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Chapter 1

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MANAGING A SERIOUS WORK ACCIDENT

*Employers' liabilities
and post-accident steps*

Argentina - Belgium - Denmark - Finland - France - Germany
Greece - Italy - Luxembourg - Netherlands - Peru - Spain - Sweden
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Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The first comprehensive law on occupational health and safety was passed on April 1972 (Law 19587). Subsequently, a number of different laws, decrees and agreements came into operation and Argentina ratified several International Labour Organisation ('ILO') conventions, all of which have constitutional standing.

The law covers technical, preventative and protective measures with the following goals:

- to protect the life of workers and maintain their physical and mental integrity;
- to prevent, reduce, eliminate or isolate the risks at the different worksites;
- to encourage and develop positive behaviours regarding the prevention of work-related accidents or illnesses.

The Labour Injuries Law 24557 was passed in October 1995. It makes provision in relation to the duty of safety and protection for workers, along with compensation for harm caused. Employers must observe all legal safety and health regulations and also ensure all restrictions on, for example, working hours are complied with. The employer must protect the worker's

life and property while at the work site. Thus, if food is provided, it must be healthy and if housing is provided, it must be adequate and suitable to the needs of the worker and the family group.

If employers have insufficient funds to make provision for labour risks, they must take out insurance with a Labour Injuries Insurance Company ('ART'). The employer must come up with an action plan if its activities are considered 'critical' and implement it under the supervision of the ART. The ART will report any non-compliance to the overseeing authority.

► Who enforces OHS law?

The main organisations responsible for enforcing OHS laws are the National and Federal inspectorates of the Labour Ministry, the Superintendent of Occupational Risks and the Labour Injuries Insurance Companies ('ARTs'). They have the power to inspect, with or without cause, and in the case of a serious workplace accident, the local inspectorate can visit the workplace and order compliance with the law.

► What powers do the inspectors have?

The powers to enforce OHS laws given to Labour Ministry inspectors (i.e. engineers in labour safety, lawyers and accountants), are very wide and include the power to monitor workplaces and enforce statutory OHS standards.

They may enter a workplace at any time, without prior notice or a search

warrant and require the production of documents. They can be accompanied by any person with specialist, expert or professional experience and make enquiries of anyone in the workplace (e.g. supervisors, workers or third parties) who might be able to provide information for their investigation. An inspector who finds a breach, can order the workplace parties to attend a hearing and can impose a fine for the breach.

The inspector may ask for the breach to be remedied immediately; make an order for the breach to be remedied by a certain date; or issue an order for a compliance plan, requiring the employer to detail how and when it will remedy the breach.

The inspector may also visit the employer's affiliates to make recommendations about ensuring correct implementation of OHS law.

› Which parties have duties to protect workers and establish safe workplace conditions?

The employer

The employer has the main duty to protect workers and establish safe workplace conditions, but supervisors, the workers themselves, the Superintendent of Occupational Risks, and the Labour Injuries Insurance Companies ('ARTs') also have a role.

The employer assumes responsibility for the following:

- › pre-occupational tests and regular checks of personnel, recording all results in a health file;
- › maintenance of work machinery, premises and tools in good working condition;
- › installment of all necessary ventilation equipment;
- › adequate maintenance of electric power and drinking water;
- › regular disposal of by-products and hazardous waste, along with regular cleaning and disinfection;
- › elimination, isolation or reduction of noise and vibrations that could affect workers' health;
- › installation of fire and other accident safety equipment;
- › adequate and safe storage of dangerous substances;
- › implementation of suitable first-aid;
- › placing of visible notices and signs about health and safety and indication of the risk of certain machinery and installations;
- › promotion of health and safety training, particularly regarding the risks involved in the assigned duties;
- › reporting of labour injuries and illnesses.

Employees

Workers undertake to:

- › comply with safety and health regulations and with recommendations related to the use, maintenance and care of personal protection equipment and also those related to machinery operation and work processes;
- › perform preventative and regular medical tests and comply with recommended prescriptions and indications;
- › comply with notices and signs about safety and health;
- › attend health and safety training programmes given during working hours.

› What penalties exist for violations of OHS and criminal law?

The law sets out a system of sanctions for breaches, as follows:

Minor breaches: The first minor breach is punishable by a warning. Repetition of a minor offence is punishable by a fine of 25% to 150% of the monthly value of the Living Mobile Wage applicable at the time of discovery of the breach.

Serious breaches: These are punishable by a fine of 30% to 200% of the monthly value of the Living Mobile Wage at the time of discovery of the breach, for each worker affected.

Very serious breaches: These are punishable by a fine of 50% to 2,000% of the Living Mobile Wage at the time of discovery of the breach, for each worker affected.

The Administrative Authority may impose greater fines for repeated breaches. These cannot exceed 10% of the total remuneration paid to employees at the employer for the month immediately prior to the finding against it.

In very serious cases, the Authority may close the premises for up to ten days, during which workers continue to have a right to collect their salaries; or may disqualify the employer for one year from access to public tenders.

In cases of obstruction of labour inspections, employers may be fined 100% to 5,000% of the Living Mobile Wage. In particularly serious cases, the employer may be fined up to 10% of remuneration paid to employees for the month immediately prior to the finding against it. Finally, the Administrative Authority may compel the employer to attend a hearing (with police help if necessary).

Note that minor offences include not granting female employees a midday rest when law requires it. Serious offences include breaches of the rules on working hours, weekly rest, vacation leave, non-working days and overall working time. Very serious infringements include acts or omissions that result in serious and imminent health risks for workers.

› What are the risks of civil claims against the employer?

Injury or illness resulting from the performance of any duty or arising from working conditions which are in breach of the law can be considered a civil infringement. However, the employer may be able to prove, for example, that the injury or illness was caused by the worker's presence at a worksite without proper authorisation and without the employer's knowledge. If the harm was caused by a third party, the affected worker or the worker's dependents will be entitled to claim compensation for damages based on the Civil Code, deducting any amounts payable by the Labour Injuries Insurance Company ('ART') or the self-insured employer. In relation to damages for contractual liability, the judge can order the liable party to compensate for moral damage caused.

Law 26773 of 2012 makes making important amendments to the law. The main changes were recourse to optional civil proceedings, for damages (where any amount already received from another source, such as from the Labour Injuries Scheme, would be deducted) and an option for the employer to take out additional insurance to cover civil proceedings. The law also provides for a single compensation payment, to replace the periodic payment scheme that existed before and which the Supreme Court had

repeatedly objected to. Now, compensation is calculated from the time the incident took place or the moment the cause of the illness was identified and a single payment will be made. Workers can choose between the compensation available under the Labor Injuries Scheme or the amount that can be claimed in court via civil proceedings. If the worker collects the compensation set by the Labor Injuries Scheme, he or she may no longer claim in court. If a worker claims in court and the amount awarded is lower than he or she would have been entitled to under the Labour Injuries Scheme, the difference must be paid by the ART.

Note that the employer can take out civil liability insurance that workers may invoke.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

The law defines a 'labour injury' as any sudden and violent event arising from the performance of work or taking place while commuting to and from the worker's domicile and the workplace, provided the worker has not altered the route for reasons unrelated to work.

'Occupational illnesses' are those included on a list produced by the government. The list identifies the risk agent, symptoms and exposure, along with the activities capable of causing the occupational illness. Illnesses not on the list will not be compensated for, with the following exceptions: those that the Central Medical Commission determines on a case by case basis to have been caused by performance of the work.

› What are the legal requirements on the employer following a workplace accident?

Employers must report to the Labour Injuries Insurance Company ('ART') that a workplace accident or illness has taken place. Workers may also report to the ART, and this commonly happens. In serious accident cases or in a case in which a fatal accident occurs, both the ART and the employer will notify the police and administrative authorities. Each reported accident or illness will be given a unique reference number. The ART will investigate any incident reported to it by the employer and will make a written report.

In the case of an accident on the way to work, the worker is required to give the employer a written statement within three working days of the employer's request. The employer must then make a declaration to the ART. This may say, for example, that the itinerary was altered on the day in question for study purposes or for attendance at another place.

If a worker or the worker's dependants wish to claim an illness that is not on the government list of occupational illnesses should be compensated for, they will file for a procedure before the Central Medical Commission. The Central Medical Commission will gather the necessary evidence and make a decision based on scientific opinions and inform the ART if it finds the illness falls within the occupational category.

› Must accidents to persons other than workers be reported?

There is no obligation on employers to report accidents to persons other than its workers, as the Labour Injuries Insurance Company ('ART') only covers risk to the workers declared. Only the actual employer of the victim is obliged to report the accident to the

workplace accident insurer. If a subcontractor is on the employer's premises when the accident happens, either the employer or the subcontractor must report the accident. The ART of the subcontractor is liable for to provide the employee with coverage.

› Is there a legal obligation to conduct internal investigations?

There is no legal obligation on the employer to conduct an internal investigation or to file an accident report to the authorities. However, the employer must cooperate with the investigation conducted by the Labour Injuries Insurance Company ('ART'). The employer may be required by the ART to submit a detailed accident report to it.

› What other parties are involved in the reporting and investigation process?

The investigation by the Labour Injuries Insurance Company may require the involvement of different sections of the employer's organisation, witness statements or managers' reports. The trade union may supervise this process and make suggestions.

In the Province of Buenos Aires, the investigation may be supervised by a health and safety committee, consisting of employers and workers.

› When must accident scenes be preserved and for how long?

There are no specific requirements as to the length of time the scene of an accident must remain undisturbed, but if the accident is serious, it is advisable to await instructions from the Labour Injuries Insurance Company before disturbing the scene.

If the accident involves a fatality or serious injury, the police may be involved and they may ask for the scene to be undisturbed.

› When is there an obligation to retain experts

The Labour Injuries Insurance Company will make use of expertise, but it may also be useful for the employer to conduct a parallel internal investigation and to obtain its own expert opinion.

The union may also ask for an expert to monitor the investigation process.



BRUSSELS - BELGIUM

Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The Occupational Health and Safety (OHS) rules in Belgium are set out in federal statutes. The most important principles are contained in the so-called 'Act on the Wellbeing of the Workers' (Act of 4 August 1996 on the wellbeing of workers in the performance of their work). This Act applies to any employer (person, company and/or organisation) that employs workers in Belgium, as well as to contractors and other third parties (employers or self-employed persons) that perform work in Belgian territory. The Act transposes into Belgian law European Directive 89/391/EEC of 12 June 1989.

The general OHS principles, as set out in the Act on the Wellbeing of Workers, have been described in more detail in over 150 specific Royal Decrees, which provide specific and technical regulations regarding, for example, the use of machinery, special working equipment, specific health and safety risks and working with (sub)contractors. The Act on the Wellbeing of Workers and its implementing Royal Decrees will in time be codified in a new 'Code on wellbeing at work', but this process is still on-going.

► Who enforces OHS law?

An occupational health and safety inspectorate (which is governed by the Federal Ministry of Labour and Employment) is responsible for the enforcement of OHS law.

This OHS inspectorate consists of several local inspection services, whose jurisdiction is restricted to a specific geographical area. In the event of a serious workplace accident, the locally competent local OHS inspectorate will visit the workplace and investigate. The location of the accident, rather than the head office of the employer, is used to determine which local OHS Inspectorate has authority to act.

► What powers do the inspectors have?

The OHS Inspectorate consists of trained inspectors (engineers and doctors) whose role is to monitor and enforce the statutory OHS standards. These inspectors have very extensive powers, which are set out in the Social Criminal Code. In order to carry out their duties, the inspectors can, for example:

- enter a workplace at any time (day or night), without any prior notice and without a search warrant or court authority;
- require the production of documents and records;
- be accompanied on the inspection by any person with specialist, expert or professional experience;
- make enquiries of any person in the workplace (i.e. supervisors, workers or even third parties) who might be able to provide useful information for their investigation.

An Inspector who discovers an infraction can order the workplace party (including employers, directors, officers, supervisors and workers themselves), responsible for the perceived breach to remedy it. This can involve issuing 'Compliance' or 'Stop Work' orders.

A Compliance order may be a 'forthwith' order, requiring the alleged infraction to be remedied immediately; a time based order, requiring the infraction to be remedied by a certain date; or a compliance plan order, requiring the employer to detail how (and when) it will remedy the infraction.

A Stop Work order may be applied to any process, material, task or workplace (or part of one) to prohibit any further use of it or work involving it until the infraction is remedied. In practice, OHS inspectors generally issue Stop Work orders when they believe that serious breaches of OHS legislation have been committed and these present an imminent danger to the workforce.

If a Compliance order or a Stop Work order has been imposed, an employer may appeal to the Labour Courts. However, an employer needs to appreciate that non-compliance with an OHS Inspectorate order constitutes a serious breach, which can lead to criminal penalties at Level 4.

One of the most important powers of the OHS Inspectorate is the power to bring formal charges against corporations and/or individuals (such as directors, officers, supervisors and others) who have committed breaches of OHS legislation. This can lead to criminal prosecution and criminal court proceedings.

► Which parties have duties to protect workers and establish safe workplace conditions ?

Every workplace party (including employers, directors, officers, supervisors and workers themselves), plays a role in ensuring health and safety at the workplace. While there is some overlap between the obligations of workplace parties, employers have the primary responsibility for ensuring health and safety at the workplace. Nevertheless other individuals (i.e. directors, officers and/or supervisors) can also be held personally responsible for breaches of health and safety regulations.

Employees

All workers have a legal duty to protect themselves and others in the workplace and play a role in ensuring workplace safety. In particular, they have a duty to:

- refrain from all activity that could be harmful to themselves, their co-workers, their employer or any third party;
- properly use all machinery, equipment, appliances, means of transportation and any other work equipment;
- properly use any personal safety equipment provided by the employer and intended for employees' protection and store it properly after use;
- refrain from incorrectly turning-off, altering or replacing safety systems on machinery, equipment, appliances and/or buildings and use them correctly;
- report to the employer and the internal health and safety service any circumstances that could lead to serious and imminent danger to health or safety in the workplace or any failure in safety systems;
- assist the employer and the internal health and safety service by allowing them to fulfill their duty to ensure the wellbeing of workers in the performance of their work;
- assist the employer and the internal health and safety service by allowing them to fulfill their duty to ensure safe working conditions that do not give rise to health and safety hazards;
- co-operate with and assist the employer in the implementation of health and safety policies on the protection of workers against violence, harassment, unwanted sexual behaviour and sexual

intimidation in the workplace, and refrain from any such unlawful behaviour, including refraining from breaching the grievance procedure.

The employer

Notwithstanding the legal duties on workers, the employer always has the primary responsibility to protect the health and safety of others in the workplace. Therefore, it is the employer that must develop and introduce a welfare policy that includes adequate preventive and protective measures, policies and/or procedures in relation to the 'wellbeing of the workers'. The term 'wellbeing' has a broad meaning, including not only the protection of the health and safety of workers, but also the protection of workers against 'psycho-social risks at work' (i.e. stress, violence, harassment and sexual intimidation), ergonomics, hygiene at work, etc., as well as certain environmental protective measures.

The employer must develop its welfare policy in such a way that it is a 'dynamic risk control system'. A feature of a dynamic risk control system is the planning of preventive and protective measures and/or policies through the performance of risk assessments. These include an analysis of the working environment, working conditions, working methods, machinery and equipment. The term 'dynamic' refers to the fact that the development and the implementation of a welfare policy should be an ongoing process, which is constantly re-evaluated and adapted according to the needs and/or changing circumstances or working conditions.

The employer must ensure that the workers have received the necessary information, instructions and training to allow them to perform their work in a healthy and safe manner. The information and instructions for the workers should be in writing and be comprehensible to the workers concerned. The employer should also verify compliance with these work instructions.

Further, the employer is subject to the following obligations to ensure health and safety in the workplace which should be contained in the company's welfare policy, such as, a duty to:

- provide and maintain all required working equipment, materials and protective devices;
- provide adequate information, instructions and training to workers;
- appoint competent supervisors and provide suitable training for them, particularly in relation to their role of ensuring implementation of the welfare policy;
- acquaint workers with any hazards in the workplace;
- establish emergency procedures and practice emergency exercises;
- remedy all hazardous workplace conditions;
- cooperate with a joint health and safety committee when required by OHS legislation;
- co-operate with inspectors from the OHS Inspectorate;
- take all reasonable precautions appropriate to the circumstances to protect workers.

Supervisors and directors

Although employers have the primary responsibility to ensure healthy and safe in the workplace, supervisors and/or directors also have a considerable personal responsibility for this, including a duty to:

- co-operate with the employer in the development of a welfare policy and 'dynamic risk control system' by, for example, making proposals and giving advice;

- › investigate incidents and accidents that have occurred in the workplace and propose measures for the prevention of any repeat of them;
- › ensure the compliance of workers with the rules on use of work equipment, collective and personal protective equipment and the use of substances and materials, and if required, take necessary measures to stop any non-compliance;
- › request assistance and advice from the (internal or external) health and safety service in a timely way;
- › ensure that work is being given to workers who have the skills and experience, and have also received the relevant training and instructions, in order to execute their work in a safe manner;
- › ensure that workers understand the instructions they are given and that they follow them;
- › organise suitable training (for the function to be executed) for each new recruit and appoint another experienced worker to ensure that he or she is accompanied and assisted.

Joint health and safety committees

OHS compliance also places great reliance on the activities of the joint health and safety committees (i.e. 'Committees for the Prevention and the Protection of Workers'). These are comprised of worker and management representatives and are required in larger companies. In smaller companies (fewer than 50 employees) trade union representatives may take on the role of the health and safety committee.

If there is no health and safety committee and no health and safety trade union representatives, the employer has a duty to inform and consult with the individual workers regarding any proposal or initiative in relation to health and safety at the workplace. This should be done by advertising the proposals in the workplace and asking the workers to submit their comments and/or suggestions within a period of 15 days.

Internal health and safety advisers

Every employer must have at least one internal health and safety adviser, known as a(n) (internal) 'prevention adviser' - this is the 'internal health and safety service' of the employer. The term 'internal' refers to the fact that the internal prevention adviser must be on the pay-roll of the company (except where the company has fewer than 20 employees, in which case the employer can personally fulfill the role of internal prevention adviser). The employer can also outsource specific tasks required of the internal health and safety service to an external health and safety service.

› What penalties exist for violations of OHS and criminal law?

All breaches of the Belgian OHS rules can lead to prosecution and criminal penalties, as set out in the Social Criminal Code, irrespective of whether there has been an accident. In the event of a workplace accident leading to death or injury, there is also a risk of prosecution under the general Criminal Code. In the event of criminal prosecution after a serious workplace accident, the Public Prosecutor will generally base prosecution, both on the Social Criminal Code as well as on the Criminal Code (for manslaughter or assault).

In the Social Criminal Code a distinction is made between OHS breaches which have led to an accident or damage to health and other OHS-related breaches. The first category can lead to criminal penalties at 'Level 4', the second to penalties at Level 3.

The minimum and maximum penalties (per breach), under the Social Criminal Code, are as follows:

	Imprisonment	Criminal fine (person)	Criminal fine (corporation)
Level 3	/	EUR 600 – 6,000	EUR 600 – 6,000
Level 4	6 months to 3 years	EUR 3,600 – 36,000	Maximum EUR 432,000

Further, for some OHS-related breaches the fine can be multiplied by the number of workers involved, but is subject to a cap of 100 times the maximum fine. In addition to the above penalties, criminal courts can also decide to shut down activities or businesses (partially or in their entirety) for between one month and three years.

Although breaches of the OHS rules can lead to imprisonment, such sentences (for directors, officers and/or supervisors) remain relatively rare.

In the event of criminal prosecution after a workplace accident, the Public Prosecutor can base the prosecution not only on the above-mentioned provisions of the Social Criminal Code, but also on the general Criminal Code. Prosecution is also possible for the general offence of assault (i.e. for injuries) or manslaughter (i.e. for a fatal accident), leading to the following penalties (per breach):

	Imprisonment	Criminal fine (individual)	Criminal fine (corporation)
Assault (accident with injuries)	Between 8 days and 6 months	EUR 300 – 3,000	Maximum EUR 72,000
Manslaughter (fatal accident)	between 3 months and 2 years	EUR 300 – 6,000	Maximum EUR 288,000

Not every workplace accident will lead to criminal prosecution. The Public Prosecutor may decide to dismiss the charges, which will then lead to an administrative procedure, governed by the Ministry of Labour and Employment. The administrative fines involved in this procedure are as follows:

	Imprisonment	Administrative fine (individual)	Administrative fine (corporation)
Level 3	/	EUR 300 – 3,000	EUR 300 – 3,000
Level 4	/	EUR 1,800 – 18,000	EUR 1,800 – 18,000

Acceptance and payment of an administrative fine means that the corporation (and/or its directors, officers, supervisors, etc.) can no longer be prosecuted before a criminal court for the same breaches. However, acceptance and payment of an administrative fine constitutes an admission of the breaches involved. This can have important legal consequences if there is a risk of civil claims for damages.

An employer can appeal a decision to impose an administrative fine on it to the Labour Court. The Labour Court will either uphold the decision or reduce the administrative fine, but cannot impose a higher administrative fine.

› What are the risks of civil claims against the employer?

The risk of an employer facing a civil claim as a result of a workplace accident is limited by the principle of 'civil immunity'. Civil immunity means that the victim cannot claim any damages from their employer or co-workers, or from the directors and/or officers of the company involved.

The principle of 'civil immunity' should be seen as a trade-off for the fact that any victim of a workplace accident will automatically receive compensation from the workplace accident insurance of the employer for the physical harm suffered, in accordance with the Belgian Workplace Accidents Act, regardless of who was responsible for the accident and even if the accident was caused by the behaviour of the victim.

However, the civil immunity protection to the employer and co-workers is not absolute. Firstly, there are a few exceptions to the principle of civil immunity, in which case civil claims for damages would still be possible (e.g. in the event of a traffic accident, for damages to the goods belonging to the victim, if the accident was deliberately caused by the employer and/or a co-worker, etc.)

Further, the principle of civil immunity only protects the employer (individual or corporation) and/or the directors, officers and co-workers of the victim. Therefore, if the victim is a third party (e.g. a temporary agency worker or a worker of a subcontractor), the accident can - and usually will - give rise to a civil claim for damages.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

The Belgian Workplace Accidents Act defines a 'work accident' as:

- › a sudden occurrence;
- › causing injury to a worker;
- › during and as a result of the execution of the employment contract.

An accident that occurs on the way to or from work is also considered a 'work accident' and will give rise to workers' compensation, provided that the accident occurred on the 'normal journey' to or from work (i.e. not necessarily the shortest route). The Act on Workplace Accidents provides a specific definition of the 'normal journey' to and from work.

If an accident is considered a 'work accident' as defined above, the victim or his or her relatives (in the event of a fatality) will receive workers' compensation from the insurer of the employer of the victim.

The Occupational Health and Safety Act of 4 August 1996 on the well-being of workers places a number of specific obligations on the employer in the event of a 'serious workplace accident', including an obligation to investigate the accident and to draft a detailed accident report, which must be submitted to the Health and Safety Inspectorate.

