees employed in certain professions or industries, and are subject to specific health and safety rules and requirements and/or special treatment under the law.

By way of example only, Part IV of the Labour Law prohibits the employment of persons who are under 15 and imposes a number of restrictions on the employment of minors between 15 and 18 years old, including prohibitions of night employment, employment above a certain number of hours, employment in dangerous or difficult work or work that may otherwise be harmful, employment without the approval or consent of the legal guardian, and employment without a medical examination. The employment of minors is further regulated by Bahrain Ministerial Order No. 23/2013.

There is no distinction on the basis of age, sex, profession or industry in relation to death and injury compensation and all classes of people are treated equally under the law.

However, the court will take into account the personal circumstances of the injured or the deceased person and therefore age, sex, marital status and health will be relevant.

9. What bodies and rules govern medical injury?

Where employees fall within the scope of the Social Insurance Law, the Bahrain Social Insurance Organisation (SIO) is liable to pay employee compensation for employment injury. In the case of total permanent disability or death of an employee, compensation is a lump sum or equivalent to a monthly salary of 80% of the monthly salary at the time of death or total permanent disability paid to the legal heirs. In the case of any permanent partial disability arising from a work-related injury, the compensation is a proportion of the monthly salary at the time of injury, calculated in line with the relevant provisions of the Social Insurance Law and the schedules to the Law.

10. What are the specific rules governing claims involving mental incapacity?

Currently there are no specific rules governing claims involving mental or psychological illness or incapacity beyond a claim for compensation for intangible damages of the injured person or in the case of death his legal heirs.

It is also difficult in Bahrain to obtain insurance cover for the treatment of mental or psychological illness or incapacity.

11. How is negligence proven?

In addition to an employee's potential rights under the Social Insurance Law, employees could bring a claim against their employer under the Civil Code. These claims are assessed separately to claims under the Social Insurance Law. Given the capped compensation under the Social Insurance Law as discussed above, employees are increasingly commencing claims under the Civil Code.

Negligence in civil claims can be proven by all available means in line with Bahrain Law No. 14/1996 (the Evidence Law). The burden will be on the party claiming a disputed fact to prove it. The court will exercise its discretion on the admissibility of any evidence and the weight to place on it.

12. Are there any criminal sanctions involving death or injury to employees or the public?

Yes. The Penal Code imposes criminal liability for certain breaches involving death or injury to employees or the public (imprisonment and/or a fine).

13. What are the main principles governing damages in cases of personal injury or death?

Employees who are insured against employment injury under the Social Insurance Law will be entitled to receive compensation from the Bahrain Social Insurance Organisation (SIO), calculable in line with the Social Insurance Law.

Compensation for damages in cases of personal injury or death caused by an unlawful (detrimental) act is discretionary and the Court will take into account, *inter alia*, the personal circumstances of the injured or deceased person. Damages can be tangible (e.g. the percentage of any permanent physical disability, loss of income, costs and expenses of medical treatment) and intangible psychological damages (e.g. pain and suffering, grief, post-traumatic stress disorder, loss of reputation or social status). In cases of death, the spouses and relatives up to the second degree may also claim psychological damages. The Court will have discretion in assessing the type and value of the compensation to be awarded.

Under the Civil Code, if the respondent proves that the damage arose out of an extraneous cause outside of the control of the respondent such as a natural disaster, unavoidable accident, *force majeure*, act of a third party, or act of the claimant suffering the damage, the respondent will not be liable to pay compensation for damages.

The Civil Code expressly permits the court to reduce the level of damages/compensation if the claimant suffering the damage participated in bringing about or aggravating the damage caused.

Where an injury or a death was the result of the negligence or deliberate misconduct on the part of the injured or the deceased, the respondent will not be liable to pay compensation for damages. For example, where an employee attempts suicide, was under the influence of alcohol or drugs, or intentionally violated safety instructions posted up on easily visible places in the workplace, etc.

14. What are the main principles governing the calculation of damages as a result of past losses?

Past losses should be actual losses suffered by the claimant. Please refer to paragraph number 13 above.

15. What are the main principles governing the calculation of damages as a result of future losses?

Where the injury results in permanent partial or total disability, damages will be awarded for future losses and will extend to loss of future income due to the person's inability to return to work. Please refer to paragraph number 13 above.

16. How is a claim served for death or injury which occurred outside the jurisdiction?

Irrespective of whether the death or injury occurred outside the jurisdiction of Bahrain, the Kingdom's courts will exercise jurisdiction over claims against any employer or person who is a Bahraini national or resident.

17. Are there any limitations in personal injury claims?

Under Article 180 of Bahrain Law No. 19/2001, the limitation period in personal injury claims for unlawful (detrimental) acts is three years from the date on which the victim became aware of the harm and the identity of the person responsible for it or 15 years from the date of the unlawful act, whichever is sooner. However, if the civil claim arises from the conviction for a criminal offence, it will not be time-barred so long as the criminal proceedings are ongoing.

The limitation period in personal injury claims against the Bahrain Social Insurance Organisation (SIO) under the Social Insurance Law, is one year from the date of injury or death with respect to daily allowances or funeral expenses, and five years from the date of the injury or the death on which the entitlement become due with respect to any other grants, compensation or pensions.