The Occupational Health and Safety Act defines a 'serious workplace accident' as follows:

'An accident occurring at the workplace itself which, owing to its serious nature, requires a specific thorough investigation in order for preventative measures to be taken to avoid recurrence.'

This definition was further refined in a Royal Decree of 27 March 1998 as follows:

- › a workplace accident leading to the death of a worker; or
- › a workplace accident which has caused permanent injuries, the occurrence of which is directly linked to one of the following events,

which are different from the normal performance of the work:

- an electrical breakdown, explosion or fire;
- an overflow, tipping over, leakage, emptying, evaporation or release;
- the breaking, bursting, gliding, falling or collapsing of an object;
- loss of control over a machine, means of transportation, hand tool or other object;
- a person falling from a height;
- a person being caught or dragged by an object or by the fore of speed of an object; or

with one of the following objects involved in the accident:

- scaffolding or overground construction;
- excavation works, trenches, pits, underground passages, tunnels or an underground water environment;
- installations;
- machines or instruments;
- systems for closed or open transport and storage;
- vehicles for transport over land;
- chemical substances, explosives, radioactive substances or biological substances;
- security systems and security equipment;
- weapons;
- animals, microorganisms or viruses; or

› a workplace accident that has caused temporary injuries, directly linked to one of the above-mentioned events or objects, where one of the following injuries has occurred:

- flesh-wounds with loss of tissue, resulting in incapacity of several days' duration;
- bone fractures;
- traumatic amputations (i.e. loss of limbs);
- surgical amputations;
- shaking and internal injuries that could be life threatening in the absence of treatment;
- harmful effects of electricity resulting in work incapacity of several days' duration;
- burns resulting in work incapacity for several days;
- chemical or internal burns or freezing;
- acute poisoning;
- suffocation and drowning;
- the effects of non-thermal radiation resulting in work incapacity of several days' duration.

There is no specific definition of a workplace accident in the Criminal Code, nor in the Social Criminal Code. Generally speaking, any workplace accident can give rise to criminal prosecution based on:

- › Article 128 of the Social Criminal Code (i.e. for breaches of the OHS legislation);
- › Article 418 of the Criminal Code (i.e. for assault);
- › Article 419 of the Criminal Code (i.e. for manslaughter).

› What are the legal requirements on the employer following a workplace accident?

All workplace accidents

After any workplace accident the employer must immediately inform its internal and/or external health and safety service (i.e. the Internal or External 'Service for the Prevention and the Protection at Work'). This (internal or external) health and safety service consists of OHS-specialists, called 'prevention advisers'. Prevention advisers are trained professionals who are able to give victims first aid and assist the employer by preserving the scene of the accident and taking the necessary immediate measures to avoid recurrence.

In the event of a 'serious workplace accident' the internal or external health and safety service will investigate the causes of the accident and draft a detailed accident report, which must be completed by the employer and submitted to the OHS Inspectorate.

Workplace accidents causing at least four days of work incapacity

The employer must ensure that a detailed 'workplace accident record' is drawn up for each workplace accident causing at least four days of work incapacity. These workplace accident records must remain at the disposal of the OHS Inspectorate and must be kept for at least ten years.

'Serious workplace accidents'

In the event of a serious workplace accident the employer must ensure that the accident is thoroughly investigated by its (internal or external) health and safety service and that a detailed accident report is submitted to the local department of the OHS Inspectorate. This accident report must contain a number of mandatory elements, such as:

- › the names and addresses of the parties involved;
- › information regarding the victim and his or her injuries;
- › the time and location of the accident;
- › a detailed description of the factual circumstances;
- › an analysis of the possible causes of the accident;
- › a list of remedial post-accident steps that will be taken to avoid reoccurrence.

The accident report should be submitted to the OHS Inspectorate within ten days after the work accident. If this time limit is not feasible, the employer can submit a preliminary report containing the data available at that time. This preliminary report should, however, include the following mandatory minimum information:

- › the reasons why it is not possible to finalise the accident report within the ten day time limit;
- › a detailed overview of the steps still to be taken in order to complete the investigation;
- › remarks and comments from the joint health and safety committee (if available) who visited the accident scene immediately after the occurrence of the serious workplace accident;
- › if available, the advice and/or comments of the joint health and safety committee as referred to in the minutes of their meetings, regarding the accident investigation and the accident report.

The final accident report should contain a detailed action plan, committing the employer to take steps to avoid the reoccurrence of similar accidents. The action plan must be very specific, setting out deadlines for every post-accident step to be taken. This action plan constitutes a binding commitment on behalf of the employer and can lead to prosecution if the employer fails to comply with it. The OHS Inspectorate can (and usually will) check whether the reported action plan has been executed in a timely way.

Very serious workplace accidents (fatality or permanent injuries)

The employer must immediately inform the competent OHS Inspectorate in the event of:

- a fatal workplace accident or;
- a workplace accident causing permanent injuries.

This notification can be done by sending to the OHS Inspectorate a copy of the written notification to the work accident insurer or by sending a letter (or fax or email) indicating the following basic information:

- › the name and address of the employer;
- › the name of the victim;
- › the date and place of the accident;
- › the presumed consequences (i.e. the nature and presumed seriousness of the injuries);
- › a short description of the circumstances.

Immediate notification of the OHS Inspectorate can also be done through the portal site of the social security authorities. The employer should notify the department of the OHS Inspectorate that has authority for the geographical location where the workplace accident occurred (the location of the headquarters of the company is thus irrelevant).

Insurance

Employers have a legal obligation to put in place insurance cover, covering the risk of one of their workers having a workplace accident.

Any accident that might result in the application of the Act on Workplace Accidents (and thus giving rise to workers' compensation for the victims) must be reported to the insurer within eight days of the day following the accident. (Note that every employer must have an insurance contract for its employees covering the risk of work accidents, including those on the journey to and from work.)

Workplace accidents must be reported to the insurer by using a special declaration form, the content of which is determined by the Fund for Workplace Accidents. This form can be downloaded or printed from the website of the Fund for Workplace Accidents (www.fao.fgov.be). The website also contains useful information on how to complete the form. Reporting can also be done electronically through the website of the national social security authorities (www.socialsecurity.be). Each accident report will be given a unique notification number. After having reported the accident, the employer will receive a copy of the completed form by email.

An employer that submits the notification too late or who fails to report a workplace accident to the insurer is liable to criminal prosecution. In addition, the victim, or his or her relatives in the case of a fatality, can file a complaint with the Fund for Workplace Accidents, the OHS Inspectorate or directly with the Public Prosecutor's Office.

► Must accidents to persons other than workers be reported?

Only the actual employer of the victim is obliged to report the accident to his workplace accident insurer for the purpose of workers' compensation. This obligation is governed by the Act on Workplace Accidents.

However other legal obligations may apply because OHS law not only applies to employers and their workers, but also to sub-contractors, temporary agency workers, self-employed workers and any other third party performing work on the employer's premises. Therefore, the obligation to investigate every serious workplace accident and submit a detailed report to the OHS Inspectorate also applies where there is a serious workplace accident involving, for example, a worker of a subcontractor or a temporary agency worker. All parties involved have a legal obligation to cooperate in the investigation and to ensure timely submission of the mandatory accident report with the OHS Inspectorate.

Moreover, every agreement with a sub-contractor or temporary employment agency should stipulate in writing how the parties will manage serious workplace accidents, including matters such as who will lead the investigation and who will bear the costs of it.

► Is there a legal obligation to conduct internal investigations?

If a workplace accident qualifies as a 'serious workplace accident' the employer must ensure that the accident is thoroughly investigated (by its internal or external health and safety service) and that a detailed accident report is submitted to the OHS Inspectorate.

If the accident does not qualify as a 'serious workplace accident', the employer must still notify its (internal or external) health and safety service, as well as the insurance company covering the workplace risks (workers' compensation). However, there is no legal obligation to conduct an internal investigation nor to file an accident report to the authorities (health and safety inspectorate), as this is only required in the event of a 'serious work accident'.

► What other parties are involved in the reporting and investigation process?

The accident report that is required in the event of a 'serious work accident' must be drafted by a qualified 'prevention adviser', from either the employer's internal or external health and safety service. These are duly trained health and safety specialists who will conduct an investigation at the scene of the accident; talk to the witnesses; analyse the possible causes of the accident and advise on what measures would be appropriate to prevent similar accidents occurring.

Prior to submitting the accident report to the OHS Inspectorate, a draft of the report must be discussed within the joint health and safety committee. Members of the health and safety committee have the right to make comments and suggestions on the draft report and these must be added to it before it is submitted to the OHS Inspectorate. The joint health and safety committee has also got the right to appoint a delegation of its members to visit the scene of the accident so as to be able to closely follow the on-going accident investigation.

Supervisors have a legal duty to examine accidents that have occurred in the workplace and to propose measures to prevent them happening again. Furthermore, supervisors have a duty to cooperate with the internal or external prevention adviser who conducts the accident investigation.

In the event of a workplace accident, workers have a general duty to assist and cooperate with the supervisors and/or the prevention adviser(s) and allow

them to conduct an investigation. Furthermore, in the absence of a joint health and safety committee or health and safety trade union representatives within the company, the workers have the right to be informed about all OHS-related matters, including work accidents, the results of accident investigations and accident reports. This should be done by posting or advertising all proposals (e.g. draft accident reports) and asking the workers to submit their comments and suggestions within a period of 15 days.

The obligation to investigate a 'serious work accident' and to submit a detailed accident report to the OHS Inspectorate also applies in the event of an accident involving a worker of a third party or any self-employed person performing work on the premises. All parties involved have a legal obligation to cooperate to ensure a thorough investigation of the accident and to ensure timely submission of an accident report to the OHS Inspectorate.

► When must accident scenes be preserved and for how long?

In the event of a serious work accident, the employer must ensure that the accident scene is preserved in order to allow the OHS Inspectorate (and the company's health and safety service) to investigate the scene.

There are no specific requirements on the length of time the scene of the accident needs to remain undisturbed. However, if it was a fatal accident or one causing permanent injuries, the employer must immediately notify the health and safety inspectorate. The health and safety inspectorate usually visits the scene within the first few hours of an accident, so it is advisable to wait for their visit before disturbing the accident scene.

After visiting the scene the health and safety inspectorate might decide to temporarily seal or close-off the scene, allowing the inspectors to continue their investigation without disturbance. If an employer does not comply with the requirement to close-off the accident scene, there is a risk of prosecution and either criminal or administrative penalties for 'obstruction of the investigation'. In most cases however, the health and safety inspectorate will take pictures of the accident scene, determine any urgent measures to be taken and then open up the accident scene shortly after the accident. The health and safety inspectorate may also impose certain preventive measures to be taken before the accident scene can be 'reopened' or before allowing work to restart. In this case employers are well-advised to contact the inspectorate after having taken the required measures but prior to restarting the work, in order to obtain the explicit authorisation from the inspectorate. Often the inspectorate will revisit the scene to check whether the measures have been taken properly before giving authorisation to restart work or reopen the scene.

► When is there an obligation to retain experts?

Examining and determining the causes of an accident can be a very complex process in some cases. If deemed necessary for the investigation of the cause of the accident, the OHS Inspectorate and/or the Public Prosecutor can appoint an expert to investigate technical aspects of the accident and to advise on the possible causes of the accident.

However, even if this is being done, it can also be useful for the employer to conduct a parallel internal investigation using a second expert so as to be able to challenge the opinion or conclusions of the first one, if this turns out to be necessary. Taking into account that all 'serious workplace accidents' must be investigated by the (internal or external) health and safety service of the employer - which is composed of trained OHS-specialists - the employer will not usually need to retain his own expert(s), unless the cause of the accident remains unclear and more specialist advice is required.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

The occupational health and safety rules are set out in the Danish Working Environment Act. The Act imposes a general duty on the employer to ensure a safe and healthy working environment – both physically and psychologically.

The Danish Working Environment Act is a framework act which lays down general objectives and requirements in relation to the working environment, for example, rules regarding health and safety organisation, performance of work, organisation of the workplace, technical equipment, substances and materials and rest periods.

The Act is supplemented by a number of binding executive orders detailing the requirements for health and safety at work. The executive orders relate to specific work activities and risks such as lifting activities and manual handling.

The Act is further supplemented by a number of guidelines issued by the Danish Working Environment Authority ('WEA'). The guidelines offer guidance on how to interpret the provisions of the Act and the executive orders. The guidelines are not binding as such, but it is important to bear

in mind that they are based on binding regulations.

The Act is binding on companies, organisations and individuals and applies to work performed by employees for an employer. This scope of application is interpreted broadly and therefore the Act applies to all kinds of work done in the course of employment, even if the work falls outside the scope of the employee's normal work. The jurisdictional coverage of the Danish Working Environment Act is Denmark and its territorial waters.

The Act and the most common executive orders and guidelines are available in English at www.arbejdstilsynet.dk.

▶ Who enforces OHS law?

The Danish Working Environment Authority ('WEA') is responsible for ensuring compliance with the Danish Working Environment Act and all binding executive orders. The WEA's aim is to ensure a safe, healthy and constantly improving working environment through supervision, appropriate regulation and information. The WEA is an agency under the Ministry of Employment and the Minister for Employment is the supreme administrative authority in matters concerning health and safety at work.

The WEA is entrusted with the following tasks:

- ▶ advising enterprises, sector working environment councils, employee and employer organisations and the public on all aspects of health and safety at work;

- › providing small enterprises of between one and four employees with additional advice;
- › assisting the Ministry of Employment in drafting rules and regulations under health and safety law;
- › issuing guidelines;
- › keeping abreast of technical and social developments, with a view to improving health and safety at work;
- › examining plans for work processes, work sites, technical equipment and substances and issuing licences under health and safety law;
- › overseeing compliance with health and safety law.

There are a number of sanctions available to the WEA to use to enforce health and safety law. The WEA's decisions may be appealed to the Danish Council of Appeal on Health and Safety at Work within four weeks of the day the employer is notified of the decision.

In some cases, the WEA will also report the employer to the police. The case will then be decided by the Danish courts.

In cases of very serious breaches, there is also – theoretically at least – a risk of prosecution under the Danish Penal Code for hazardous behaviour or even manslaughter. However, no such case has yet come before the Danish courts.

› What powers do the inspectors have?

On presentation of valid ID, the Danish Working Environment Authority ('WEA') is entitled to be given access at any time to public or private work sites without a court order, if necessary to enable it to carry out its duties. Access may be obtained with assistance from the police, if necessary. However, the WEA is not authorised to inspect work of a non-commercial nature carried out in private homes or any private surroundings. Nevertheless, if a lift is on private property, the WEA is authorised to inspect without a court order.

If so requested, any person subject to obligations under the Danish Working Environment Act must provide the WEA with all information necessary for the performance of its duties, including oral information and physical documents. For example, WEA officers are allowed to take photographs and collect samples for further analysis. The employer or its representative must be informed of such actions.

If so required by the WEA, the employer must acquire and keep records of all inspection reports regarding the site. The records must be kept on site and be available to the WEA during inspections.

The WEA has authority to issue decisions in cases of breach of the Danish Working Environment Act or its executive orders, including ordering the employer to remedy the breach immediately or within a specified period.

When necessary to avert an imminent serious risk to the health or safety of employees, the WEA may order the employer to address the risk immediately. Measures to address a serious health and safety risk may include:

- › ordering anyone in a dangerous zone to leave it immediately;
- › ordering the use of a machine, machine part, container, construction, tool or other technical equipment or substance or material to cease;
- › ordering work as a whole to cease.

The WEA also has authority to issue administrative fines in cases of serious breach of clear and generally known provisions of the Danish Working Environment Act.

The WEA may also order the recipient of an improvement notice or other decision concerning health and safety to seek assistance from an authorized health and safety consultant in the following situations:

- › when the improvement notice concerns one or more complex and serious problems (covered by sections 8 to 25 of the Danish Working Environment Act);
- › when the WEA has identified at least five breaches during the same inspection;
- › when the notice concerns problems with the psychological working environment, as a result of bullying or sexual harassment;
- › when it is necessary to investigate whether toxic materials or substances can be substituted with less toxic materials or substances or exposure to them can be reduced by altering the work process.

In a case of serious breach of the Danish Working Environment Act or where the employer has failed to comply with orders issued by the WEA, the WEA may report the employer to the police. The case will then transfer to the police and take the form of a criminal investigation with criminal charges being made against the employer.

› Which parties have duties to protect workers and establish safe workplace conditions?

Under the Danish Working Environment Act, health and safety at work must be ensured by means of cooperation between the employer and employees.

In enterprises with between one and nine employees, health and safety cooperation must take place via regular contact and dialogue between the employer and employees.

In enterprises with between ten and 34 employees, health and safety cooperation must be managed via a 'health and safety organisation' consisting of one or more supervisors and one or more elected employee representatives, plus the employer or a representative, who will also be the chair. The health and safety organisation is responsible for day-to-day tasks as well as overall health and safety risks. The organisation will typically meet once a month and discuss health and safety strategy, including how to prevent accidents.

In enterprises with 35 or more employees, the health and safety organisation must be two-tiered. The first tier is one or more groups, each group consisting of a supervisor and an elected employee representative responsible for day-to-day tasks such as mentoring and guiding employees. The second tier is a committee responsible for overall health and safety tasks, such as implementing new procedures. The committee must consist of the employer or a representative and a number of supervisors and elected employee representatives.

The elected health and safety representatives enjoy protection against dismissal and any other impairment of their conditions, in the same way as elected union representatives within the same or a similar sector.

The employer

The primary responsibility of the employer is to ensure safe and healthy

working conditions.

In general terms, the employer must:

- › ensure the effective supervision of work, so that it is performed safely and without health and safety risks;
- › inform employees of any risk of accidents or illnesses that may exist in connection with the work;
- › ensure that employees are provided with all necessary training and instruction;
- › ensure the work is performed, organised and carried out in a way that ensures health and safety;
- › ensure the workplace is in a safe condition and meets the requirements for example, for furnishing, dimensions, exits and welfare facilities;
- › provide safe technical equipment;
- › protect employees from exposure to substances and materials that may be hazardous or otherwise compromise health or safety.

It is also the employer's duty to ensure that all members of the health and safety organisation are provided with reasonable time off work to carry out their health and safety duties. In addition, it is the employer's duty to provide members of the health and safety organisation with training, necessary knowledge and the opportunity to coordinate their efforts. The employer must ensure that members of the health and safety organisation are provided with a three-day safety course within three months of their appointment to the organisation.

Further, the employer must ensure a written workplace assessment of health and safety conditions at the workplace is prepared. It must have due regard to the nature of the work, work methods and work processes. The workplace assessment must remain at the workplace and be available to employees and the Danish Working Environment Authority ('WEA'). The workplace assessment must include an opinion on health and safety issues at the workplace and how these are to be resolved. The assessment must also identify and describe health and safety conditions in the enterprise, as well as contain a plan to resolve any issues identified.

If the employer does not have the necessary expertise within the organisation to undertake health and safety work, it must seek external assistance.

The supervisor

A supervisor is a person whose work consists solely or primarily of managing or supervising employees on behalf of the employer. The supervisor must contribute towards ensuring that working conditions are safe and healthy within the field of activity under his or her authority. Therefore, the supervisor must check the effectiveness of measures taken to promote health and safety.

If the supervisor becomes aware of any errors or deficiencies that may involve a risk of accident or illness, he or she must take steps to avert the danger. Where the risk cannot immediately be averted, the supervisor must inform the employer without delay and, if necessary, immediately stop the work.

Employees

Employees must comply with all instructions given by the employer in order to promote health and safety.

Employees must cooperate to ensure that the working conditions are safe

and do not involve any health risks. They must check the effectiveness of measures taken to promote health and safety.

If an employee becomes aware of any errors or deficiencies which may affect health or safety and cannot be remedied by themselves, they must inform the supervisor, the employer or a member of the health and safety organisation.

Employees are always entitled to leave a work zone in the event of serious or imminent danger which cannot be avoided, and the employee's position or rights must not be affected as a result.

Building and construction owners

For building and construction activities where several employers are active at the same site, the contractor must plan and coordinate the measures to be taken to promote the health and safety of all employees.

Suppliers and repair workers

Any person who supplies or provides machinery, parts or other technical equipment must ensure that it can be used without health and safety risks and that it is accompanied by the necessary protective equipment. These duties also apply when equipment is made available for resale or leasing, for example.

Machinery supplied or displayed in Denmark must show the name and address of the manufacturer or importer.

Any person who, as an independent subcontractor, installs, converts or reconditions technical equipment must ensure compliance with safety rules and regulations. If, while performing this work, the repair worker becomes aware of any errors or deficiencies that may affect safety, he or she must inform the owner or user.

› What penalties exist for violations of OHS and criminal law?

In Denmark, the Danish Working Environment Authority ('WEA') focuses on both the physical and psychological working environment. The most common serious breach on the part of an employer is failing to ensure a safe and healthy physical working environment, but in recent years, the WEA has intensified its focus on psychological factors in the working environment such as stress and harassment. To this end, it has issued a range of orders on this subject.

The WEA has the authority to order employers to remedy an issue immediately or within a specified period. In the case of a serious breach of OHS law, (e.g. risk of cave-in or collapse) or the employer's non-compliance with orders issued by the WEA, the WEA may report the employer to the police. The case will then transfer to the police and they will decide whether to prosecute. If so, the case will go to trial.

The following individuals and enterprises may be subject to penalties under OHS law:

- › employers - whether the legal entity or the owner-manager;
- › individuals - employees, supervisors or CEOs;
- › others – e.g. suppliers, subcontractors, repair workers.

Employers, whether natural or legal persons, are generally liable for breaches of the Danish Working Environment Act even if the employer

has not acted intentionally or negligently, if the breach is attributable to one or more persons associated with the enterprise or the enterprise as such and the person involved has acted negligently or intentionally. This is effectively strict liability, although there are certain exceptions where the employer may not be liable for an employee's breach of the Act if the employer has fulfilled its obligations.

Employees and supervisors may also be liable under OHS law if the employer has fulfilled its obligations under the Act and the employee or supervisor negligently or intentionally breaches the Act. In practice, this is only used in cases of gross negligence or intentional breach.

CEOs may be liable for any negligent or intentional breach of OHS law.

If an employer fails to meet its legal requirements or comply with orders issued by the WEA, the employer may be fined or imprisoned for up to one year. If the employer's breach results in an employee suffering serious injury or dying, the employer may be imprisoned for up to two years. However, breaches of OHS law will usually result in a fine and the courts have yet to use the sanction of imprisonment.

Fines are usually calculated in four steps. The first step is to determine whether the basic fine should be DKK 20,000 or DKK 40,000. This will depend on the severity of the breach and the level of the employer's intent. If, for example, the employer has breached an important rule acting with gross negligence, this will usually be considered a serious breach.

The second step is to determine whether the breach has resulted in death or serious injury. If so, the basic fine is doubled to DKK 40,000 or DKK 80,000. The third step is to assess whether the fine should be increased as a result of aggravating or significantly aggravating factors. The fine will be increased by DKK 10,000 for each of the following aggravating factors:

- › the breach has resulted in death or serious injury;
- › the employer has received an improvement notice regarding the same or a similar matter before;
- › the breach has resulted in or was intended to result in financial benefit;
- › the breach was committed with gross negligence or intent.

The fine will be increased by DKK 20,000 for each of the following significantly aggravating factors:

- › a person under the age of 18 has died or has been seriously injured;
- › more than one person has been injured or endangered because of the breach;
- › the employer has been penalised during the past four years for breach of the Danish Working Environment Act.

Finally, the court will adjust the total fine (based on all of the above) depending on the size of the business (i.e. large enterprises face larger fines than small ones), unless the breach is of a technical or administrative rule with no risk of injury. Ultimately therefore, the amount of a fine is determined by the courts and the figures given above are guidelines. The WEA has issued the two tables below for an easy overview:

Basic fine of DKK 20,000

Nature of breach	Small enterprises (0-9 employees)	Medium-sized enterprises (10-34 employees)	Large enterprises (35-99 employees)	Very large enterprises (100+ employees)
Basic fine	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)
Breach has resulted in death or serious injury	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)
Addition for each aggravating factor	DKK 10,000 (EUR 1,350)	DKK 10,000 (EUR 1,350)	DKK 10,000 (EUR 1,350)	DKK 10,000 (EUR 1,350)
Addition for each significantly aggravating factor	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)
Addition based on size of employer	DKK 0 (EUR 0)	DKK 35,000 (EUR 4,725)	DKK 52,500 (EUR 7,100)	DKK 70,000 (EUR 9,450)
Total fine	DKK 70,000 (EUR 9,450)	DKK 105,000 (EUR 14,175)	DKK 122,500 (EUR 16,550)	DKK 160,000 (EUR 18,900)

Basic fine of DKK 40,000

Nature of breach	Small enterprises (0-9 employees)	Medium-sized enterprises (10-34 employees)	Large enterprises (35-99 employees)	Very large enterprises (100+ employees)
Basic fine	DKK 40,000 (EUR 5,400)	DKK 40,000 (EUR 5,400)	DKK 40,000 (EUR 5,400)	DKK 40,000 (EUR 5,400)
Breach has resulted in death or serious injury	DKK 40,000 (EUR 5,400)	DKK 40,000 (EUR 5,400)	DKK 40,000 (EUR 5,400)	DKK 40,000 (EUR 5,400)
Addition for each aggravating factor	DKK 10,000 (EUR 1,350)	DKK 10,000 (EUR 1,350)	DKK 10,000 (EUR 1,350)	DKK 10,000 (EUR 1,350)
Addition for each significantly aggravating factor	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)	DKK 20,000 (EUR 2,700)
Addition based on size of employer	DKK 0 (EUR 0)	DKK 55,000 (EUR 7,425)	DKK 82,500 (EUR 11,150)	DKK 110,000 (EUR 14,850)
Total fine	DKK 110,000 (EUR 14,850)	DKK 165,000 (EUR 22,275)	DKK 192,500 (EUR 26,000)	DKK 220,000 (EUR 29,700)

› What are the risks of civil claims against the employer?

Under the Danish Industrial Injury Insurance Act, all employers in Denmark are required to procure and maintain industrial injury insurance and pay contributions to the 'Labour Market Insurance'.

If an employee is injured while performing work for the employer, the

employee will be entitled to compensation under the Danish Industrial Injury Insurance Act if the injury qualifies as an industrial injury, which includes work accidents and occupational diseases. It is of no relevance whether or not the employer or anyone else has acted negligently. The compensation is paid by either the industrial injury insurance company or the Labour Market Insurance.

The following expenses are covered by the industrial injury insurance or the Labour Market Insurance:

- › expenses for medical care, rehabilitation, aids, etc.;
- › compensation for loss of earning capacity;
- › compensation for permanent injury;
- › transitional allowance at death;
- › compensation for loss of breadwinner;
- › compensation for surviving dependants.

The Danish Industrial Injury Insurance Act does not cover compensation for lost earnings or pain and suffering. Therefore, the employee may choose to claim damages from the employer under the Danish Liability for Damages Act. The employer may be liable to pay damages if the industrial injury is caused by the employer's negligence in relation to health and safety at the workplace. Such claims will be based on an argument from the employee that the employer failed to properly supervise or instruct the employees. In order for the employer to be liable in damages to the employee, the following conditions must be met:

- › the employer must have acted negligently;
- › there must be a causal connection between the injury suffered and the work;
- › the injury must have been foreseeable by the employer.

Under the Danish Liability for Damages Act, the employee may claim:

- › compensation for lost earnings;
- › medical expenses;
- › compensation for pain and suffering;
- › compensation for permanent injury;
- › compensation for loss of earning capacity.

Employers are only liable in damages to employees for claims where no compensation is available under the Danish Industrial Injury Insurance Act which, as a starting point, will always be the case in regard to compensation for pain and suffering and loss of earnings. In some cases, a difference will arise, for example, in relation to loss of earning capacity, since loss of earnings is calculated differently under the Danish Liability for Damages Act than under the Danish Industrial Injury Insurance Act. In these situations, the employee may try to get the employer to pay the difference.

As a starting point, the employee is entitled to compensation for pain and suffering on days when the employee is absent due to sickness. The compensation is, based on 2015 figures, DKK 190 (EUR 25.5) per day, subject to a maximum compensation of DKK 72,500 (EUR 9,700). The compensation for loss of earnings will depend on the difference between the employee's actual and expected income.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

The Danish Industrial Injury Insurance Act distinguishes between work accidents and occupational illnesses.

Work accidents

Under the Danish Industrial Injury Insurance Act, a work accident is defined as a physical or psychological injury following from an incident or exposure that occurs suddenly or within five days, for example if an employee falls down a ladder. A work accident may be recognized as an industrial injury if it occurred while working for an employer because of the work or working conditions.

The nature of the injury is of no relevance in this regard. All physical injuries are covered but also psychological injuries, for example caused by shock, are covered by the insurance.

The incident or exposure may be minimal or may result from a normal procedure. The only requirement to qualify as a work injury is a causal nexus between the injury and the incident or exposure.

An accident occurring when the employee is on his or her way to or from work is not regarded as a work accident. But an accident occurring on the way between two workplaces is regarded as a work accident.

Occupational illnesses

Under the Danish Industrial Injury Insurance Act, an occupational illness is a disease or disorder caused by the work or working conditions. The illness must have developed as a result of exposure in the workplace and the correlation between exposure and illness must be well known in medical research. If there is adequate medical research to document that the illness is caused by a certain type of exposure, it will be included on the list of occupational illnesses. An illness may be recognized as an industrial injury in two ways:

- › if the illness and the exposure causing the illness are on the list of occupational illnesses, the 'Labour Market Insurance' will recognize the illness as an industrial injury; or
- › if the Occupational Illnesses Committee of Denmark states that the illness was most likely caused by the exposure in the workplace.

› What are the legal requirements on the employer following a workplace accident?

When to report

It is the employer's responsibility to report work accidents to the 'Labour Market Insurance' and the Danish Working Environment Authority ('WEA'). The local emergency services must be called immediately in the event of a serious accident. Besides that, the employer is required to report to the WEA and to discuss the industrial injury with its internal health and safety organisation.

If a work accident is expected to give rise to a claim under the Danish

Industrial Injury Insurance Act, the Labour Market Insurance must be notified as soon as possible and no later than nine days after the accident occurred.

Where the WEA is not notified of a work accident within nine days, because the injury was not expected to give rise to a claim and the employee is not expected to resume work to a full extent within five weeks after the accident, it must be notified within five weeks.

The final deadline for reporting a work accident is one year after the injury.

The WEA must be notified of deaths presumed to have been caused by a work injury, including any death occurring at the workplace for any reason, within 48 hours. The Board must be notified once more if the injury likely to have caused the death was reported before the employee died.

The employer is under no obligation to report occupational illnesses, but may choose to report them to the Labour Market Insurance. Doctors and dentists are required to report occupational illnesses to the Labour Market Insurance.

The deadline for reporting an occupational illness is the same as described above, but time begins to run when the person responsible for reporting it becomes aware that the illness is work-related.

The final deadline for reporting an occupational illness is one year from the date when it is known that the illness is work-related.

How to report

Work accidents must be reported via the electronic system EASY. When reporting through EASY, the Labour Market Insurance and the WEA will both receive the accident report. The system is only available in Danish and can be accessed from <https://easy.ask.dk/easy/>.

Occupational illnesses must be reported via <https://erhvervssygdomme.dk/ess/>. Employers without internet access or a Danish VAT number ('CVR' number) may apply for an exemption from digital reporting. Injuries resulting in death must be reported directly to the Labour Market Insurance on (0045) 20 42 63 97.

Other reporting

An injury may be reported by the injured employee or by a person or organisation on behalf of the injured employee if the employer fails to do so for some reason.

For the Labour Market Insurance

When an employee is involved in a work accident, the employer must notify the Labour Market Insurance. It must submit a report via the Labour market Insurance's digital system and this must contain the following details:

- › information about the injured or dead employee (i.e. full name, address, job title at the time of the accident and date of employment);
- › date and time of the accident;
- › expected duration of incapacity;
- › the injured employee's occupational status (e.g. employee, self-employed with a limited liability company, self-employed in an

owner-managed enterprise, trainee or working spouse)

- › information about the employer (i.e. name of the company, VAT number, branch, address, insurance company with whom the employer has taken out its mandatory insurance);
- › detailed description of the accident specifying the sequence of events and how the accident happened;
- › description of the injuries sustained, including information about which body parts were injured and how;
- › information about the person reporting, if this is not the employee or employer (i.e. name, address and VAT number);
- › status of the reporting person (i.e. an injured person, a doctor or dentist, the employer or someone else);
- › date and signature.

Upon request, the employer is required to provide the Labour Market Insurance with the information necessary to further investigate the accident. However, the employer is not required to provide information or comments that may be used against it in court.

› Must accidents to persons other than workers be reported?

Employers are responsible for reporting work injuries suffered by their own employees.

Under the Danish Industrial Injury Insurance Act, 'employees' include:

- › those engaged to carry out work in Denmark whether paid or unpaid, permanent, temporary or casual;
- › members of the employee's family working for the employer's business in such a way and to such an extent as to be regarded as being in the same position as other employees;
- › self-employed individuals and their assisting spouses working in Denmark, if they have taken out insurance;
- › live-born children having contracted a disease prior to birth owing to the mother's work during pregnancy;
- › those carrying out civic or municipal duties;
- › those attempting to save human life, prevent accidents or forestall major material or cultural losses.

An employer is under no obligation to report accidents suffered by others.

› Is there a legal obligation to conduct internal investigations?

There is no legal obligation to conduct an internal investigation after an industrial injury. However, as part of the employer's obligation to ensure the continued health and safety of employees, the employer must inform the employees of any risk of accidents which may exist in connection with their work and this may require the employer to conduct an investigation in order to locate the risks and identify the need for additional training and instruction.

Further, an industrial injury or an improvement notice issued by the Danish Working Environment Authority ('WEA') should give rise to considerations as to whether the workplace fulfills the requirements in the Danish Working Environment Act or whether it is, for example, necessary to revise the internal safety procedures, check up on employees' training level or make sure that all equipment is up-to-date. The employer may want to involve the WEA or the internal health and safety organisation in planning and organising this process. External advisers may also be involved, especially in the case of complex problems.

If an industrial injury has happened, it might also be necessary to review the workplace assessment.

It should be noted that if a similar injury happens again, this will most likely be considered an aggravating circumstance by the courts.

› **What other parties are involved in the reporting and investigation process?**

In the event of a serious work accident, the police will inform the Danish Working Environment Authority ('WEA') immediately. The WEA will most likely initiate an emergency inspection and prepare an accident report. As part of its inspection, the WEA will make an assessment of the security measures to be taken before work can be resumed and the need for psychological first aid. After the inspection, the WEA will contact the employer and inform it of the result.

› **When must accident scenes be preserved and for how long?**

There are no specific requirements as to when or for how long the scene of the accident should be preserved.

› **When is there an obligation to retain experts?**

If, as a result of the accident, the employer realizes the task of ensuring safe and healthy working conditions exceeds the expertise available at the workplace, the employer must seek external assistance with a view to ensuring the continued health and safety of its employees.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

The Occupational Health and Safety rules in Finland are set out in the Occupational Safety and Health Act (738/2002) and the Occupational Health Care Act (1383/2001). Moreover the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006) governs the authorities responsible for the enforcement of occupational health and safety legislation and their duties and powers.

The employees' right to compensation for work accidents and occupational diseases is regulated by the Work Accident and Occupational Disease Act (459/2015). These acts apply to all work performed for an employer under the employer's direction and supervision both in the public and private sector.

The general OHS principles, as set out in the Occupational Safety and Health Act, have been more fully developed in various Government and Ministerial Decrees, which provide specific, technical regulations regarding for example, the use and properties of machinery, special working equipment and specific health and safety risks in certain sectors.

▶ Who enforces OHS law?

The Ministry of Social Affairs and Health and the Regional State Administrative

Agencies are responsible for the administration and enforcement of the OHS legislation. The Regional State Administrative Agencies have inspectors who are empowered to inspect workplaces and enforce OHS legislation.

Should there be grounds for suspecting either a breach of OHS law or a criminal offence, the occupational safety and health authority will notify the police, unless the act is minor and the public interest would not be served by notification.

▶ What powers do the inspectors have?

The occupational safety and health authority and the inspectors are allowed to use their powers only to the extent necessary to enforce occupational safety and health. In order to carry out their duties, the inspectors have the right to:

- ▶ enter a place where work is performed or thought to be performed;
- ▶ request from the employer documentation and clarifications relating to the safety and health of the work and workplace and the state of the work community;
- ▶ inspect documentation on the occupational healthcare services provided by a service provider;
- ▶ engage in discussions with those working at the workplace or any other persons occupied at the workplace and to receive information necessary to complete their duties;
- ▶ take samples of materials used at the workplace, or products manufactured or used at the workplace, for separate analysis or investigation; and

- › carry out hygiene measurements at the workplace and take photographs.

Inspections can be carried out as often as necessary for supervision purposes. Inspections will primarily be conducted after notifying the employer in advance, but can be done without prior notification if required. If the inspection is organised following a notification to the occupational safety and health authority, the identity of the notifier must be kept confidential unless the notifier has agreed otherwise and disclosure of the notifier's identity is necessary for the purposes of supervision. The occupational safety and health authority also has the power to assign experts to help with the investigation.

If the inspector detects any faults or omissions in buildings, equipment or other conditions at the workplace that the employer is liable to remedy, the inspector may give appropriate instructions to the employer for remedying the omissions or eliminating the faults. The inspector may also issue a written order if the danger or nuisance caused by the fault or omission is considered more than minor. A written order can also be issued if the employer has not complied with prior instructions from an inspector.

If the employer does not comply with the written order the inspector can transfer the matter to the occupational health and safety authority. The authority can order the employer to remedy the breach within a set time period. If needed, the occupational health and safety authority can order that unless the employer fulfills its obligations, it will be required to pay a fine, or the neglected obligation will be performed by a third party at the employer's expense, or that work at the workplace will be suspended. The OHS authority may also prohibit the use of certain equipment or working method that it believes is causing danger to life. Before making its decision the OHS authority must offer the employer or the occupational safety and health representative the opportunity to be heard.

› Which parties have duties to protect workers and establish safe workplace conditions?

Both employers and employees have duties to establish safe workplace conditions. Employers do, however, have the primary responsibility to ensure health and safety at work. In doing so, employers must consider all circumstances related to the work, the working conditions and other aspects of the working environment, as well as their employees' personal capacities.

The employer

Employers must develop the measures necessary to improve working conditions, decide on the extent of them and put them into practice. The following principles should be observed when developing measures:

- › the measures should help prevent hazards or risk factors;
- › they should help to eliminate hazards and risks or, if this is not possible, a less hazardous or harmful alternative should be chosen;
- › safety measures which have a general impact should be implemented before measures with an individual impact; and
- › technological developments and other available means should be taken into account.

Employers must also continuously monitor the working environment, the state of the working community and the safety of work practices. Moreover, employers must produce a policy regarding the actions needed to promote safety and health at workplaces and to maintain employees' working capacity. The policy must also discuss the need to improve working conditions and the impact of environmental factors. These objectives must

be discussed with employees or their representatives.

Employers must assess the hazards and risks associated with the work, the work premises and other aspects of the working environment. If certain hazards and risks cannot be eliminated, employers should assess the consequences to employees' safety and health. If the employer does not have the expertise needed to analyse and identify hazards and risks, it should consult external experts with the appropriate expertise.

If the assessment of risk shows that the work may cause a particular risk of injury or illness, the work may only be done by an employee who is competent to do it or by another employee under the direct supervision of the competent employee. Access to the danger area by others should be prevented using appropriate measures. If work or working conditions may involve a particular risk to a pregnant employee or her unborn child and the risk cannot be eliminated, the employer should aim to transfer the employee to other suitable work for the duration of the pregnancy.

When designing the working environment, work premises, production methods, the use of machinery and the use of substances hazardous to health, employers must ensure their impact on health and safety is taken into account and that they are suitable for the intended use. Employers must also provide employees with appropriate personal protective equipment if the risk of injury or illness cannot be avoided or adequately reduced by other means.

Employers should also take the employees' physical and mental capacities into account when planning the work so as to avoid or reduce risks to health and safety from workload factors.

All employers must maintain an accident insurance policy for all their employees. Policies generally cover both work-related accidents, including accidents on the way to and from work, and occupational illnesses. The law contains detailed provisions relating to the essential terms of the policy, for example, the level of benefit to be provided for each employee.

Employees

The employees' primary obligation in ensuring occupational safety and health is to follow the orders and instructions given by the employer. Employees must also take care of their own health and safety and that of other employees. Employees should also avoid harassment and other inappropriate treatment of other employees at the workplace, as this may be a risk to their health and safety, including to their mental wellbeing.

Employees are responsible for using and looking after personal protective equipment provided for them by the employer. Employees must inform the employer and the occupational safety and health representative without delay of any defects they discover in equipment, but also in the working conditions, methods or machinery. Employees should also try to eliminate any faults and defects they discover.

If the work causes a serious risk to an employee's own or other employees' life or health, the employee has the right to stop performing the work. The employer or his or her representative must be informed if an employee stops work without delay. The right to refrain from work only exists until the employer has eliminated the risks or in some other way ensured the work can be done safely.

Occupational safety and health representatives

Every employer who regularly employs at least ten employees must have an occupational safety and health representative and two vice representatives that the employees elect from amongst themselves. These representatives work as contact points between the employees and the occupational safety and health authority and represent the employees in OHS cooperation at workplaces.

The occupational safety and health representatives must familiarise themselves with the workplace environment, the state of the work community and occupational safety and health legislation. They should also participate in inspections and expert investigations relating to occupational safety and health, if the expert or occupational safety and health authority considers this necessary.

They are also entitled to access the records the employer is obliged to keep in accordance with occupational safety and health law. Employers must ensure that the occupational safety and health representatives and the vice representatives receive appropriate training to enable them to carry out their duties. The training must take place during working hours, unless agreed otherwise.

The occupational safety and health representatives have the right to be released from their regular work to carry out their duties, unless there is a sufficient temporary reason to prevent them being released. If there are at least ten employees working regularly at the workplace, the employer must normally release the occupational safety and health representatives from their regular work for at least four hours over four weeks to do their duties unless the release would cause significant inconvenience for production or the employer's activities. Employers must compensate the occupational safety and health representatives for any loss of income resulting from taking care of their duties during working hours.

If any work causes immediate and serious danger to an employee's life or health, the occupational safety and health representatives are entitled to interrupt the work.

The occupational safety and health representatives are protected against termination of their employment. Employers may only terminate their employment on individual grounds if a majority of the employees represented by the representative agree. The representative's employment may be terminated on collective grounds only if his or her work ceases completely and the employer is unable to arrange other suitable work or train the representative to do other work.

OHS law requires employers to appoint a health and safety manager and those employing 20 or more people at the same working place are also required to set up a separate health and safety board. The board serves as a forum for discussion between the employer and employees.

Others

Alongside employers and employees, there are others who have obligations regarding workplace safety and health, as detailed below:

- › product manufacturers and suppliers must comply with separate provisions on safety, for example for machinery and other equipment;
- › designers must ensure their designs comply with applicable legislation;

- › installers of machinery and other work equipment must follow the manufacturers' instructions and ensure it is installed appropriately;
- › inspectors carrying out initial and periodic inspections are liable to perform the inspections appropriately and give the necessary instructions concerning any faults uncovered;
- › dispatchers and loaders must give necessary instructions regarding loading and unloading items.

› What penalties exist for violations of OHS and criminal law?

Failure by an employer to comply with its duties can be considered either as a violation of occupational safety and health or a work safety offence. An act is considered a violation of occupational safety and health when it is relatively minor and not punishable as a work safety offence. Breaches of occupational safety and health law are committed by an employer or its representatives if they either intentionally or carelessly fail to:

- › carry out an initial or periodic inspection;
- › do an analysis or work out a plan;
- › provide or install a safety device or personal protective equipment;
- › obtain permission for work or notify work;
- › give instructions needed for the use of equipment or substances hazardous to health, or other similar instructions; or
- › keep the Occupational Safety and Health Act available for inspection.

A person can also be sentenced for breach of occupational safety and health law if he or she removes or destroys a device, instruction or warning intended to eliminate the risk of a work accident or occupational illness, without permission or a good reason, or through carelessness.

Failure to report a serious work accident resulting in a serious injury or death to the police or the OHS authority can also be considered a breach of occupational safety and health law.

An employer that fails to comply with the law in the way described above may be subject to a fine ranging from one to 120 days. The rate of the daily fine is calculated based on the person's income and the number of days will depend on the severity of the breach. Such fines are only imposed on individuals, such as a representative of the employer who is responsible for ensuring compliance with OHS legislation.

Work safety offences are regulated in the Penal Code (39/1889) and cover more serious acts. An employer or representative who intentionally or negligently breaches work safety regulations; causes a fault contrary to work safety regulations; prolongs a breach of work safety regulations by failing to monitor compliance; or fails to take financial, organisational or other measures necessary for work safety can be sentenced for a work safety offence to a fine of one to 120 days, a corporate fine or imprisonment for up to one year.

However, if the intentional or negligent breach leads to death, a physical injury or to severe danger, it may be punishable as negligent homicide, negligent physical injury or imperilment. The punishment for these offences can vary from a fine of between one and 120 days to imprisonment for between six months and six years depending on the consequences and severity of the act. Note that corporate fines, to which the employer may be subject, range from EUR 850 to EUR 850,000.

› What are the risks of civil claims against the employer?

Failure to observe occupational safety and health legislation may render the employer liable for damages caused to the affected employees in accordance with the general principles set out in the Tort Liability Act (412/1974).