The limitation period under the Labour Law is generally one year from the date of the termination of the contract of employment.

18. What are the key rules governing costs in personal injury litigation in this jurisdiction?

Civil claims must be filed in line with the procedures set out in Bahrain Law No. 12/1971 as amended (the Civil and Commercial Procedures Law). Court fees are calculated by reference to the value of the claim in line with Bahrain Decree-Law No. 3/1972.

Criminal complaints must be filed in line with the procedures set out in Bahrain Law No. 46/2002 as amended (the Criminal Procedures Law). There are no fees for filing a criminal complaint at the police and/or the Public Prosecution.

The Court will determine whether to award the claimant full or partial costs. Only court fees and expenses and nominal attorney fees are awarded and so, while a claimant can claim the full legal costs incurred, legal costs are rarely awarded in full and so are largely not recoverable.

19. What are the main alternative dispute resolution routes used for personal injury cases in this jurisdiction?

Alternative dispute resolution for personal injury cases remains very rare in Bahrain and disputes are generally referred to the civil courts as detailed in the Civil and Commercial Procedures Law. However, subject to the requirements and restrictions set out in the Bahrain Law No. 22/2019 (Mediation for Dispute Resolution Law), and its Implementing Regulations issued by the Minister of Justice, Legal Affairs and Waqf by virtue of Bahrain Ministerial Order No. 126/2019, parties to a dispute may be able to refer a claim or dispute to mediation. Under Bahrain Ministerial Order No. 32/2020, issued by the Minister of Justice, Legal Affairs and Waqf, with respect to the Regulation of Mediation in Criminal Matters, mediation can also now be used as an alternative means of dispute resolution in crimes where conciliation or reconciliation is legally permissible.

20. Who is able to act as an expert witness in personal injury cases in this jurisdiction and how are they generally instructed?

In personal injury cases, disputed claims are normally referred to a Medical Committee to review the injured person's injury and medical records and confirm any disputed percentage/type of permanent disability or occupational illness.

Article 132 of Bahrain Law No. 14/1996 (as amended) allows litigating parties to independently or jointly appoint their own experts, subject however to the requirements set out in the Evidence Law and Bahrain Ministerial Order No. 116/2021 issued by the Minister of Justice, Legal Affairs and Waqf.

Ultimately, the court will exercise its discretion on the admissibility of any party expert evidence and the weight to place on it.

21. Are there any criminal sanctions when an employee or a member of the public is killed or injured in the course of their work, on the company's premise or as a result of the business' products or services?

Failure to comply with statutory requirements can have serious consequences, both for companies and individuals. In addition to civil compensatory damages or contractual liability under the Civil Code, administrative penalties and fines under the Labour Law or any of the Ministerial Orders in connection therewith, liability can include criminal penalties under the Penal Code for certain breaches (imprisonment and/or a fine).

Where there is a work related fatality or injury to an employee, or a fatality or injury to a member of the public in the company's premises or the area where the company does business or as a result of the company's products or services, the company's directors, officers, and/or employees, including those responsible for health and safety, may be personally exposed to criminal proceedings under the Penal Code.

22. In what circumstance can a business be held accountable for death or injury caused by one of their employees or agents? What levels of proof are required? What mitigating circumstances can be argued?

Generally, a business can be held accountable for the death or injury caused by an unlawful (detrimental) act of one of its employees or agents arising from or in connection with the performance of the employee's contract of employment or the agent's contract of agency (Article 172 of Bahrain Law No. 19/2001). The business might have a right to recourse against its employee or agent depending on the circumstances.

The standard of proof required is much higher in criminal proceedings than in civil proceedings. In civil proceedings, the standard of proof is satisfied if the court is satisfied that the case has been proved on the balance of probabilities, the preponderance of the evidence.

The claimant must prove that the injury was a direct or natural consequence of the unlawful (detrimental) act. There must be a wrongful or deliberate element and the act must have led to the damage.

Mitigating circumstances that can be argued include extraneous causes outside of the control of the respondent such as a natural disaster, unavoidable accident, *force majeure*, act of a third party, or if the claimant suffering the damage brought about or participated in bringing about or aggravating the damage caused.

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Biography

Reem is Zeenat Al Mansoori & Associates' Leading Lawyer in employment law and corporate transactional matters. She is a Licensed Practiced Attorney in the Kingdom of Bahrain up to the Cassation Court and the Constitutional Court, with approximately 15 years of experience in legal practice.

Reem provides non-contentious and dispute resolution legal advice, counsel and representation to domestic and international clients. She often advises companies and investors who wish to incorporate, expand and/ or restructure their existing businesses in the Kingdom of Bahrain and works closely with clients to ensure their compliance with the local laws and regulations. Reem also routinely counsels and assists clients on licensing and regulatory compliance and corporate governance matters and acts for clients in voluntary liquidations, share sale and purchase transactions, M&A and restructurings.

She frequently advises domestic and international clients on the whole spectrum of employment law, with specialism in individual and collective redundancies, employment issues in cross-border transactions, business transfers, remuneration policies and employee investigations and disciplinary action. She is also experienced in commercial agencies, distributorships and franchises.