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

The Finnish Accident Insurance Act defines a 'work accident' as a sudden and unpredictable occurrence:

- › caused by an external factor;
- › causing injury to or the death of an employee; and
- › occurring during work or in work-related circumstances.

An accident is unpredictable if it occurs without the employee intending it to occur. An external factor is defined as a factor not related to the employee or his or her actions, for example, a bump in the road, a slippery road or a sharp object hitting the employee. A work accident can occur either at work or in circumstances related to work (e.g. on the way to or from work).

Note that an injury or illness resulting from an assault or any other intentional act of another person is considered a work accident if it happens at the workplace or in work-related circumstances.

A serious work accident is an accident that results in a serious injury (e.g. fractures in long bones, a brain injury resulting in even minor permanent disability or burns that require skin grafts) or the death of an employee. These accidents have to be reported to the police, the OHS authority and the insurance provider without delay.

There is no specific definition of a work accident in the Penal Code.

› What are the legal requirements on the employer following a workplace accident?

Employers are obliged to report all accidents resulting in death or serious injury to the OHS authority, the police and the insurance provider without delay. A serious injury is defined as an injury that is highly likely to be permanent and make normal activities difficult. Because the seriousness of an injury might not be noticeable immediately after its occurrence and yet failure to report the accident is punishable as a breach of occupational safety and health, accidents should be reported even if the employer is not certain of the consequences of the accident.

All accidents, regardless of severity, that may make the insurance provider liable to pay compensation should be reported to the insurance company. The report should be made without delay.

Note that the report made to the OHS authority can be via a phone call, for example. No written report is necessary. Depending on the requirements of the insurance provider, the report to the insurance company can be made either on paper or over the Internet, using a specific work accident/occupational illness form.

› Must accidents to persons other than workers be reported?

In principle, only accidents to employees have to be reported, but there are some additions to this rule. The Occupational Safety and Health Act also applies to:

- › leased workers;
- › apprentices and students;
- › those employed under a policy to reengage long-term unemployed persons;
- › those doing work associated with rehabilitation and rehabilitative work experience;
- › people serving court sentences and working;
- › people undergoing treatment and doing work;
- › conscripts and women in voluntary military service;
- › those in non-military national service; and
- › people belonging to a contractual fire brigade while voluntarily participating in rescue services.

Serious accidents to the above persons also have to be reported to the OHS authority, the police and the insurance company.

› Is there a legal obligation to conduct internal investigations?

A work accident should always be investigated internally to understand why and how the accident occurred and how similar accidents could be prevented in future. There is, however, no legal obligation on the employer to conduct an internal investigation.

› What other parties are involved in the reporting and investigation process?

There are no regulations concerning the involvement of third parties in the reporting and investigation process. External experts should, however, be used if this is necessary to complete the investigation.

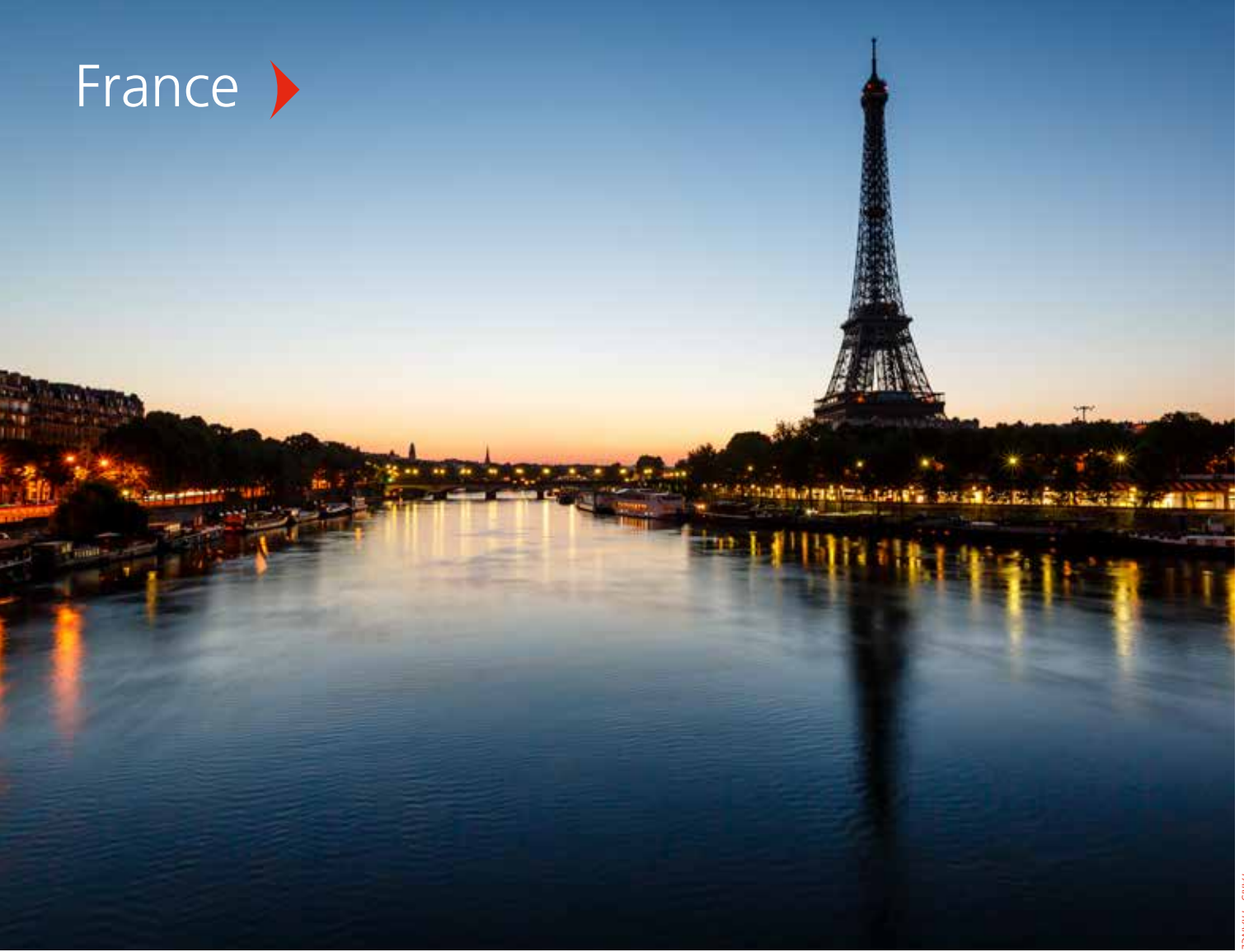
› When must accident scenes be preserved and for how long?

In the event of a serious work accident the employer should ensure that the accident scene is preserved so as to allow the police and the OHS authority to investigate the scene.

There is no specific legislation on the length of time the scene of the accident should remain undisturbed. However, if there is a serious work accident, the employer must notify the police of the accident and the police should start the investigation without delay.

› When is there an obligation to retain experts?

There is no legal obligation to obtain an expert opinion when investigating work accidents. They should, however, be used if this is necessary to complete the investigation.



Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The Occupational Health and Safety (OHS) rules in France are part of the Labour Code, which transposes European Directive 89/391/EEC of 12 June 1989 into French law. These rules apply to private law employers and 'workers' (which has a broader meaning than workers under employment contract, and may extend to interns and contractors).

► Who enforces OHS law?

The Labour Inspectorate (which is governed by the Ministry of Labour and Employment) is responsible for the administration and enforcement of OHS law. It consists of several local inspection services, whose jurisdiction is restricted to each geographical location.

► What powers do the inspectors have?

Labour inspectors and auditors have the right to enter all employment premises, including those protected on account of their dangerous nature. This right may be exercised at any time of day or night and is not subject to prior notification or the provision of a reason. The purpose of inspections is to verify compliance with the law on employment conditions and to protect

workers in their performance of their duties. The employer has the option to accompany the labour inspectors.

During a visit, the inspector may make all examinations, inspections and enquiries deemed necessary to ensure compliance with the legal provisions and, in this regard, they may:

- question the employer and/or staff on all matters related to the application of the law, either alone or in the presence of witnesses;
- take photos, provided that they are justified by the alleged offence;
- ask the employer and those working under the employer's control to provide proof of their identity and address.

During the visit, the Labour Inspector may have access to all documents that must by law be made available. The Labour Inspector may take samples of any materials used or products distributed or utilised, for analysis. The Inspector may ask the employer to conduct technical assessments including:

- to verify the state of legal compliance of its installations and equipment;
- to measure workers' exposure to physical risks or physical, chemical or biological agents which are subject to exposure limits;
- to analyse dangerous substances and preparations.

At the end of the inspection process, the Labour Inspector may:

- make observations;

- › provide oral or written advice;
- › issue the employer with a warning or letter of observation;
- › give the employer official notice of the need to rectify, within a fixed deadline, any infringement of health and safety rules or any serious and imminent risks (and, in certain cases, order a temporary shutdown of activity);
- › draw up an infringement report (generally, however, the Labour Inspector should give the employer official notice before producing a report) for the public prosecutor, who will then assess the level of penalties to be imposed;
- › apply to an emergency court to have any particularly dangerous circumstances halted immediately.

› Which parties have duties to protect workers and establish safe workplace conditions?

The employer

The employer must take any necessary measures to ensure safety and protect the physical and mental health of the workers. This includes:

- › taking action to minimise occupational risks and harsh working conditions;
- › providing information and training;
- › providing suitable arrangements and resources.

The employer is required to ensure it adapts the measures it takes in line with changes in circumstances and works to mitigate risks it is aware of. It should take measures based on the following principles:

- › the avoidance of risks, where possible;
- › the assessment of risks that cannot be avoided;
- › the tackling of risks at source;
- › adaptation of the work to the worker, notably as regards the design of work stations, the choice of equipment and methods of work and production, with a view to limiting monotonous work and 'predetermined work rates' and reducing the effects of these factors on workers' health;
- › the incorporation of technical developments;
- › the replacement of dangerous substances with safe or less dangerous ones;
- › prevention planning, including, all of the following as a whole: technical aspects, the organisation of the work, working conditions, labour relations and the effects of environmental factors, such as the risk of bullying and sexual harassment;
- › the implementation of collective protective measures, over and above individual protective measures;
- › ensuring appropriate instructions are issued to workers.

The employer is required, based on the nature of the business, to assess the risks to its workers' health and safety, including the choice of manufacturing processes, work equipment, chemical substances or preparations, the arrangement of the work premises and installations and how work stations are set out. This risk assessment must take into account the way exposure to risk may vary based on gender. When tasks are given to a worker, the employer must consider the abilities of that person to take the necessary health and safety precautions.

When workers from several organisations work at the same workplace, the employers must cooperate to ensure compliance with health and safety law.

Employees

Employees should, as far as their training and instructions from the employer allow, take care of their own health and safety as well as that of others affected by their actions or omissions at work. This obligation does not diminish the employer's responsibilities.

The employer's instructions must specify the way work equipment, protective equipment and any dangerous substances or preparations are to be used. The instructions should be tailored to the nature of the work to be accomplished.

The health, safety and working conditions committee (known as the 'CHSCT'), which is mandatory within companies with at least 50 employees and composed of staff representatives, represents employees' interests in relation to health and working conditions. It participates in the assessment and prevention of occupational risks and may conduct inspections or enquiries. In certain circumstances, it may be assisted by an expert, at the employer's expense.

The occupational health department (either within the organisation or provided externally, depending of the size of the organisation) is required to advise the employer, workers and staff representatives about health at work. Its role is to prevent harm to the health of workers resulting from their work and to monitor their health at work.

External bodies

External bodies, such as the social security authorities may also play a role in the prevention of occupational risks, by giving advice on occupational risk assessment and prevention and also by rewarding good practice financially by reducing social security contributions.

› What penalties exist for violations of OHS and criminal law?

Less serious infringements are punishable with a fine, based on the following scale:

- › Class 1 contraventions: up to EUR 38;
- › Class 2 contraventions: up to EUR 150;
- › Class 3 contraventions: up to EUR 450;
- › Class 4 contraventions: up to EUR 750;
- › Class 5 contraventions: up to EUR 1,500.

For the most serious offences, the minimum fine is EUR 3,750 and prison sentences may also be imposed. The maximum penalties that may be incurred are as follows:

- › for manslaughter: three years' imprisonment (increased to five years for manifestly intentional breaches of safety obligations) plus a fine of EUR 45,000;
- › for unintentional injuries resulting in over three months' incapacity: two years' imprisonment (increased to three years for manifestly intentional breaches safety obligations) plus a fine of EUR 30,000;
- › for unintentional injuries causing incapacity for three months or less resulting from a manifestly intentional violation of a safety obligation: one year's imprisonment and a fine of EUR 15,000;
- › for placing others in danger: one year's imprisonment and a fine of EUR 15,000.

For legal entities, the maximum possible fine is five times that applicable to natural persons. For crimes for which there is no specified fine but only imprisonment, if the perpetrator is a legal entity, EUR 1,000,000 will be imposed.

› What are the risks of civil claims against the employer?

If an employee who has suffered an accident at work is compensated via social security, this will exclude any civil action against the employer (or its assignees) unless the employer is guilty of an intentional offence.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

The Social Security Code defines an accident at work as follows:

"An accident at work is any accident, irrespective of its cause, which occurs as a result of or during working time to any person employed or working in any capacity or any location for one or more employer(s) or company director(s)".

Case law considers an accident at work to be an event or series of events occurring on a certain date as a result of or during working time, that causes a 'bodily injury', irrespective of when the injury becomes apparent. (Note that 'bodily injury' has been interpreted to include psychological harm, for example, sudden depression following a demotion announced during an annual appraisal, or psychological problems resulting from emotional trauma caused by an act of aggression in the workplace.)

› What are the legal requirements on the employer following a workplace accident?

The employer must declare any accident of which it has become aware to the social security authorities within 48 hours (not including Sundays and public holidays), by registered letter. The declaration must be made using an official form and sent by registered letter, requesting an acknowledgement of receipt.

In certain circumstances, the employer may be authorised by the social security authorities to record an accident on a special register, instead of making a declaration. This applies to minor accidents resulting in no work stoppage or medical treatment covered by social security.

The employer must declare the accident at work itself. However, it is not up to the employer to decide whether an accident is occupational in nature and it must therefore declare all accidents of which it is aware, even those that do not result in work being halted or which appear minor. If the employer has doubts about a particular accident, it may express its reservations within the declaration itself or in an appended letter, explaining why it is of that view. Any employer that fails to declare an accident at work, makes a late declaration, or fails to issue an accident form to the victim, may incur a financial penalty, along with a criminal fine.

There is no obligation on the employer to declare accidents at work to the Labour Inspectorate or the police. In practice, however, this may be recommended, depending on the gravity of the situation. The Labour

Inspectorate or the police will usually also be informed by the emergency medical services and/or the social security authorities.

› Must accidents to persons other than workers be reported?

If the victim is not an employee, then his or her own employer or the insurance company should be notified. However, no formal obligation exists in this regard.

› Is there a legal obligation to conduct internal investigations?

There is no legal obligation on the employer to investigate but if the employer has a health, safety and working conditions committee, it will be informed of the accident and has the power to investigate it. In addition, the employer must assess occupational risks and as part of that duty, it should try to understand how an accident happened so as to prevent it from recurring. Therefore, an internal investigation may be prudent.

› What other parties are involved in the reporting and investigation process?

There is no obligation on the employer to inform the authorities, but they may be informed by staff representatives (i.e. the health, safety and working conditions committee or the trade unions).

› When must accident scenes be preserved and for how long?

There are no rules about how long a scene should be preserved, but if the police or the public prosecutor decide to conduct investigate (which is not automatic), they may take measures of this kind.

› When is there an obligation to retain experts?

There is no obligation to retain experts. External investigators may do so at their discretion and it is open to the employer also to do so, as a way of protecting itself against any future claims. However, this is rare in practice.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

OHS duties are regulated by a large number of provisions. These are issued by the Federal Parliament in the form of Acts, and the Federal Government in the form of statutory ordinances. They are also set by the statutory accident insurance providers, in the form of accident prevention regulations, followed by guidelines and comments. This is known as a dual system.

The following institutions are the statutory accident insurance providers: occupational accident insurance funds (nine for trade and industry and one for agriculture) and more than twenty providers for public authorities. They all act on the basis of Social Code Book VII. They are only competent in relation to workplace accidents, occupational illnesses and health dangers due to work. By contrast, the Federal Parliament and Government are competent for all of the following aspects of OHS:

- ▶ social aspects (e.g. working time regulations and the protection for certain groups of employees such as youth, expectant mothers and those with severe disabilities);
- ▶ technical aspects (relating to work processes);
- ▶ medical aspects;
- ▶ product and equipment safety.

Framework Directive 89/391/EEC of 12 June 1989 was implemented by the Act on the implementation of measures of occupational safety and health to encourage improvements in the safety and health protection of workers at work (the 'Act on Protection at Work', which entered into force on 21 August 1996). Single Directives for different aspects of OHS have been implemented by statutory ordinances by the Federal Government.

An important special law is the Act on company doctors, safety engineers and other specialists for safety at work (the 'Act on Safety at Work').

▶ Who enforces OHS law?

OHS law is enforced by the supervisory authorities of the Federal Lands. These are the trade and industry inspectorates and the administrative offices for OHS. The statutory accident insurance providers have their own supervisors who monitor compliance with their accident prevention regulations.

The Act on Protection at Work contains criminal provisions for employers or those in charge, who persistently contravene orders of the supervisory authority or endanger the life or health of workers by intentionally contravening legal obligations or orders. In the case of a workplace accident resulting in physical injury or death, the general Criminal Code also applies. Criminal law is enforced by the public prosecutors.

► What powers do the inspectors have?

The supervisory authority may:

- › require information and documents (unless there is a risk of self-incrimination) and inspect those documents;
- › enter, inspect and examine business premises, offices and working areas during business and working hours (but note that outside of these times this can only be done to prevent an imminent danger to public order and safety and the same rules apply if the workplace is at home);
- › examine operating equipment, work equipment and personal protective equipment;
- › examine work procedures and processes;
- › undertake measurements; and
- › determine occupational health risks and investigate the causes of accidents at work, occupational illnesses or claims for damages.

The supervisory authority may order:

- › the measures the employer or workers must take to fulfil their obligations under the law and statutory ordinances;
- › the measures the employer must take to avert a specific danger to the life and health of workers.

If the employer fails to comply with an order, the supervisory authority may require it to cease the work referred to in the order or stop using the work equipment. Further, if an order is not complied with, the supervisory authority may impose fines or impose the measures itself.

The supervisors of the statutory accident insurance providers have comparable rights and may also order:

- › the measures the employer or workers must take to fulfil their obligations;
- › the measures the employer must take to avert specific accident risks and specific dangers to workers' health.

The supervisors may also:

- › require information (unless there is a risk of self-incrimination) and documents and inspect those documents;
- › enter, inspect and examine business premises, offices and working areas during business and working hours (but note that outside of these times this can only be done to prevent an imminent danger to public order and safety and the same rules apply if the workplace is at home);
- › examine operating equipment, work equipment and personal protective equipment;
- › examine work procedures and processes;
- › take samples; and
- › investigate the causes of accidents at work, occupational illnesses or claims for damages.

► Which parties have duties to protect workers and establish safe workplace conditions?

The following have duties under OHS law:

- › the employer;

- › safety officers;
- › OHS specialists and company doctors;
- › assistants for first aid, fire-fighting and evacuation;
- › the safety committee;
- › the works council;
- › workers.

The employer

The employer has the following general duties:

- › to organise adequately and supply the necessary means to perform work;
- › to make a risk assessment of workplaces and activities, including for psychological stress;
- › to implement required health and safety measures (i.e. using the best available technology and taking collective measures before individual measures);
- › to evaluate the effectiveness of implemented health and safety measures;
- › to document the results of risk assessments and implemented health and safety measures and their effectiveness;
- › to train employees in safety at the workplace at the beginning of work and in cases of changes at the workplace;
- › to implement measures concerning first aid, fire-fighting and evacuation;
- › to record workplace accidents if an employee has died or is injured in such a way that he or she later dies or becomes incapable of working (completely or partially) for more than three days.

These are the duties of the employer, shareholders and all representatives of the organisation, the plant manager and any instructed persons. If the employer delegates its duties, it must exercise control over those it instructs.

Agency workers must be trained by their employer (i.e. the agency) about risks in general terms and by the agency's client about the specific risks at the client's workplace.

If there are other forms of collaboration between the employer and another organisation, both have a duty to ensure health and safety at work.

Safety officers

In companies with more than 20 employees (or in smaller companies if there are special risks to life and health), the employer must appoint safety officers together with the works council. The minimum number of safety officers is determined by the rules of the occupational accident insurance fund, depending on the size of the company and types of risks. The safety officer is not required to have any specific qualifications. He or she must advise the employer about implementing measures to avoid accidents at work and occupational illnesses. The safety officer must also control the use of the personal protective equipment and inform the employer about risks of accidents at work and dangers to health. The safety officer needs to work with the OHS specialist and the company doctor and act as contact point for employees. Therefore, the safety officer should be a local employee, who carries out the duties of a safety officer voluntarily and free of charge.

OHS specialists and company doctor

Depending on the size and organisation of the workplace and the type of risks, the organisation must appoint the following types of OHS specialists: a safety engineer, a safety technician or a safety master. They are required to have specific qualifications.

They must:

- › support the employer during the risk assessments;
- › advise the employer regarding the organisation of the workplace (i.e. the use of technical equipment and procedures);
- › enter and inspect the workplace and inform the employer about risks;
- › advise and instruct employees;
- › investigate the causes of any workplace accidents.

The company doctor is not responsible for medical examinations into fitness for the job or the management of incapacity to work due as a result of illness, but for preventive medical examinations and medical advice for the employer. This could involve:

- › supporting the employer during risk assessments;
- › advising the employer regarding the organisation of the workplace (i.e. the use of technical equipment and procedures);
- › entering and inspecting the workplace and informing the employer about risks;
- › advising and instructing employees;
- › supporting the employer to organise first aid.

OHS specialists and the company doctor can either be:

- › employees (whose appointment and revocation are with the consent of the works council); or
- › freelancers; or
- › part of an industry-wide service organised by the occupational accident insurance fund; or
- › from a competence centre (for companies with a maximum of ten employees in certain branches).

If they are external, the employer must consult the works council before entering into or terminating the collaboration.

Assistants for first aid, fire-fighting and evacuation

Assistants responsible for first aid, fire prevention and evacuation must be appointed based on the rules of the occupational accident insurance fund and the number of employees at the workplace. The assistants must be suitably qualified. As they should be available at the plant at all times, they are usually employees. The employer must consult the works council before appointing such assistants.

The safety committee

In workplaces with more than 20 employees, there will be a safety committee consisting of:

- › an employer's representative;
- › the safety officers;
- › the OHS specialist;
- › the company doctor;
- › two members of the works council.

Its task is to share experience and consult on specific safety matters and the prevention of accidents. It meets at least once every quarter.

The works council

The employer must consult the works council about the appointment of safety officers and assistants for first aid, fire-fighting and evacuation. The employer needs the consent of the works council for the appointment and revocation of employees as OHS specialists and company doctors. It must consult the works council before entering into or terminating collaboration with external OHS specialists and company doctors.

The works council must monitor compliance with OHS rules. It is allowed to request measures that will benefit the organisation and staff and promote health and safety at work. The works council has co-determination rights regarding general occupational health and safety matters. If the statutory provisions allow the employer to implement the regulations in a number of ways, the employer must make a works agreement with the works council setting out which strategy it will use. The employer is also free to make additional voluntary works agreements in respect of extra measures to avoid work accidents and harm to health.

The works council must support the supervisory authorities, supervisors and other participants in combatting risks to health and accidents at work. The works council has the right to participate in investigations of accidents at work and receive copies of all documents in relation to accident investigations (e.g. the completed accident notification form). The works council also has the right to participate in planning of premises, equipment, procedures and workplaces.

Employees

Workers must take care of their own health and safety and the health and safety of their colleagues. They must use work and safety equipment as instructed. They must inform the employer without undue delay about any serious risks to health and safety and support the employer in fulfilling its duties. If they wish to make a complaint, they must contact the nominated person within the workplace before contacting the external authorities.

› What penalties exist for violations of OHS and criminal law?

Supervisory authorities may impose administrative fines of no more than:

- › EUR 500 where the employer fails to provide requested information or does not allow the workplace to be inspected;
- › EUR 5,000 for breaches of OHS rules or where a worker contravenes an enforceable order, either intentionally or negligently;
- › EUR 25,000 where the employer or a person acting on its behalf contravenes an enforceable order, either intentionally or negligently.

If an order is not complied with, the supervisory authority may require the cessation of the work referred to in the order or the cessation of use of the work equipment. Further, the supervisory authority may impose fines or carry out the measures itself.

The supervisors of the statutory accident insurance providers are also entitled to impose administrative fines of up to a limit of EUR 2,500, EUR 5,000 or EUR 10,000, depending on the breach (e.g. lowest fine might be for the accident notification form being missing, incorrect, or not completed on time, whereas the highest fine might be for a breach of OHS rules, contravention of an order, or failure to work with the supervisors).

A term of imprisonment of up to one year or a fine may be imposed as a penalty:

- › if the employer or a person acting on behalf of the employer repeatedly breaches an enforceable order; or
- › if the life or health of workers is jeopardised because of an intentional breach of OHS rules or because the employer or person acting for the employer has intentionally breached an enforceable order.

Where an employee is injured or dies in a workplace accident caused by failure to comply with OHS rules, the offender (the employer or colleague of the employee) may be held responsible under the Criminal Code, for example for:

- › Section 212: intentional manslaughter (with imprisonment for not less than five years up to imprisonment for life);
- › Section 222: negligent manslaughter (with imprisonment not exceeding five years or a fine);
- › Section 223: causing bodily harm intentionally (with imprisonment not exceeding five years or a fine);
- › Section 229: causing bodily harm by negligence (with imprisonment not exceeding three years or a fine).

There are no fixed amounts for fines. They are imposed in daily units (a minimum of five and maximum of 360). The court will determine the amount of the fine taking into consideration the personal and financial circumstances of the offender.

› What are the risks of civil claims against the employer?

The employee may refuse to work without loss of salary and take legal action in order to force the employer to fulfil its OHS duties.

The employee may also claim damages for breaches of OHS rules by the employer. However, there is an exemption from liability for the employer as a result of its mandatory membership of the occupational accident insurance.

The employer is always liable for property damage, but it is not liable for bodily harm unless:

- › the employer intended to cause bodily harm (i.e. it is liable if it acted with intent in respect of his duties, his action and the damage)
- › the accident occurred on the employee's way between home and work.

If the employer is not liable, the employee is not entitled to receive compensation for material damage or for pain and suffering. If the employer is liable, the employee will receive compensation for material damage from the employer (reduced by the amount paid by the accident insurance provider) along with compensation for pain and suffering from the employer alone. If the accident insurance provider has paid compensation to the employee, it can claim reimbursement from the employer if the employer has acted with gross negligent or deliberately breached OHS rules.

The same applies to the client of a temporary work agency, even though the client is not employer of the agency worker. The same also applies if the employee was injured by a colleague, in other words, the colleague is not liable for bodily harm unless he or she intended to cause bodily harm.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

Work accidents are accidents to insured persons based on an insured activity (i.e. employment). There must be a connection between employment and performance, as well as between performance and the accident. Accidents are time-limited occurrences which affect the body from the outside and cause death or harm to health. Note that the route between home and work is also insured.

› What are the legal requirements on the employer following a workplace accident?

A workplace accident must be reported to the accident insurance provider and to the supervisory authorities if an employee has died or is injured in such a way that he or she later dies or becomes incapable of working (completely or partially) for more than three days. The employer must ensure it records accidents of this kind.

An accident notification form must be submitted within three days of the employer becoming aware of the accident. The notification, signed by the employer and the works council, must be submitted to the accident insurance provider and to the supervisory authority. A copy of the notification must be given to the works council. The employer must also inform affected employees that they can request a copy of the notification. The OHS specialists and the company doctor must also be informed.

Accident insurance providers make a form available online for downloading and printing. Some providers also offer online notification. The German Social Accident Insurance (the 'DGUV'), which is the umbrella association for accident insurance institutions for the trade and industry sector and the public sector (excluding agriculture) also provides the form and some useful information about how to complete it at http://www.dguv.de/medien/formtexte/unternehmer/U_1000/U1000.pdf.

However, if there has been a death, mass accident or an accident causing serious harm to health, the employer must notify the accident immediately. The same applies under certain other circumstances (e.g. if hazardous or biological substances are involved).

The procedure immediately after a workplace accident should be as follows:

- › to safeguard the scene of the accident (e.g. stop machinery and rescue the injured);
- › to call the police if there has been a serious accident, in particular a death;
- › to send for medical help (e.g. emergency medical services);
- › to warn colleagues who could be in danger;
- › to give first aid to the injured;
- › if agency workers are injured, to contact the agency.

If a person is injured, needs a doctor and might be incapable of working, a so-called 'transit doctor' must be involved. This is a doctor with special qualifications in accident surgery. The contact details of the nearest transit doctors must be published in each plant. The transit doctor is responsible for primary medical care and the employer must inform the injured employee of this.

After giving primary medical care, the transit doctor will estimate the period of incapacity for work and will refer the employee to his or her family doctor if there is minor damage. The transit doctor will submit a report about the work accident to the responsible accident insurance provider for statistical evaluation. If there is serious harm (i.e. to the extremities, the cranium or the backbone), the transit doctor will initiate a special procedure in collaboration with an expert from the accident insurance provider to plan rehabilitation measures.

Note that, depending on the situation, a specialist for damage to skin or the ears, nose or throat may be made responsible for the primary medical care.

› Must accidents to persons other than workers be reported?

If an agency worker is injured in a workplace accident at the workplace of the agency's client, the client must inform the agency and the agency must notify its accident insurance provider. Further, the agency's client must notify its own accident insurance provider, even though the agency worker is not employee of the agency's client.

› Is there a legal obligation to conduct internal investigations?

The employer must gather the necessary information for the accident notification form. This includes information about the injured, witnesses and equipment involved (e.g. machinery and special substances) and a description of the course of the accident. Therefore, the employer must conduct at least a basic internal investigation, including visiting the scene of the accident, taking pictures of it, asking those involved about it and analysing documents, such as those specifying faults.

It can be useful for the employer to conduct a more detailed internal investigation in order to challenge the conclusions of the supervisory authority, the accident insurance provider and/or the public prosecutor and in order to defend itself against claims by injured employees. Since documents and equipment might be seized later during the external investigation, the employer should act before the external investigation commences.

The internal OHS specialist has a duty to investigate the cause of workplace accidents, to summarise and analyse the results of the investigation and to suggest measures to avoid recurrence.

› What other parties are involved in the reporting and investigation process?

The injured employee and any witnesses must help and support their manager during the investigation of the work accident. Note that the union is not involved.

› When must accident scenes be preserved and for how long?

There are no statutory rules about how long the scene of an accident needs to remain undisturbed. It depends on the individual case.

While the employer is waiting for the investigators (i.e. the supervisory authority, supervisors from the accident insurance providers, external OHS specialists, the police and the public prosecutor), the employer must preserve the evidence.

The external investigators will order the necessary measures. They might decide to continue to seal the scene for as long as reasonably necessary to

conduct the investigation. They might also order the employer to stop the work or stop using the work equipment.

› When is there an obligation to retain experts?

The supervisory authorities, the accident insurance providers and the public prosecutors may consult official experts during investigation of the accident to obtain technical or medical advice.

It can be useful for the employer to consult a second expert in order to be able to challenge the conclusions of the supervisory authority, the accident insurance provider and/or the public prosecutor and in order to defend itself against claims by injured employees.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

The occupational health and safety rules in Greece are set out in Law 3850/2010, entitled the 'Code of Health and Safety of Employees'. This law codifies and modernises pre-existing legislation.

According to Article 2 of the Code, certain pre-existing provisions regulating the health and safety of workers at sea and of miners remain in effect. In addition, Presidential Decree No. 1073/1981 applies to OHS in the context of some kinds of construction work and remains in effect. The 'Regulation of Labour in Mines and Quarries' also remains in effect with respect to certain provisions.

Further, a series of Ministerial Decisions and Presidential Decrees provide specific, technical regulations to do with working conditions (e.g. in public works), as well as exposure to harmful physical, chemical or biological agents. All these provisions remain in effect.

Finally, there is a National Schedule of Occupational Diseases (Presidential Decree 41/2012), in compliance with European Commission Recommendation 2003/670/EC.

▶ Who enforces OHS law?

The competent authority for enforcing OHS laws is the Labour Inspectorate (Soma Epitheorisis Ergasias). The Central Service of the Labour Inspectorate has an OHS Directorate. Each of the 15 Regional Services is comprised of two directorates, one of which is the OHS Regional Directorate. The latter has two or more OHS divisions comprised of OHS Inspectors who have the authority to conduct inspections and investigations. The location of the accident determines which division has authority to act. In addition, 'Special Labour Inspectors' are tasked with enforcing OHS law irrespective of region. Their powers lie mainly in the field of OHS law, but they may file reports in order to initiate criminal proceedings.

Administrative sanctions with respect to OHS Law breaches are imposed either by the Regional OHS Directors or the Special Labour Inspectors. The Minister for Labour and Social Security may also impose sanctions.

The police have powers with respect to criminal law and are always notified about workplace accidents.

▶ What powers do the inspectors have?

The Labour Inspectorate has extensive powers in relation to OHS and oversees compliance. It is competent to inspect and check all workplaces using any appropriate means. It investigates breaches of OHS law from an 'administrative' perspective. It also reports any omissions it finds in OHS law and any issues arising from application of the law to the Minister for Labour and Social Security.

The Inspectorate can visit all workplaces, at any time of day and, when deemed necessary, even at night, without prior notice to the employer. The inspectors have, by law, unlimited access to all documents, data, registries and files kept by the employer, can take copies of them and are entitled to request information about all aspects of production.

Inspections may also involve taking samples, photographs or videotapes, measuring hazardous physical, chemical or biological agents in the workplace, with the aim of improving conditions and identifying new and emerging hazards caused by the introduction of new technology and changes in the organisation of labour.

It enforces its findings by imposing severe 'administrative' sanctions on employers that refuse entry or access (these sanctions are administrative only in name, as, depending on the circumstances, they could also be classified as criminal).

The Inspectorate investigates the cause and conditions of serious and fatal workplace accidents and occupational illnesses, proposes measures for their prevention and drafts reports noting breaches of OHS law, with the aim of preventing repetition. The level of cooperation by the employer with suggestions is one of the criteria the Inspectorate applies when deciding on the severity of its administrative sanctions.

In serious cases the Labour Inspectorate may initiate criminal proceedings against those liable by filing charges with the competent authorities.

In addition, the Labour Inspectorate must by law immediately intervene in the workplace to investigate any complaint or request it receives.

› Which parties have duties to protect workers and establish safe workplace conditions?

Employers bear the primary responsibility for ensuring the protection of workers. However, the law imposes relevant duties on other parties as well. Thus, employees are also under a legal obligation to implement all OHS rules to the best of their ability.

The employer

All measures taken by the employer must comply with the General Principles of Prevention set out in law. These are to:

- › avoid risk;
- › assess unavoidable risks;
- › adapt the workplace conditions to avoid, as far as possible, monotonous or rhythmically repeated tasks;
- › replace hazardous material, methods, procedures or equipment with non-hazardous or less hazardous ones;
- › carry out cohesive and all-inclusive prevention planning;
- › deal with risks at their source;
- › favour collective protection measures over individual ones;
- › adapt to technical developments;
- › provide employees with appropriate instructions.

The employer is also obliged to:

- › take into account all OHS risks when setting up the workplace (e.g. in terms of choice of machinery, chemical or biological agents or products);

- › take into account employees' abilities in OHS when assigning tasks;
- › consult with employees and their representatives on planning and the introduction of new technologies.

The employer must appoint a safety doctor and (if the organisation employs over 50 persons) an occupational doctor. These can be individuals employed by the business or their services can be provided by the External Services for Prevention and Protection.

The employer has a duty to take all appropriate measures for the protection of the health and safety of employees, including activities to prevent occupational hazards, provide information and training to employees and create appropriate infrastructure. Employers must:

- › ensure that all measures taken are adapted to changing circumstances and try to improve on the status quo;
- › implement suggestions made by technical and health inspectors and facilitate their work during inspections;
- › oversee the proper application of OHS measures;
- › inform the employees about occupational risks;
- › formulate a plan for preventative action and improvement of workplace conditions;
- › maintain equipment and facilities;
- › encourage and facilitate training and retraining of staff;
- › take collective protective measures.

The employer must also keep a written assessment of existing OHS risks, including those that may affect groups of employees working under special conditions. The written assessment is carried out by the safety technician, the occupational doctor and/or External Services of Prevention and Protection, if hired by the employer. The assessment must:

- › identify existing risks;
- › identify potential risks arising, for example, from machinery and equipment, fire, electrocution, explosions, exposure to harmful physical, chemical or biological agents and work structure;
- › consider and/or conduct medical and other examinations concerning exposure to harmful agents, if applicable;
- › assess the measures that are needed to eradicate or avoid existing risks;
- › produce a list of measures taken to contain or mitigate risks;
- › propose the measures that need to be taken.

The employer must present the written assessment to the employees' OHS representatives and consult with them about it.

The employer must also arrange the workplace in a way that is compatible with OHS rules. In addition, it must put in place a system that allows emergency assistance to employees performing hazardous tasks without supervision and outside the visual and hearing range of other work stations. Moreover, it must provide, where appropriate, for employees to be protected from weather conditions. A series of Presidential Decrees lay down minimum requirements for workplaces arrangements by industry such as:

- › minimum height of workplaces;
- › minimum required space per employee;
- › minimum free surfaces per work station;
- › required equipment;
- › hygiene facilities;
- › construction requirements for facilities.

In addition, ventilation, temperature and lighting must be taken into account when designing or arranging the workplace.

The employer must draft an Evacuation and Rescue Plan, if this is considered necessary, given the position, size and type of business. The Labour Inspectorate may impose a sanction on employers who fail to have a Plan and so employers are strongly advised to have a Plan in place.

Emergency exits must be adequately clearly marked and adjusted to the workplace and number of employees, and they must lead to safety by the shortest route.

The employer is under a duty to maintain all installations, facilities and equipment. Any shortcoming that may lead to an immediate and serious OHS risk gives rise to a duty to shut down operations until resolution of the issue.

In addition, all safety systems must be regularly maintained by the employer and the employer must have written proof of maintenance, which must be carried out at least once every six months. First aid kits and facilities should also be regularly inspected by the employer.

In terms of harmful physical, chemical or biological agents, employers must take all measures necessary to avoid or mitigate exposure. In order to do so, they must:

- › replace harmful agents with safer ones where possible;
- › restrict their use in the workplace;
- › replace production procedures that generate harmful agents with ones that generate no agents or generate agents under the exposure limits;
- › limit the number of employees exposed;
- › limit the duration of the exposure;
- › provide employees with personal protective equipment;
- › prohibit an employee from performing a task involving exposure, if exposure is contra-indicated in medical examinations.

The employer must also:

- › measure the concentration or intensity of all harmful agents;
- › regularly maintain all equipment, appliances or systems used for taking measurements;
- › provide for emergency measures in case exposure limits are exceeded;
- › install security alert and early warning systems;
- › keep up-to-date records of all employees exposed to harmful agents and personal medical files on employees;
- › provide information to employees about exposure to harmful agents.

The employer must also regularly refer employees for medical examinations and assess the results. Referrals must also take place after recruitment or a change of work station or task performed.

Employees

Employees are under a general duty to:

- › implement all OHS rules in accordance with training and employers' instructions;
- › attend to their own health and safety and those of third parties.

These duties require:

- › proper use of machinery, tools and harmful substances;
- › proper use of safety equipment;
- › proper use of safety mechanisms;
- › reporting to the employer, safety technician and occupational doctor all situations that may give rise to an immediate OHS hazard;
- › reporting of all shortcomings in safety systems;
- › assisting the employer, safety technician and occupational doctor in all matters concerning OHS.

Employees must also attend seminars and training programmes on OHS issues.

Those responsible for first aid, fire safety and evacuation

In every business, the employer must appoint employees responsible for first aid, fire safety and evacuation. These employees must be specially trained to perform first aid, fire safety and evacuation measures.

The safety technician and occupational doctor

All businesses must employ a safety technician (either an employee or a certified person from the External Service of Prevention and Protection), who acts in an advisory capacity. The safety technician is also competent to:

- › provide the employer with suggestions and advice on OHS issues (which should be recorded in a special registry and certified by the Labour Inspectorate);
- › check the safety of facilities and instruments before they are used, as well as the production procedures and methods.

The safety technician must:

- › regularly inspect work stations from an OHS point of view and report to the employer any omission or failure to observe health and safety measures, propose measures for dealing with omissions or failures and oversee their implementation;
- › oversee the proper use of personal protective measures;
- › investigate the causes of workplace accidents, analyse and evaluate the results of the investigation and propose measures for the prevention of similar accidents;
- › oversee fire drills and alert procedures in order to assess the degree of readiness to deal with accidents.

The safety technician must ensure employees comply with OHS rules and guide them regarding the prevention of accidents. The safety technician must also participate in training courses.

The occupational doctor has duties similar to those of the safety technician, but in addition, he or she must:

- › do medical check-ups on employees;
- › ensure specific medical examinations are carried out (e.g. for exposure to radioactivity);
- › offer immediate treatment in the case of accident or sudden onset of disease;
- › refer employees for additional medical examinations where necessary.

Producers, importers and suppliers

Producers, importers and suppliers of equipment also have a duty to act in accordance with OHS law. Machinery must be manufactured so as not to create risks and must be installed properly. Moving parts must not be accessible.

Producers, importers and suppliers of hazardous substances are under similar obligations.

Committee for the Health and Safety employee representatives

Employees in businesses employing over 50 people may elect a 'Committee for the Health and Safety of Employees'. In businesses employing over 20 people, the employees may elect representatives for OHS matters. Businesses employing fewer than 20 people may elect one representative.

These Committees and representatives act in an advisory capacity and are competent to:

- › oversee compliance with OHS measures and contribute to their improvement;
- › propose measures for preventing serious accidents;
- › point out occupational hazards;
- › be briefed with data on work accidents and occupational illnesses;
- › be briefed on new production procedures, machinery, tools or materials;
- › ask the employer to take measures to prevent imminent and serious OHS dangers, not excluding shutting down machinery, facilities or production procedures;
- › consult and meet with the employer about all OHS issues;
- › inform the Labour Inspectorate of any shortcomings in the implementation of OHS rules;
- › be present at investigations and inspections and comment on findings.

Note that a special regional regime governs the Ship Repair Zone of Piraeus, Drapetsona, Keratsini, Perama and Salamis in terms of Committees on Health and Safety of Employees.

› What penalties exist for violations of OHS and criminal law?

All breaches of OHS law can lead to both criminal prosecution and administrative sanctions. In practice, the so-called 'administrative' sanctions are much more severe than the criminal ones.

If a workplace accident results in the injury or death of an employee or a third party, this results in criminal prosecution and liability in accordance with the general provisions of the Greek Criminal Code.

In cases of serious negligence on the part of the employer, the prosecution may decide to pursue charges of murder or intentional grievous bodily injury, but such charges are rarely upheld by the courts.

Administrative sanction	Minimum	Maximum	Imposed by
Fine	EUR 500	EUR 50,000	Regional Labour Inspectorate
Temporary cessation of operations for six days maximum	› 1 day › affected production unit	› 6 days › entire business	Regional Labour Inspectorate
Temporary cessation of operations for less than six days	affected production unit	entire business	Minister for Labour and Social Security
Permanent cessation of operations	affected production unit	entire business	Minister for Labour and Social Security

The criteria for imposing administrative sanctions are:

- › the imminence, gravity and extent of the risk;
- › the seriousness of the breach any repeated non-compliance or similar breaches in the past, and the degree of fault.

Fines are calculated based on:

- › the gravity of the breach;
- › the number of employees;
- › previous administrative or criminal sanctions;
- › the level of cooperation by the employer;
- › the number of employees affected by the breach.

Criminal Sanctions

All violations of OHS Law (as set out in Law 3850/2010, the 'Code of Health and Safety of Employees') can lead to prosecution and the following criminal sanctions:

Sanction imposed	Minimum	Maximum	Imposed on
Fine and/or imprisonment	EUR 900	EUR 15,000	employer
fine or	6 months	5 years	employer
	EUR 293	EUR 15,000	Constructor, producer, importer, supplier (intentional breaches)
Imprisonment or	10 days	5 years	Constructor, producer, importer, supplier (intentional breaches)
Fine or	EUR 150	EUR 15,000	Constructor, producer, importer, supplier (unintentional breaches)
Imprisonment	10 days	5 years	Constructor, producer, importer, supplier (intentional breaches)

Note that these sanctions rarely lead to actual imprisonment since in Greek criminal law, penalties of up to five years in prison can be 'bought out'.

► What are the risks of civil claims against the employer?

Full compensation can be claimed if the accident was deliberately caused by the employer or its agents or if the business had not complied with OHS rules, and there was a causal link between the non-compliance and the accident.

However, if the victim of the accident was insured with the Social Security Foundation (the 'IKA'), the employer and its agents are exempt from paying compensation to the victim. An exception is made if the employer deliberately caused the accident. In this case, the victim can claim from the employer the difference between the amount awarded by IKA and the full compensation owed in accordance with the Greek Civil Code. Separately, the victim - or his or her relatives in the case of death - are entitled to claim compensation for moral harm and pain and suffering.

An employee (or his or her relatives in the case of death) can claim partial compensation for death or personal injury, irrespective of the employer's liability. The partial compensation is calculated on the facts, based on the employee's salary and the degree of disability. Contributory negligence by the employee may only affect the calculation if he or she has demonstrated 'special negligence'.

Chapter 2

Immediate mandatory post-accident steps

► What is a 'work accident'?

There is no legal definition of an 'accident' in OHS law. For social security purposes, an accident is a violent and abrupt occurrence during or due to employment and/or an occupational illness. Death or disability of the employee caused by a violent occurrence during or due to employment is considered a labour accident. Any condition that affects the health of the employee or causes the deterioration of a pre-existing disease that is causally linked to employment can be considered a labour accident. Practice and case law have contributed to the list of accidents that are normally classified as workplace accidents, as follows:

- › death or disability from unreasonable or excessive effort by the employee in response to unusual or adverse conditions of employment;
- › accidents that occurred during commuting to and from work if there is a causal link between the employment and the accident;
- › accidents that occurred at the employee's home while carrying work tools or before removing the work uniform;
- › accidents during work breaks, even if they happen outside the workplace in cases where the employee left the workplace to satisfy basic needs not covered by the employer (e.g. an accident on the way back to the workplace after lunch);
- › accidents during paid leave, when the employee enters the workplace in order to receive payment;
- › death caused by insect bites, regardless of a pre-existing allergic condition;
- › accidents during strikes, if the employee did not participate in the strike;
- › altercations between employees in the workplace, if related to work.

Accidents not classified as labour accidents include:

- › accidents intentionally caused by the employee;
- › suicide (unless from a psychiatric disorder with a causal link with the employment);
- › accidents in the employee's home, (unless there was a causal link with work);
- › gradual deterioration of health (unless related to a lack of measures to mitigate any adverse working conditions).

► What are the legal requirements on the employer following a workplace accident?

In the event of a workplace accident, the employer must notify within 24 hours:

- › the police at the nearest police station;
- › the competent Labour Inspectorate;
- › the nearest branch of the social security organisation, where affected employees are insured.

A notification form needs to be filled in and filed with the Labour Inspectorate and the police containing the following data:

- › name, address and type of business of the employer;
- › name and address of affected employees;
- › family status of affected employees;
- › nationalities of the affected employees;
- › date of recruitment, duration of the employment and training received in OHS;
- › job description of affected employees;
- › tasks undertaken at the time of the accident;
- › date and time of the accident;
- › place of the accident;
- › seriousness of the accident (i.e. fatal, serious or minor);
- › parts of the body affected;
- › short description of the accident;
- › name, address and telephone numbers of two witnesses;
- › date of notification.

A similar form must be filled out and filed with the nearest branch of the social security organisation where the victim is insured.

In addition, the employer must provide the OHS representative or the Committee for the Health and Safety of Employees at the workplace with data on workplace accidents and occupational illnesses at the business.

All workplace accidents must be reported in writing to the competent authorities, i.e. the police and the Labour Inspectorate. All workplace accidents must be recorded in a special registry of accidents kept by the employer. The registry must include:

- › a description of the accident;
- › the cause of the accidents.

The registry must at all times be at the disposal of the authorities (e.g. the police, social security organisations and the Labour Inspectorate).

In addition, measures to be taken or already taken to prevent similar accidents must be listed in a separate special registry certified by the Labour

Inspectorate. This special registry is used to record the OHS suggestions of the safety technician and the occupational doctor. The suggestions, including any measures to be taken, need to be undersigned by the employer, to prove knowledge of them.

Any accident resulting in employee absence for more than three working days must be registered in a separate list (in addition to appearing in the registries described above).

The safety technician and the occupational doctor are also involved in the keeping of records, as they are obliged to consider any accidents, in order to propose measures for avoiding future similar ones.

► Must accidents to persons other than workers be reported?

The employer must ensure the health and safety of third parties. An accident affecting a person other than a worker may constitute a breach of OHS law and the Labour Inspectorate is competent to investigate. Therefore, while there is no explicit legal obligation to report accidents affecting persons other than workers, in practice, the employer must report an accident affecting third parties to the Labour Inspectorate.

In addition, an accident resulting in an injury should always be reported to the police.

► Is there a legal obligation to conduct internal investigations?

The safety technician has a duty to investigate the causes of workplace accidents, analyse and evaluate the results and propose any measures for the prevention of similar accidents. There is a similar duty on the occupational doctor with respect to occupational illnesses.

As the OHS employee representatives have the right to propose measures for preventing recurrence of workplace accidents, this implies they have a right to investigate. In addition, all employees and their representatives have the right to be present during investigations by the Labour Inspectorate and must be allowed to comment on the findings. The employer is also under a legal obligation to take account of the proposals.

► What other parties are involved in the reporting and investigation process?

The employee representatives act in an advisory capacity only. However, the employer is under a legal obligation to consult with them on all issues and inform them about workplace accidents.

In addition, as the Labour Inspectorate must investigate all complaints made to it, the trade unions, OHS Representatives and the Committees for the Health and Safety of Employees can initiate investigations by filing a complaint with the Labour Inspectorate.

► When must accident scenes be preserved and for how long?

In cases of death or serious injury, the employer must preserve, not only accident scene, but also all evidence that could be used to identify the cause of the accident. There are no specific requirements about the duration of this, but in practice, all evidence should be preserved until the competent authorities have completed their investigation and inspection. Failure to do so will be considered a breach of OHS rules and punishable accordingly.

► When is there an obligation to retain experts?

The courts have the power to appoint experts and the losing party will bear the cost.

In criminal proceedings, employers have the right to appoint a 'technical consultant' at their own expense. This expert will consider the court-appointed experts' views and pose questions about them in court.

In civil proceedings, if any party asks for an expert, the court must grant this if it agrees that special expertise is required. Any party may also appoint their own technical consultant to challenge the evidence.

In administrative proceedings, where an employer wishes to contest the administrative sanction imposed on it, it may petition the Administrative Court to appoint an expert, but the court, is under no obligation to grant this.

In all cases, the parties may hire their own experts and submit advisory opinions to the courts for consideration.



Chapter 1

Risk to employer and others arising from a serious workplace accident

The occupational health and safety (OHS) regulatory framework

The law is based on Article 32 of the Constitution, which provides that there is a fundamental right of the individual and the community to physical safety and that the right is 'irrevocable and inalienable'.

In addition, there is a general provision in Article 2043 of the Civil Code to enable non-contractual liability. Article 2087 of the Civil Code further provides that 'the employer is under an obligation to adopt those measures which, depending on the particular nature of the work, experience and technology, are necessary to protect the physical and mental well-being of workers'. This applies to both the public and private sectors.

Besides these general provisions, there are more specific rules in Legislative Decree 81/2008, which consolidates all the previous OHS legislation.

The law provides that for every production activity:

- a prevention and protection service must be established;
- a workers' representative for safety must be elected;
- staff must be identified to manage emergency situations.

The law also provides that employers should conduct risk assessments, which means evaluating the safety of the organisation's activities. The assessment must form part of a safety document describing the measures that have been considered to eliminate risk. This document must be reviewed every time there is a change in the conditions or mode of production.

The law also encourages information and training as a means of cultural growth, as well as active participation in the health and safety management of workers.

► Who enforces OHS law?

OHS laws are enforced by an occupational health and safety inspectorate, which derives from the Direzione Territoriale del Lavoro ('DTL'). The DTL exists in every major town and emanates from the central Ministry of Labour. The local OHS inspectorate can at any time send its inspectors to visit workplaces and investigate, not only after a serious accident but also beforehand, as a means of prevention of accidents.

The inspectors act in an administrative capacity, but also have the power to act as police officers in relation to criminal cases. They can obtain information from witnesses or others, including the employer, employees and trade union representatives. Failure to provide information to the inspectors can result in imprisonment for two months or a fine of up to EUR 516.

► What powers do the inspectors have?

Labour inspectors have the right to:

- › visit any part of the workplace at any time;
- › question medical professionals;
- › take samples of materials or products considered harmful;
- › seek information necessary for the investigation from the employer, managers and employees;
- › request copies of the medical records of workers in relation to work-related illnesses.

Labour inspectors must keep the information they receive in the course of their investigations confidential.

Inspectors may consult an expert if the employer is unable to provide them with necessary expertise or information.

In their capacity as judicial police officers, they can conduct formal interviews with witnesses. Witnesses can ask for a lawyer to be present during the interview.

The employer should ensure that all records required by the inspectors are kept at the workplace and presented upon request. The risk assessment for each workplace should be kept within the production unit to which it relates.

► Which parties have duties to protect workers and establish safe workplace conditions?

The employer, managers and supervisors

The employer must assess the health and safety risks to workers, including groups of workers facing particular risks when it considers how to produce its products and when it chooses the work equipment and substances to be used.

The employer must draft a document containing:

- › an assessment of the health and safety risks during work, using specified assessment criteria;
- › the location of prevention and protection measures and individual protection devices to be used;
- › the measures believed to be appropriate to ensure a safe working environment and improve safety over time.

The document is kept on the company's premises or within the production unit itself.

The employer must:

- › appoint a person responsible for protection and prevention (this could be someone internal or external, depending on which rules apply);
- › appoint employees for protection and prevention, (again, external or internal, depending on the rules);
- › appoint a qualified doctor.

The employer must adopt all necessary measures to ensure the health and safety of workers and, in particular, it must:

- › appoint workers to implement fire prevention measures, fire fighting, evacuation, rescue, first aid and emergency management;
- › update prevention measures to reflect changes to production and technical advances;
- › set tasks for workers that are suitable to their abilities and health and safety;
- › supply workers with suitable and necessary individual protection equipment;
- › take appropriate measures to ensure that only workers who have received proper training can enter areas of exposure to serious risk;
- › require each worker to follow the employer's policies on health and safety and to use protective equipment;
- › require a qualified doctor to carry out the various legal duties relating to health and inform him or her of the processes and risks of production;
- › adopt measures to deal with emergencies and instructions for workers explaining what to do in emergencies (e.g. to evacuate);
- › refrain from asking workers to continue their activities in cases of serious and immediate danger;
- › allow workers to check safety and health measures through their safety representative and allow the safety representative access to information;
- › take appropriate measures to avoid risks to the population at large or the external environment;
- › keep a chronological record of work injuries involving at least a day's absence;
- › consult the safety representative in the cases where this is required;
- › adopt measures necessary to prevent fires, the need for evacuation and serious and immediate danger.

The employer carries out the assessment and drafts the document in cooperation with the person responsible for protection and prevention and with the qualified doctor, where health surveillance is mandatory. It must also consult with the safety representative.

The assessment and the document should be updated when there are changes to the production process.

The employer must keep workers' health and risk files for those undergoing check-ups at the company premises or at the production unit. These files must be kept confidential and a copy should be given to the worker upon completion of his or her contract, or when the worker so requests.

Employees

Each employee must take care of his or her own health and safety and the health and safety of others in the workplace, as far as they are affected by the employee's own actions, as instructed by the employer.

In particular, the employees must:

- › follow instructions given by the employer, managers and supervisors, for individual and collective protection;
- › use all machinery, equipment, dangerous substances, means of transport and other work apparatus correctly;
- › use all protection devices appropriately;
- › report immediately to the employer, managers or supervisors any deficiencies in health and safety protection that they are aware of and, act to reduce or eliminate the danger;
- › not remove or modify safety measures or devices without permission;

- › not carry out operations or manoeuvres that they are not trained to do or that could compromise their own safety or that of others without permission;
- › have the required health check-ups;
- › contribute, together with the employer, managers and supervisors, to the fulfillment of all requirements imposed to protect the health and safety of employees.

› What penalties exist for violations of OHS and criminal law?

There are various possible criminal offences in relation to danger or injury, as follows:

- › fraudulent behaviour - where there is intention to cause damage or a failure to take steps to reduce or eliminate harm;
- › negligence - where there is no intention to cause damage but there is fault deriving from negligence, imprudence or inexperience.

The employer, managers, supervisors, employees could all incur personal liability for offences relating to health and safety.

Judgments about accidents or illnesses at work are generally based on failure to prevent an event that there is a legal duty to prevent, manslaughter and grievous bodily harm.

In relation to manslaughter and grievous bodily harm, the court considers the following elements whether there is a causal relationship between the event and the defendant's actions and whether there is a pre-existing, simultaneous or supervening cause of the event, independent of the defendant.

The penalties on the employer for various health and safety breaches are as follows:

- › failure to assess risk: stoppage of work from four to eight months or a fine of EUR 5,000 to EUR 15,000;
- › failure to prepare a risk assessment document: stoppage of work for four to eight months or a fine of EUR 5,000 to EUR 15,000;
- › failure to appoint emergency workers, fire or first aid: fine of between EUR 3,000 and EUR 9,000;
- › failure to inform workers: stoppage of work for two to four months or a fine of between EUR 800 and EUR 3,000;
- › failure to train workers, safety officers and the safety manager: a stoppage of work for between four and eight months or a fine of between EUR 2,000 and EUR 4,000;
- › failure to appoint a competent doctor: stoppage of work for three to six months or a fine of between EUR 3,000 and EUR 10,000;
- › failure to disclose the name of the safety manager: fine of EUR 500.

In addition, the authorities may shut down the operation if there are repeated violations of the rules on working time and health and safety.

› What are the risks of civil claims against the employer?

Compensation is available under two different systems: public insurance via the National Institute for Insurance against Industrial Injuries ('INAIL'), offering social support for the injured worker, and compensation via civil action in the courts.

Employees are not entitled to compensation for minor physical harm, but between 6% and 15% of the amount payable for physical damage is paid by INAIL. If the employee wishes to seek more, he or she may claim against the employer. Note that the employee has the right to receive an annuity from INAIL even if the injury occurred through his or her negligence, imprudence or carelessness.

If a worker dies in a workplace accident, the closest relatives are entitled to compensation, payable by INAIL. INAIL has the right to pursue the employer for reimbursement where the employer has breached health and safety rules.

Some types of harm are not covered by INAIL. They are:

- › harm to mental health;
- › harm to the quality of a person's life (e.g. based on reduced ability to handle routine and relationships).

Compensation of this kind is payable by the employer and must be treated as separate from compensation for physical harm.

If a worker believes that the employer is liable to top up the amount he or she receives for physical harm or should pay for harm to mental health or quality of life, the worker can bring a civil action in court.

The worker must prove:

- › the injury;
- › the harm;
- › a causal connection between the injury and the harm;
- › that the employer has breached health and safety regulations.

The worker can use documentary evidence and witnesses to prove the case and can also ask for a court-appointed expert witness.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

A workplace accident is a:

- › violent event;
- › during worktime, including the journey to and from work;
- › resulting in an injury or physical illness that means the worker cannot work for more than three days.

› What are the legal requirements on the employer following a workplace accident?

An injured employee must report the accident to the employer immediately, either personally or through a co-worker or third party. This applies equally to minor incidents and those that have occurred on the journey to and from work.

The employer or in-house doctor must immediately send the injured worker to the nearest hospital.

The injured worker will receive a certificate from the hospital giving a medical diagnosis and the number of days the worker needs to stay off

work. Within two days of receiving this, the employer must report this information to the public insurance scheme, the National Institute for Insurance against Industrial Injuries ('INAIL') giving the worker's insurance code.

The INAIL will check whether the injured worker is insured by the employer under the public insurance scheme, which is mandatory for all the employers. The injured worker only has the right to healthcare and compensation via INAIL if he or she is insured.

When a workplace incident has caused the death of the worker or serious danger to life, the employer must immediately communicate the incident to the INAIL, in the form of an incident declaration.

If the employee is off sick for more than three days, the employer must send a copy of the incident declaration to the police.

If the employer fails to send an incident declaration both to INAIL and the police, or if it is late, incorrect or incomplete, the employer must pay a penalty ranging from EUR 1,290 to EUR 7,745.

› Must accidents to persons other than workers be reported?

Accidents to third parties can be reported to OHS inspectorate by the injured person if he or she believes the site owner has failed to comply with health and safety requirements. However, the site owner is not obliged to report an accident involving a third party to the OHS inspectorate.

› Is there a legal obligation to conduct internal investigations?

There is no legal obligation on the employer to conduct an internal investigation.

› What other parties are involved in the reporting and investigation process?

There are no rules requiring the involvement workplace health and safety representatives or trade union representatives in the investigation process.

› When must accident scenes be preserved and for how long?

There are no rules about how long an accident scene must be preserved, but it is advisable for the employer to preserve the scene for long enough to enable the police and other authorities to decide what needs to be done.

› When is there an obligation to retain experts

There is no obligation on an employer to obtain its own expert opinion, but it may be advisable to do so, in case the matters goes to court and the employer needs to challenge the view of the authorities.



Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

Protection of the health and safety of workers is guaranteed in Luxembourg by the following set of legal provisions:

- the health and safety of workers is a fundamental constitutional principle, by Article 11(5) of the Constitution of Luxembourg;
- Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work was transposed into domestic law by the Law of 17 June 1994 (now Articles L. 311-1 et seq. of the Labour Code);
- Various European directives transposed into domestic law, such as one on carcinogenic substances (Directive 90/394/EEC, transposed into domestic law by a law dated 15 June 1994) and one on noise (Directive 2003/10/EC, transposed into domestic law by a Grand-Ducal decree dated 6 February 2007);
- Various Grand-Ducal regulations and orders implementing the country's laws and regulations governing health and safety, such as a regulation dated 27 June 2008 concerning the minimum health and safety guidelines to be followed on temporary or mobile building sites.

The provisions for the prevention of occupational risks were elevated into overriding mandatory provisions of national public importance by Article

L. 010-1 of the Labour Code and apply to all employers, both public and private, operating in Luxembourg. Any violation of these minimum guidelines may be treated as a criminal offence.

► Who enforces OHS law?

Several institutions are responsible for applying Luxembourg's laws governing occupational health and safety. They all act in keeping with their respective powers and areas of jurisdiction, but also jointly, with some providing technical backing to the operations of others.

- The employer: By virtue of its powers of management and organisation, the employer has a general obligation to ensure the health and safety of its employees when they are under its authority. To that end, it has the power to take all necessary measures and must make strategic choices to help prevent or remedy risks, such as choosing suitable machinery and production processes.

In major corporations, the employer cannot oversee everyone's safety, and must therefore delegate this task to other employees. Nevertheless, this delegation of powers does not relieve the employer of its responsibility for the employees. The law provides that 'the employer shall bear the risks generated by the activity of his company, the employee shall bear the damage caused by his deliberate acts or by his gross negligence'. The employer can thus claim compensation for any damage caused by the employee in the course of performance of his or her contract of employment, provided

that it can demonstrate the damage caused and prove it was due to a deliberate act or gross negligence on the part of the employee.

If this can be proved, the employer can discipline the employee for gross negligence, for example, by dismissing the employee, or may bring a prosecution should the employee's act constitute a criminal offence.

- › The Labour and Mines Inspectorate: This is involved both in investigations of accidents and working towards their prevention (e.g. by training employees and advising employers). It embodies the health and safety policy of the Health and Safety Directorate of the Ministry of Health via the inspections it performs. It may be assisted by the police of the Grand-Duchy, which have the power to prosecute criminal offences governed by standard rules of law (e.g. involuntary manslaughter), but also those governed by the customs and excise rules. The Customs and Excise Authority provides logistical backup to the Inspectorate during inspections of building sites and companies to ascertain whether the law is being complied with. In order to fulfil its brief, the Labour and Mines Inspectorate has wide-ranging powers of investigation.
- › The Accident Insurance Association: This body has primarily a preventative role, which complements that of the Labour and Mines Inspectorate. It is tasked with advising employers on implementing safety measures and its main brief is to inform employees about health and safety and provide them with training.

Other institutions also play a role in terms of checking working conditions:

- › The Occupational Health and Safety Directorate of the Ministry of Health: Acting through its medically trained labour inspectors, who have the status and powers of police officers, it is tasked with monitoring the health and safety units of organisations, checking working conditions and dealing with cases of mental or sexual harassment, as well as examining the existence and content of the mandatory lists of high-risk jobs in organisations. It has the power to settle disputes between employers and employees concerning decisions about aptitude for work made by medical practitioners.
- › The Occupational Health Services: These identify the risks of breaches of occupational health rules and maintain heightened surveillance of high-risk jobs in organisations. They have the power to conduct medical examinations, contribute towards ensuring the effectiveness of risk prevention measures, in cooperation with the Joint Works Committee and the representatives of the workers. They therefore complement the work of the Labour and Mines Inspectorate. They can also advise the employer about the rules and the equipment needed to ensure the safety of employees.

The Health and Safety Coordinator on temporary or mobile building sites: This body is active during the planning of a project and during the work itself, ensuring that the client takes into consideration the general prevention principles of health and safety law. The coordinator will draw up a general health and safety plan setting out the rules applicable to the building site and the risks inherent in the site. The coordinator will also amalgamate the separate health and safety plans that must be drawn up by all contractors involved in work on the site.

› Powers – e.g. orders and search warrants for information and documents

The officers of the Labour and Mines Inspectorate have the following powers:

- › The power to check compliance with health and safety law at any time of day or night by visiting the premises, without the need for authorisation from the courts or any State authority, provided there is 'sufficient evidence or legitimate grounds' to believe that an offence is being committed.
- › The power to request sight or disclosure of all documents necessary for the investigation.
- › The power to gain unfettered access to the premises during inspections.
- › The power to be assisted during their inspections by approved experts or organisations.
- › The power to conduct any examination they consider necessary, including taking technical measurements.
- › The power to question any employee who might provide information useful to the inspection.

During an inspection, the Labour and Mines Inspectorate can order a company to take measures to remedy any health and safety issues it brings to light, or put an end to an offence being committed. To that end, it can:

- › Request the technical monitoring of any facility or machine, and check any work process to ascertain compliance with health and safety law.
- › Ask the employer to make changes within a timescale set by the inspectors.
- › Order emergency measures for up to 48 hours to counter a grave and present danger (e.g. by making an employee stop work). This time limit can be extended by order of the Head of the Labour and Mines Inspectorate.

If 'the health and safety of any employees is severely compromised or at risk of being severely compromised', the Head of the Labour and Mines Inspectorate has the power to impose various emergency measures, including ordering the closure of workplaces. Before taking this step, the employer or its representative must have been given the opportunity to be heard.

› Which parties have duties to protect workers and establish safe workplace conditions?

Although the employer bears the primary obligation to protect its workers, other parties also have duties in this respect.

The employer

The employer must:

- › take the measures necessary to ensure the safety of the workers;
- › set up or become affiliated with an occupational health service;
- › assess the risks at hand;
- › provide sufficient and adequate training to employees;
- › consult and inform employees and ensure they are able to take part in discussions about all health and safety issues;
- › manage work accidents and work-related illnesses;
- › deploy first aid and fire-fighting capabilities;
- › take emergency measures in cases of serious and imminent danger.

The employer cannot avoid liability if it has not met its health and safety obligations. However, in some cases, the courts have found senior executives who can show they delegated responsibility for health and safety duties to an employee with the necessary skills, authority and means to exercise them, not liable for the breach.

Employees

Although the obligation to prevent occupational risks is borne primarily by the employer, employees are responsible for protecting their own safety and that of others whom they interact with at work. They must use all machines, facilities and personal protection equipment properly, not disconnect safety systems and report any danger to the employer, the health and safety representative or the designated employee in charge of OHS matters. Failure to do so could result in criminal liability, though this is rare in practice.

Health and Safety Representative

The health and safety representative is appointed by the trade union delegates at a workplace. This means that only companies with more than 15 employees employed under a contract of employment have a health and safety representative.

The health and safety representative performs inspection rounds within the organisation to check safety facilities. In some cases, for example, for health and safety assessments, consultation with the health and safety representative is mandatory. The health and safety representative is independent from the employer and has the power to ask the designated employee in charge of OHS matters to assist him or her if there appears to be a serious health and safety risk to workers. The health and safety representative may also call upon the Labour and Mines Inspectorate under certain circumstances.

Designated employee in charge of OHS matters

The 'designated employee' in charge of OHS matters, who is appointed by the employer, is responsible for ensuring the protection of workers and risk prevention. The designated employee may, for example, provide training to employees in health and safety and conduct regular inspections of the protection systems. The number of designated employees in charge of OHS matters in each organisation depends on the total number of employees and on the number of high-risk jobs in the organisation.

The law divides companies into seven classes (A, B, C, D, E, F and G) which determine the basic training and professional experience required by the designated employee in charge of OHS matters.

In companies with fewer than 50 employees, the employer can take on the duties of the designated employee in charge of OHS matters as an individual, if he or she meets the legal conditions required and has enough time to meet the obligations.

The Health and Safety Coordinator

In the case of a building site involving at least two contractors, the client must appoint a Health and Safety Coordinator. If several building or civil engineering operations are taking place concurrently on a site under the supervision of several clients, the respective coordinators must consult one another in order to prevent risks arising from interference between the

various activities. In order to act as a Health and Safety Coordinator, a person must hold an authorisation from Labour Ministers specifying the coordination activities that he or she can perform.

What penalties exist for violations of OHS and criminal law?

There is currently a marked trend in Luxembourg for penalising employers in the event of an occupational accident or illness occurring within the organisation. This trend is reflected both in the Labour Code and by frequent application of the criminal law.

Criminal law provisions for OHS breaches

Under Article L. 314-4 of the Labour Code, there are minimum and maximum fines and prison sentences for various breaches of health and safety law, for example, failure to deploy first aid facilities or to circulate information or provide training to employees on the risks within the organisation.

Breaches	Prison sentences on employers	Fines
Breaches of employer's main obligations, i.e. to: <ul style="list-style-type: none"> take the measures necessary to ensure the safety of the workers; set up or become affiliated with an occupational health service compliant; assess the risks at hand; provide sufficient and adequate training to employees; consult and inform employees and ensure they are able to take part in discussions about all health and safety issues; manage work accidents and work-related illnesses; deploy first aid and fire-fighting capabilities; take emergency measures in cases of serious and imminent danger. arrange medical examinations; not to employ someone declared incapable by the labour doctor; allow the labour doctor access to all information, places, doing tests- allow for HIV tests (penalty on both the employer and the labour doctor) 	8 days to 6 months	EUR 251 to 25,000 Please note that for legal entities this amount may double on correctional issues, and not exceed EUR 750,000 on criminal issues.
Breaches of the employee's obligations, i.e. to: <ul style="list-style-type: none"> use all machines, facilities and personal protection equipment properly; keep safety systems connected; report any danger to the employer, health and safety representative or the designated employee 	Not applicable	EUR 251 to 3,000

Note that Article L.327-2 of the Labour Code penalises an employer for failure to organise Occupational Health Services, for example by employing

someone who has not undergone the mandatory medical examination. Finally, Article L. 351-5 of the Labour Code lays down a number of criminal punishments in order to protect workers against the risk of exposure to harmful physical, chemical and biological substances.

Breaches	Prison sentences	Fines
Failure to ensure employees are protected against chemical, physical and biological substances	8 days to 1 month	EUR 251 to 50,000

General criminal offences

The general provisions of the Criminal Code can also apply to the prevention of occupational risks. Employees who are involved in a work accident caused by a breach of health and safety rules might incur physical injuries or might even die. In such cases, Luxembourg's general criminal law applies and there could be a charge of homicide or involuntary assault and battery causing bodily harm.

Breaches	Prison sentences	Fines
Involuntary homicide (Article 419 of the Criminal Code)	3 months to 2 years	EUR 500 to 10,000
Involuntary assault and battery causing bodily harm (Article 420 of the Criminal Code)	8 days to 2 months	EUR 500 to 5,000

► What are the risks of civil claims against the employer?

Fixed compensation is paid by the Accident Insurance Association to a worker who suffers harm, or his or her successors or assignees, if the employee has died. The Social Security Code provides that the employer cannot be sued for damages and the victim is therefore only able to claim the fixed compensation, regardless of whether this is sufficient.

However, there is an exception. If a criminal court finds the employer guilty of having intentionally caused the work accident or work-related illness, the victim can bring a civil action for compensation for any harm not covered by the fixed compensation.

If the damage was caused by a third party, a civil liability lawsuit governed by the standard rules of law can be brought against the third party by the victim.

Chapter 2

Immediate mandatory post-accident steps

► What is a 'work accident'?

A 'work/travel accident' according to the Social Security Code

Luxembourg's Social Security Code defines a work accident as an accident which occurs 'owing to or in connection with a person's occupation'. Case law has provided three cumulative conditions for an incident to qualify as a work accident, in addition to the requirement of a hierarchical relationship between the employer and the employee who is the victim of the accident, and the requirement that the latter must have been working as part of the activity of the company that employs him or her at the time of the accident. The three conditions are as follows:

- › a sudden event;
- › an extraneous cause;
- › physical injury and/or damage to a vehicle.

It is up to the affected employee to prove the link between his or her occupation and the accident. However, should the accident have occurred 'at the workplace during working hours', case law lays down a presumption that the accident is work-related.

The Social Security Code also incorporates a definition of journey-related accidents, which are also covered by the Accident Insurance Association. A journey-related accident is an accident which occurs on the normal journey between the victim's workplace and his or her home or the place where he or she usually has meals.

Should an accident occur at a time when the journey has been interrupted or diverted for personal reasons unrelated to the job, the accident will not qualify as a travel accident and is not covered by the Accident Insurance Association.

A 'serious work accident'

A serious work accident is an accident is one which:

- › causes the death of the victim;
- › causes permanent physical damage;
- › causes fractures, third degree burns over more than 9% of the skin, or internal burns, wounds characterised by a loss of flesh, or trauma which, in the absence of treatment, could endanger the employee's life.

Workplace accidents in criminal law

There is no definition of a work accident in criminal law. However, in order for criminal prosecutions to be brought based on the provisions of the Criminal Code, all the constituent elements of the offence must be met. The employer must be at fault in order to be held criminally liable.

► What are the legal requirements on the employer following a workplace accident?

Any employee who suffers a work accident must immediately notify the employer or line manager, unless in exceptional circumstances. All accidents must be declared to the Accident Insurance Association by the employer, regardless of whether they are fatal, serious or only minor, within eight days following the date on which the employer becomes aware of their occurrence.

The employer or its representative must fill in a work accident declaration form, which is available on the website of the Accident Insurance Association (www.aaa.lu), either by hand, or online. It is advisable to keep a copy of the declaration form in the organisation's files. The Accident Insurance Association will acknowledge receipt.

If the employer fails to make a work accident declaration, or does not wish to make one, an employee affected by the accident (or his or her successors or assignees in the case of death), can contact the Accident Insurance Association directly to report the work accident. The Association will then contact the employer to ascertain the facts before deciding whether the incident should be recognised as a work accident.

In the event of a serious or fatal accident, the employer must also report the circumstances to the Labour and Mines Inspectorate and the police. Any work accident must be declared in writing by the employer or its representative (e.g. the designated employee in charge of OHS matters) by filling in a standard form and sending it either manually or online to the Accident Insurance Association within eight days of the date on which the employer became aware of it.

If the employee who suffered the accident is physically injured, the employer should fill in the declaration on the eighth day, so it can provide all necessary information to the Accident Insurance Association concerning the employee's resumption of work.

The work accident declaration must contain the following information:

- › the name and addresses of those involved (i.e. the employer and affected employee);
- › information regarding the physical injury suffered by the employee;
- › the time and location of the accident;
- › a detailed description of the circumstances of the accident;
- › information about the affected employee's job.

The original of the declaration must be sent to the Accident Insurance Association, which will issue an acknowledgement of receipt. The Association then sends a copy of the work accident declaration to the Labour and Mines Inspectorate.

If a serious accident occurs, the employer or its representative must immediately warn various bodies by any suitable means, so as to enable them to react as soon as possible. These include the occupational health services and the employees appointed by the employer and trained to provide first aid.

In the case of a serious work accident, the employer must immediately alert the police within whose area of jurisdiction the accident occurred. This is because the police have jurisdiction to witness breaches of the occupational health and safety rules and to conduct investigations. Serious accidents must also be declared immediately, by any means, to the Accident Insurance Association.

The employer must immediately warn the Labour and Mines Inspectorate, should a serious work accident occur, by any suitable means. At least three labour inspectors are on duty at all times and can travel to the location of an accident within an hour of the declaration.

Finally, the employer has a legal obligation to insure all its employees with the Accident Insurance Association. The insurance is designed to cover the consequences of work accidents and is financed by contributions from employers, as well as by the State.

› Must accidents to persons other than workers be reported?

The employer or its representative must declare all accidents and work-related illnesses involving its employees to the Labour and Mines Inspectorate. If the incident involves temporary employees, the accident declaration form should be filled in by the organisation using the person's services and countersigned by the temporary work agency.

Therefore, any accident that occurs owing to or in connection with work must be reported by the employer.

› Is there a legal obligation to conduct internal investigations?

The employer has no legal obligation to conduct an internal investigation to determine the causes of an accident, even if this could be done by virtue of its management powers.

› What other parties are involved in the reporting and investigation process?

Informing employee representatives

The employer must inform the representatives of the workforce about the occurrence of a work accident. The health and safety officer may accompany the labour inspector during a subsequent investigation. The representatives of the workforce may force the employer to take the health and safety measures proposed by the health and safety officer, so as to avoid the occurrence of another similar accident. The employees must cooperate with the employer and the appropriate authorities to determine the circumstances of a work accident. If there are no employee representatives in the organisation, the employees must be informed directly about the occurrence of an accident and may then force the employer to take the health and safety measures necessary to recurrence.

Occupational health services

The occupational health services, either internal or external, must be informed about the occurrence of a work accident, as they are competent to provide first aid. Occupational medical practitioners may conduct additional medical examinations if a health incident occurs in the organisation.

Investigations by the Labour and Mines Inspectorate

If there is a serious work accident, the Labour and Mines Inspectorate will investigate. The inspectors may check safety systems and the state of equipment and facilities. They can photograph the premises, question witnesses and examine all documents they consider relevant. The health and safety officer and the designated employee in charge of OHS matters, can shadow the labour inspector throughout the investigation. The outcome of the investigation conducted by the Labour and Mines Inspectorate (or by the National Health and Safety Unit of the Civil Service for the public sector) is then forwarded to the Accident Insurance Association.

The Labour and Mines Inspectorate compiles an investigation file containing various documents, such as the safety measures to be taken by the employer to avoid the occurrence of a further accident and a description of the circumstances of the work accident. A report of the accident is then drawn up by the labour inspector and sent to the public prosecutor's office. The public prosecutor then decides whether to prosecute the employer under the Criminal Code. If the accident is not considered serious, it is not mandatory for the Labour and Mines Inspectorate to investigate, but it may decide to do so.

Investigations by the Accident Insurance Association

Article 161 of the Social Security Code enables the Accident Insurance Association to conduct a special investigation, in addition to the court or regulatory investigations, if it considers this necessary. It may use its own personnel or may ask any competent authorities for assistance. It may request the disclosure of all necessary information from other institutions conducting investigations.

› When must accident scenes be preserved and for how long?

If this is necessary for the purposes of the investigation, the labour inspector may order a work stoppage and thus suspend the activity of the company for a maximum of 48 hours. This measure, which may be extended by the Director of the Labour and Mines Inspectorate, is, however, rarely used in practice.

› When is there an obligation to retain experts (if no mandatory goes into next section below)

If the complexity of the work accident so requires, the Labour and Mines Inspectorate can retain experts to take samples and technical measurements as part of its investigation. The experts may be recruited either internally, or externally. Similarly, if the Accident Insurance Association decides to conduct a special investigation, it may call upon its own experts or those of the appropriate authorities.

Given that the occurrence of a work accident is potentially grounds for criminal prosecution of the employer, it is advisable for the employer to retain its own expert to determine the circumstances of the accident and demonstrate that all necessary safety measures were taken.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The Occupational Health and Safety (OHS) regulatory framework

Dutch law on occupational health is set out in the Health and Safety at Work Act of 1998 ('HSWA'), the Working Conditions Decree and a set of ministerial regulations called the Working Conditions Regulations. This set of legislative rules and decrees implements relevant European and International Labour Organisation ('ILO') regulations and directives on working conditions.

The HSWA is a framework Act containing general obligations on the employer and the employee, such as:

- obligations on employers to conduct an annual risk assessment;
- an obligation on employers and employees to discuss health and safety matters regularly in work progress discussions and in discussions with the works council;
- an obligation on employers to involve a professional occupational health and safety service (e.g. the 'Arboservice' and/or health and safety consultants), for example, to do risk assessments and medical examinations.

In addition to the more general regulations, there are a large number of

implementing orders containing meticulous details on various aspects of health and safety at work. These orders were consolidated in 1996 into one single Working Conditions Decree, which has the status of an order in council. These, and certain former ministerial regulations have been put together to form the Working Conditions Regulations.

Aside from the statutory obligations, employers and employees can also make joint arrangements about the way they want to implement the working conditions regulations. These arrangements can be laid down in what is known as 'working conditions catalogues'. In these catalogues, employers and employees can describe methods and solutions which they have jointly formulated in order to comply with their statutory obligations.

▶ Who enforces OHS law?

The Inspectorate of the Ministry of Social Affairs and Work, (the 'SZW Inspectorate') supervises compliance with the Health and Safety at Work Act of 1998. The SZW Inspectorate aims for fair, healthy and safe working conditions and socio-economic security for everyone. Other issues covered by the SZW Inspectorate include compliance with working hours rules and the employment of foreign nationals. The SZW Inspectorate investigates accidents and complaints made by employees, trade unions or works councils. It has the power of enforcement and can impose penalties.

The SZW Inspectorate's jurisdiction includes public and private entities in the Netherlands.

► What powers do the inspectors have?

The Inspectorate of the Ministry of Social Affairs and Work, (the 'SZW Inspectorate') checks whether employers and employees comply with the statutory health and safety obligations. If the SZW Inspectorate discovers breaches, it has several options. For example, it can impose penalties.

The inspectors have the authority to:

- › enter premises where work is being carried out without first notifying the employer;
- › enter a home without the permission of the owner (but with the written permission of the district attorney);
- › ask any employee in the organisation for information and demand access to business data and documents;
- › involve other people and equipment and, if necessary, gain access with the aid of the police;
- › confiscate objects;
- › demand cooperation.

The SZW Inspectorate has the authority to impose a fine for breaches of health and safety law.

The penalty report produced by the Inspectorate should set out the breaches committed by the employer or employees. If necessary, the inspector can ask the employer for an explanation and include this in the report.

The administrative penalty department of the SZW Inspectorate will assess the penalty report. The employer and/or employee will receive a letter confirming the Inspectorate's intention to impose a penalty and a description of the breach. The employer may respond within two weeks, after which a final decision will be issued.

► Which parties have duties to protect workers and establish safe workplace conditions?

Every party involved or present at the workplace should ensure health and safety in the workplace. While there is some overlap between the obligations of workplace parties, employers have the primary responsibility to ensure the health and safety of the workplace.

The employer

The employer has a duty of care to ensure the safety of the work environment. This means that the employer must ensure that working conditions are compliant with the relevant regulations and the materials and machinery used by employees are safe. The employer should also provide sufficient instructions and take adequate measures to prevent injuries to employees. The duty of care also extends to the prevention of psychological harm. If this duty is breached and the employee suffers harm during the course of work, the employer is (in principle) liable for damages.

The employer must identify and assess any risks to employees in the execution of their work by means of a risk assessment. The employer should assess the specific dangers connected to the organisation's activities. After the risks have been identified, the employer should implement the measures required to ensure an optimum level of safety. The circumstances relevant to this are:

- › the nature of the activities;
- › the foreseeability of the danger;
- › the risk of danger;
- › the seriousness of the possible consequences;
- › the burden of taking the measures.

The employer should also take into account the fact that employees tend to be negligent, and that the everyday routine may result in a slackening of attention to their own safety and the safety rules. It is not sufficient to provide the employees with instructions only once. The employer should point out the risks to employees on a regular basis. If an employee breaches the safety rules more than once, the employer should sanction the employee.

As part of their occupational health and safety policy, organisations must appoint a health and safety officer and involve a certified specialist from the 'Arboservice' or another health and safety consultant.

The health and safety officer is responsible for health and safety in the work place. The officer assists the organisation in carrying out its risk assessment and setting up an action plan. In organisations with fewer than 25 employees, the employer may carry out this task itself.

An Arbo-specialist is either hired from a certified Arboservice or arranged for independently by the employer. The Arbo-specialist can be an occupational physician, an occupational hygienist, a safety professional or a labour and organisational specialist. The specialist will check the risk assessment and action plan and assist the organisation with its sickness policies.

Organisations with fewer than 25 employees are not obliged to have their risk assessment checked by an Arbo-specialist, provided that they use a certified risk assessment tool.

Employees

The employees must take the utmost care of their own safety, and that of other individuals at the workplace, in accordance with their training and the instructions provided by the employer. In particular, employees should:

- › use machinery, hazardous substances and tools correctly and safely;
- › attend information and training sessions;
- › apply the organisation's safety precautions correctly;
- › use all necessary personal protective equipment at their disposal in the correct way;
- › immediately report unsafe and/or unhealthy working conditions to the manager.

Health and safety representatives

The employer should consult the works council or staff assembly on issues relating to the health and safety policy and its implementation. The law on works councils encourages 'an active exchange of information'. Where there is no employee representation, the employer should consult the employees directly.

Note that the works council may delegate its rights regarding health and safety to a special committee, with the exception of the right to initiate legal proceedings.

The works council has the right to have a confidential discussion with health and safety inspectors when they visit the workplace, as well as to accompany them on their inspections, unless this hinders the inspectors' work. The works council also has the right to submit a request to the health and safety authorities to intervene in unsafe situations.

The works council should be informed by and cooperate with health and safety experts consulted by the employer about measures needed to improve working conditions. The works council should also be provided with a copy of any advice about the risks facing the organisation.

The law provides clear rules on informing and involving the works council in assessing a wide range of potential hazards, including asbestos, biological agents, noise and radiation.

The works council's consent is required where the employer wishes to establish or make changes to internal regulations or policies relating to working conditions.

► What penalties exist for violations of OHS and criminal law?

The Inspectorate of the Ministry of Social Affairs and Work, (the 'SZW Inspectorate') is bound by health and safety law, as well as more general rules pursuant to the General Administrative Law Act and the Economic Offences Act. Dutch law distinguishes between offences (overtredingen) and criminal law offences (misdrijven) and different penalties (administrative or criminal) apply. These vary depending on the gravity of the offence and whether it is a repeat offence, in which case the sanction will be higher.

Breaches of OHS law may lead to prosecution under criminal law, although this is unusual. Such breaches are more often punishable through administrative fines and even more frequently, SZW inspectors confine themselves to issuing instructions to the employer to resolve all deficiencies within a certain timeframe.

The SZW inspectors will determine a sanction depending on the gravity of the breach. They may impose, for example, the following:

- recommendations aimed at resolving the breach;
- an order to comply with the law that has been breached;
- an order to shut down operations or immediately halt the activities of the business;
- an administrative enforcement order (last onder bestuursdwang) or an order subject to a financial penalty (last onder dwangsom);
- an administrative fine (bestuurlijke boete);
- the pronouncement of an official report (proces-verbaal).

Except where the SZW Inspectorate is merely commenting, it will confirm in writing the measures to be taken by the employer and the sanctions it is imposing.

The SZW Inspectorate has the authority to impose fines. The Health and Safety at Work Act of 1998 distinguishes between an administrative fine of Category 5 (i.e. EUR 67,000) and fine of Category 6 (i.e. EUR 670,000). If a breach is repeated within five years, where a fine was paid for the original offence, the fine may be doubled. No administrative fine will be imposed if the behaviour is to be treated as a criminal offence.

Non-compliance with an administrative enforcement order is a criminal offence. An employer also commits a criminal offence if it breaches the

Health and Safety at Work Act knowing that this could harm the health of employees or endanger their lives.

► What are the risks of civil claims against the employer?

By Article 7:658 of the Dutch Civil Code, an employer must ensure safety in the workplace for all individuals working there (e.g. as employees or contractors). The employer is responsible and therefore liable for accidents which occur in an unsafe workplace, unless it can prove that it fulfilled all safety obligations, or that the accident at work was caused by deliberate recklessness on the part of the employee.

Employer liability based on Article 7:658 is covered by a voluntary insurance scheme, the Common Liability Insurance for Companies.

Relevant case law from the Supreme Court also provides an obligation on the employer to obtain 'adequate insurance' against risks associated with work-related traffic accidents.

Chapter 2

Immediate mandatory post-accident steps

► What is a 'work accident'?

A work accident is an unintentional, sudden event affecting an employee in the performance of work that had the consequence of damaging his or her health and led to time off sick, or to death. This includes accidents causing injury and occurring during work. The accident might occur at the workplace, but could also happen off the premises, for example, where the employee is travelling in the course of employment.

The term 'work' should not be interpreted too strictly. Accidents during work breaks, for example, also fall within the scope of 'work', as well as accidents during travel time, if on employer's instructions. In some circumstances, staff outings might also be included. Harm that occurs during the journey to and from work is excluded, as this is not regarded as occurring 'during work', but within the employee's private sphere. If an accident happens during the commute, the employer will, in most cases, not be liable for damages.

► What are the legal requirements on the employer following a workplace accident?

Under the Health and Safety at Work Act of 1998, employers must immediately report 'industrial accidents' that result in death, hospital admission or permanent injury, to the Inspectorate of the Ministry of Social Affairs and Work, (the 'SZW Inspectorate'). Employers must also immediately notify the SZW Inspectorate in the event of subsequent hospitalisation or permanent injury that could be related to an industrial accident.

Accidents that lead to the death of an employee must be reported immediately via telephone number 0800 5151. All other work accidents must be reported immediately either by the same telephone number or by filling out a digital form on:

http://www.inspectieszw.nl/contact/arbeidsongeval_melden/index.aspx.

The employer should maintain a record of all reported accidents and accidents that led to more than three days of absence from work due to illness. These records should include the nature and date of the accident. This

information must be made available to the affected employees.

If the employer fails to report a reportable accident, the SZW Inspectorate has the authority to impose a maximum fine of EUR 50,000.

The notification must include the date, time and place of the accident, as well as the type of injury (e.g. amputation, fracture or burn).

Depending on the nature of the accident, the police should also be involved (e.g. in the case of traffic incidents).

appoint an expert to report on technical aspects of the accident and advise on the possible causes.

There is no obligation on the employer to appoint its own expert, although it may be wise to involve, for example, a health and safety officer to assess the situation and report back on possible liability.

› Must accidents to persons other than workers be reported?

The law not only applies to employers and their employees, but also to sub-contractors, temporary agency workers, self-employed workers and any other third parties performing work on the employer's premises. Therefore, the obligation to investigate every serious workplace accident and submit a detailed report to the Inspectorate of the Ministry of Social Affairs and Work also applies to these individuals. All parties involved have a legal obligation to cooperate in the investigation and to ensure timely submission of the mandatory accident report.

› Is there a legal obligation to conduct internal investigations?

There is no requirement on employers to investigate, although in practice the employer should check what has happened, as it could be held liable for damages.

› What other parties are involved in the reporting and investigation process?

The works council or employee delegation has the right to a confidential discussion with inspectors from the Inspectorate of the Ministry of Social Affairs and Work, (the 'SZW Inspectorate') on workplace visits and to accompany them on their inspections. The works council or employee delegation also has the right to request an intervention by the health and safety authorities.

In the event of a workplace accident, employees have a general duty to cooperate with the SZW Inspectors and allow them to conduct an investigation. Further, in absence of a works council, the employees have the right to be informed about all OHS-related matters, including work accidents, the results of accident investigations and accident reports.

› When must accident scenes be preserved and for how long?

If an accident is to be investigated, this must take place as soon as possible. It is important that the scene of the accident remains untouched as far as possible so that the inspectors can make a proper assessment of the situation at the time of the accident.

There are no specific requirements as to the length of time the scene needs to remain undisturbed. Investigators from the Inspectorate of the Ministry of Social Affairs and Work usually visit the scene within the first few hours of an accident and so it is advisable to wait for their visit before disturbing the accident scene.

› When is there an obligation to retain experts

If deemed necessary to investigate the cause of the accident, the Inspectorate of the Ministry of Social Affairs and Work and/or the public prosecutor may



Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The occupational health and safety (OHS) rules in Peru are set out in laws, Supreme Decrees and Ministry Resolutions. The most important principles are contained in the Law on Safety and Health at Work of 2011. It applies to all services and economic activities involving any employer (i.e. a person, company or organisation) that hires employees, interns, public servants, self-employed individuals, contractors or other third parties to work in Peru.

All public and private bodies must ensure their internal regulations are compliant with the OHS framework.

The general OHS principles, as set out in the Law on Safety and Health at Work, are described in more detail in additional Supreme Decrees, Ministry Resolutions and other laws, which provide specific and technical regulations regarding, for example, the use of machinery, special working equipment, medical examinations, specific health and safety risks and working with contractors.

► Who enforces OHS law?

The OHS inspectorate, SUNAFIL, which is governed by the Ministry of Labour and Employment, is responsible for the administration and enforcement of OHS law.

The OHS inspectorate consists of regional city-based inspection services. The inspectors can visit workplaces and investigate breaches of the OHS rules for any reason. They respond to complaints by employees, employers, trade unions or the Labour Ministry. The location of a breach or the place to be visited is used to determine which local OHS Inspectorate has the authority to act.

Depending on the result of the investigation, the OHS inspectorate may impose a fine on the employer or send information to the Public Ministry for consideration as to whether a criminal offence may also have been committed.

► What powers do the inspectors have?

The OHS inspectorate consists of trained inspectors whose role is to monitor and enforce the statutory OHS standards in all organisations. The inspectors have very extensive powers. In order to carry out their duties, inspectors can, for example:

- carry out any test or investigation they think is needed to establish whether OHS rules have been breached;
- require to see all relevant documents and records;
- require the assistance of any specialist, expert or professional;
- question the members of the supervisory committee and representatives of the employer;
- give advice or recommend ways of promoting better compliance with OHS rules.

An inspector who discovers a breach will indicate to who is responsible for putting it right. This can involve issuing a 'compliance order' or a 'stop work order' (either total or partial) if there is a continuing risk to employees.

A compliance order may require the breach to be remedied immediately or a time based order will require it to be remedied by a certain date. A compliance plan order will set out the measures to be taken.

A stop work order may be applied to any process, material, task or workplace (or part of one) to prohibit any further use of it or work involving it until the breach is remedied. In practice, OHS inspectors can only issue total or partial stop work orders when they believe that serious breaches of OHS law have been committed and that these represent an imminent danger to the workforce.

If a compliance order or a stop work order has been imposed, the employer needs to be aware that non-compliance with it constitutes a serious breach that can lead to criminal prosecution.

In OHS matters, the employer is responsible for remedying breaches relating to OHS law on behalf of all employees interns, public servants, contractors and other third parties, both employed and self-employed, that work in its offices in Peru. However, it should be noted that temporary work agencies also bear responsibility for remedying breaches of OHS law, although if a business hires another business for a temporary duty, the hiring business is answerable for breaches of OHS law.

One of the most important powers of the OHS inspectorate is the power to bring formal charges against employers and/or employees who are responsible for breaches of OHS legislation. This may lead to criminal prosecution and court proceedings against them. Whether it does so in any given case will depend on a number of factors, including the nature of the event, the willingness of the responsible parties to comply with orders and whether there have been any other serious workplace accidents. Generally, a workplace accident that leads to death or permanent injury will progress to criminal prosecution by the Public Ministry.

› Which parties have duties to protect workers and establish safe workplace conditions?

Everyone within the workplace plays a role in ensuring health and safety. There is some overlap between the obligations of the different parties within the workplace, but the employer bears the primary responsibility for ensuring health and safety at the workplace. Even so, other individuals may also be held personally responsible for breaches of health and safety law.

Employees

All employees have a legal duty to protect themselves and others in the workplace and play a role in ensuring workplace safety. In particular, they have a duty to:

- › comply with workplace regulations and instructions given in training programmes in safety and health at work;
- › use work equipment and materials properly, including personal protection equipment, provided they have been told how to use them and are able to do so;
- › avoid operating equipment, machinery, or tools that they are not authorised to use;
- › cooperate and participate in investigations into workplace accidents

- and occupational illnesses when the authorities require it or if they have information that would assist the investigation;
- › take any required medical examinations, provided the results will be kept confidential by the employer;
- › participate in training programmes and other activities organised to help prevent accidents;
- › inform the employer about anything that could pose a risk to health and safety;
- › report any accident or professional illness immediately to the person responsible for dealing with health and safety matters;
- › provide any information required by inspectors.

The employer

The employer has the primary responsibility to protect the health and safety of those in the workplace. Therefore, it must put in place a policy that includes adequate preventative and protective measures in relation to health and safety, including measures to protect employees against psycho-social risks at work.

The policy must operate as a risk management system and must therefore involve carrying out risk assessments and planning measures based on these. This should include an analysis of the working environment, working conditions, working methods, machinery and equipment. The policy should develop and evolve continuously based on changing needs and circumstances.

The employer must ensure that employees have received the necessary information, instructions and training to allow them to perform their work in a healthy and safe manner. The information and instructions given to employees should be written and comprehensible. The employer should also verify compliance with these work instructions.

Further, the employer must:

- › guarantee the health and safety of employees in all areas of their work and all parts of the workplace;
- › develop regular activities to ensure regular upgrading of the level of protection at the workplace;
- › carry out medical examinations every two years for employees (with office-based employees being examined at the start of employment and thereafter every two years and those working in more dangerous conditions being examined before, during and at the end of employment);
- › guarantee that the trade union will organise the election of employee representatives;
- › give the committee for health and safety the resources it needs to do its job;
- › train employees in safety and health at work at the start of employment, during employment and when there are technological changes.

Occupational safety and health services

The employer must check the health of employees in order to identify and manage occupational risks and to do so will need to engage the services of occupational safety and health. They will:

- › identify and evaluate the risks that could affect the safety and health at work;
- › monitor any practices that could harm the health of employees;

- › advise on the planning and organisation of work;
- › participate in developing policies to improve practice, including testing new equipment with regard to health and safety;
- › advise on health, safety, hygiene and ergonomics, along with the use of equipment and both individual and collective protection;
- › monitor the health of employees;
- › adapt the work to take account of the employees;
- › assist with professional rehabilitation;
- › ensure information about health and safety is properly disseminated;
- › organise first aid and measures for dealing with emergencies;
- › participate in the analysis of accidents at work and professional illnesses.

Every employer must also have an occupational doctor, who must:

- › be present for at least six hours per day, five days a week, where there are 200 or more employees (including third parties);
- › be present for at least four hours per day for two days a week, where there are fewer than 200 employees (including third parties).

Committee for safety and health at work

Although employers have the primary responsibility to ensure health and safety at work, if the employer has 20 or more employees, it must create a committee for safety and health at work, formed half by employees and half by the employer. The committee must:

- › be aware of any documents or reports relating to workplace conditions that are necessary for their duties;
- › approve the internal rules of health and safety at work;
- › approve the annual programme of safety and health at work (i.e. a document setting out the annual objectives for improving health and safety at work);
- › know and approve the annual calendar for safety and health at work (i.e. the schedule of activities for implementing the annual programme of safety and health at work);
- › participate in the development of the health and safety policy;
- › approve the annual training plan for employees on health and safety at work;
- › prepare activities for training new employees about risk prevention;
- › monitor legal compliance with health and safety law;
- › make sure employees are made aware of all statutory and internal rules about health and safety;
- › make sure employees participate in solving safety problems by training them;
- › keep all aspects of health and safety under review;
- › investigate the causes of occupational illnesses that arise;
- › verify compliance with recommendations to ensure similar accidents or illnesses do not recur;
- › make appropriate recommendations to enhance health and safety;
- › review and prepare reports about accidents and occupational illnesses;
- › collaborate with the medical services and first aid;
- › supervise the occupational health and safety service and consider their advice;
- › every three months review serious accidents, investigations into them and statistics about them and inform the employer;
- › review compliance with the safety and health at work rules and the agreements that the committee develops and monitors during its term.

› What penalties exist for violations of OHS and criminal law?

Breaches of the Peruvian OHS rules lead to administrative procedures and the imposition of fines, as in the following table. Note that 'UIT' is the established tax unit that is used for the costs of public fines and fees.

Seriousness of breach	Micro Business (UIT = for 2016, PEN 3,950)	Small Business (UIT = for 2016, PEN 3,950)	Other (UIT = for 2016, PEN 3,950)
Low	0.10 - 0.50 of the UIT	0.20 - 5 of the UIT	0.50 - 30 of the UIT
Severe	0.25 - 1 of the UIT	1 - 10 of the UIT	3 - 50 of the UIT
Very Severe	0.50 - 1.50 of the UIT	1.70 - 17 of the UIT	5 - 100 of the UIT
Number of employees affected	One to ten employees	One to 100 employees	One to 1000+ employees

An employer can appeal a decision to impose an administrative fine on it to the Labour Authority, but if the appeal fails, it may claim in the Labour Court. The Labour Court will either uphold the decision or reduce the administrative fine, but cannot impose a higher administrative fine.

Acceptance and payment of an administrative fine constitutes an admission of the breaches involved. This can have important legal consequences if there is a risk of civil claims for damages.

All breaches of the Peruvian OHS of which an employer is aware and which put life, health or physical integrity at risk, will lead to prosecution and criminal penalties, as set out in the Penal Code, irrespective of whether there has been an accident. There are different penalties for breaches of OHS rules, depending on the result of the omission.

In the Penal Code a distinction is made between OHS breaches which have led to harm to health and/or death, and other OHS-related breaches.

OHS breach	Penalty
Awareness of a breach of safety and health rules that puts life, health or physical integrity at risk	Imprisonment for one to four years
Awareness of a breach of safety and health rules and failing to resolve it, leading to a serious accident	Imprisonment for three to six years
Awareness of a breach of safety and health rules and failing to resolve it, leading to the death of the employee	Imprisonment for four to eight years

Prosecution and criminal penalties will only be imposed if the employer acts knowingly and the result was an administrative breach.

› What are the risks of civil claims against the employer?

The risk of an employer facing a civil claim as a result of a workplace accident is high and the employer could be sued for payment of any of the following:

- › Loss of future earnings: Based on harm the employee suffers as a result of the accident;
- › Moral harm: This is non-material damage, as consequence of the accident, including pain or grief;

- › Ongoing harm: For example, where the loss of an arm results in an inability to work.

In cases where an investigation has conclusively proven damage to the employee, the Ministry of Labour and Employment Promotion will determine the amount of compensation payable.

Note that the employer will only be found liable if it can be proved that the cause of the damage is a direct consequence of the work done by the employee and that the employer failed in its health and safety duties towards the employee.

Therefore, if the inspectors find a breach of health and safety at work rules, they will certify that the failure caused the accident or occupational illness and the case will be submitted to the General Directorate for Inspection of Work to determine the level of injury and the corresponding fine.

The employer can avoid payment of compensation if the court determines that the damage was caused by the employee.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

A work accident is defined as any sudden event arising from or during work and resulting in a physical injury, disability or the death of an employee. Work accidents are also events that occur whilst following the employer's instructions or working under its authority, including outside the place and hours of work.

Depending on the seriousness, work accidents involving personal injuries are classified as follows:

- › Minor accidents: These are events resulting in an injury requiring a short break, with the employee able to return to work by the following day.
- › Disabling accidents: These events lead to injury requiring rest, absence to work and treatment. The injury could be total but temporary; permanent but partial or permanent and total.
- › Fatal accidents: These lead to the death of the employee.

› What are the legal requirements on the employer following a workplace accident?

Employers must inform the Ministry of Labour and Employment of the following:

- › all fatal accidents;
- › dangerous incidents that put employees or others at risk of harm to health or physical integrity;
- › any other situation than puts life, physical integrity or mental health of employees at risk.

Employers must report fatal accidents and dangerous occurrences to the Ministry of Labour and Employment within 24 hours.

The medical centre that treats the employee first after an accident or illness must inform the Ministry of Labour and Employment within the following time limits:

- › for work accidents: by the last business day of the month following the treatment;
- › for occupational illnesses: within five business days of the diagnosis (either suspected or confirmed);
- › death in consequence of an accident or occupational illness: within 24 hours.

Accidents, dangerous incidents and professional illnesses involving employees from employee cooperatives and contractors and subcontractors must be reported to the Ministry of Labour and Employment.

The employer may discharge its reporting duty by showing its records of occupational diseases and work accidents to the OHS inspectors.

The employer must notify the Ministry of Labour and Employment about accidents using the following documents:

- › Form N° 1: Notification of fatal occupational accidents and dangerous occurrences;
- › Form N° 2: Notification of non-fatal accidents and occupational illnesses;
- › Technical Tables and Records.

The employer must keep on file its records of work accidents, dangerous incidents and occupational illnesses for ten years. The records must be shown upon inspections by the Ministry of Labour and Employment.

› Must accidents to persons other than workers be reported?

If an independent person is affected by an accident, dangerous incident or professional illness, the independent person or his or her relatives should notify the medical centre and the medical centre will then notify the Ministry of Labour and Employment and the Ministry of Health.

› Is there a legal obligation to conduct internal investigations?

The employer, together with representatives of the trade unions or the employees themselves, must conduct investigations into occupational accidents, occupational illnesses and any dangerous occurrences that it is required to report to the authorities.

In the case of fatal accidents, the employer and the administrative labour authority will conduct the investigation together, with the participation of the trade unions or employees, if none.

The purpose of an investigation is to:

- › check the effectiveness of safety and health measures in operation at the time;
- › assess the need to amend these measures;
- › check the effectiveness of the recording and notification procedures for occupational accidents, illnesses and dangerous occurrences.

The investigation will follow these stages:

Stage	Activity
Stage 1: Analysis of the situation	The investigator must go to the scene of the accident as soon as possible and collect all available evidence
Stage 2: Gathering of data	Observe the scene, ask questions, gather information and speak to witnesses
Stage 3: Analysis of the information	Identify the cause of the accident
Stage 4: Corrective actions	Propose corrective actions to avoid repetition of the accident
Stage 5: Checking	Check that corrective actions are taken

› What other parties are involved in the reporting and investigation process?

The OHS inspectorate (SUNAFIL) is responsible for taking the action necessary to ensure compliance by private sector employers with current law on safety and health at work. They will notify the parties about inspections taking place.

The Regional Director of Labour and Employment is responsible for the completion of audits. It gives priority to audits of fatal accidents at work and occupational illnesses. In exception cases, it may apply to the General Labour Inspection Directorate to ask for the support of specialist inspectors or experts in order to complete its audits.

The OHS inspectorate consists of trained inspectors whose role is to monitor and enforce the statutory OHS standards in all organisations. The inspectors have very extensive powers. In order to carry out their duties, inspectors can, for example:

- › carry out any test or investigation that they think are needed to establish whether OHS rules have been breached;
- › require to see all relevant documents and records;
- › require the assistance of any specialist, expert or professional;
- › question the members of the supervisory committee and representatives of the employer;
- › give advice or recommend ways of promoting better compliance with the OHS rules.

The information gathered during an inspection should be uploaded onto the computer system by the inspector responsible for carrying out the investigation within three business days of the inspection.

› When must accident scene be preserved and for how long?

In the event of a serious work accident, the employer must ensure that the accident scene is preserved in order to allow for investigation.

There are no specific requirements on the length of time the scene needs to remain undisturbed.

› When is there an obligation to retain experts?

The Ministry of Labour and Employment, the regional and local authorities, the Ministry of Health and the public administrative bodies are all required to provide the necessary technical experts to enable appropriate investigations to take place.

Employers may hire their own expert, but could equally ask the judge for a neutral professional to review the matter.



MADRID - SPAIN

Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The occupational health and safety (OHS) rules in Spain are set out in national law. The most important principles are contained in Act 31/1995, the Labour Risks Prevention Act. This is broader than previous legislation in that it encompasses how businesses should integrate health and safety issues into all of their corporate planning and decision-making and take a proactive approach. The Act transposes the health and safety laws of EU Directive 89/391.

The principles of preventative action include:

- avoiding risks;
- assessing risks that cannot be avoided;
- tackling risks at source;
- adapting the work to the person;
- considering how to modernise techniques;
- replacing dangerous conditions with ones that involve little or no danger;
- planning prevention, by using good techniques, ensuring good working conditions and organisation of work, having good social relations and beneficial environmental factors at work;
- putting into practice the measures that place group protection before protection of the individual; and
- providing safety instructions to the workers.

The government has the power to issue further detailed regulations under the Act where necessary.

► Who enforces OHS law?

The Spanish National System of Health & Safety at Work is an agency that develops guidance and law; promotes health and safety at work; trains and informs businesses about risks; promotes research into health and safety; acts as a regulator in relation to health and safety law; applies sanctions; and processes official statistics on occupational accidents and illnesses.

The Labour Inspectorate monitors compliance and advises businesses on the best way to fulfill their obligations. It informs the Labour Authority of fatal accidents and serious occupational diseases and if appropriate, may halt work immediately if there is a serious or imminent risk to the health or safety of workers.

In Spain, it is mandatory to declare occupational accidents and illness and Inspection Agents investigate all accidents to establish the causes and consequences. They may also initiate prosecution in cases of criminal negligence.

► What powers do the inspectors have?

The Labour Inspectorate has three main functions:

- To monitor compliance with law and collective bargaining

agreements. In particular, in relation to labour and social dialogue (i.e. negotiations between the government, trade unions and employers' representatives about social and economic policy); the minimisation of occupational risks; the social security system; and employment and immigration.

- › To provide technical support. It supports workers and employers and social security organisations. It also informs, supports and cooperates with other agencies with regard to labour law and drafts reports requested by the courts.
- › To act as an arbitration, conciliation and mediation service.

The Labour Inspectors operate according to the Integrated Plan of Objectives adopted by the Sectoral Conference on Social Issues. The Plan takes into account both scheduled activities and activities resulting from complaints and reports handled by other public bodies, including the courts.

The Labour Inspectors are entitled to:

- › enter any workplace at any time, without prior notification;
- › be accompanied during visits by workers, workers' representatives and any other employee of the business;
- › carry out any examination or test to check compliance with labour law including questioning employees and the employer, with or without witnesses, on any issue concerning the implementation of labour law; ask the identity of any person present at the workplace; ask the employer, employees or any third party to be present; examine any documents related to compliance with labour law; take samples of materials, substances and/or products used by the business; and take, for example, measurements, photos and videos;
- › take any preventative measure to avoid the destruction or the alteration of documents or information.

A Labour Inspector who discovers a breach can order the party responsible (e.g. the employer, directors, officers, supervisors or workers) to remedy it. This can involve issuing 'Compliance' or 'Stop Work' orders.

A Compliance order may be a 'forthwith' order, requiring the breach to be remedied immediately; a time based order, requiring the breach to be remedied by a certain date; or a compliance plan order, requiring the employer to detail how (and when) it will achieve remedy the breach.

A Stop Work order may be applied to any process, material, task or workplace (or part of one) to prohibit any further use of it or work involving it until the breach is remedied. In practice, the Inspectors generally issue Stop Work orders when they believe that serious breaches of health and safety law have been committed and these present an imminent danger to the workforce.

The procedure starts with a written communication by the Labour Inspector to the employer responsible for complying with the Stop Work order. This must be communicated to the area where the work takes place. The Labour Inspector will also inform the Labour Authority of its decision at the same time and the employer must inform all affected employees and staff representatives. This must be done immediately.

One of the most important powers of the Labour Inspectorate is the power to bring formal charges against organisations and/or individuals (e.g. directors, officers and supervisors) who have committed breaches of

health and safety legislation. This can lead to criminal prosecution. Before doing so, the Labour Inspectorate will consider the nature of the event (e.g. whether it involved death, injury or non-compliance with orders); the willingness of those involved to comply with orders; and whether there have been other serious workplace accidents in the past. Generally, a fatal workplace accident or a workplace accident that has led to permanent injuries is likely to lead to a criminal prosecution.

› Which parties have duties to protect workers and establish safe workplace conditions?

Every party at the workplace, including employers, directors, officers, supervisors and workers, plays a role in ensuring health and safety at the workplace. While there is some overlap between the obligations of the workplace parties, employers have the primary responsibility for ensuring health and safety at work. But other individuals can also be held personally responsible for breaches of health and safety law.

The employer

The employer always has the primary responsibility to protect the health and safety of others in the workplace. Therefore, it is the employer that must develop and introduce a 'welfare policy' that includes adequate preventative and protective measures, policies and/or procedures in relation to the 'wellbeing of the workers'. The term 'wellbeing' has a broad meaning, including not only the protection of the health and safety of workers, but also the protection of workers against 'psycho-social risks at work' (i.e. stress, violence, harassment and sexual intimidation), ergonomics, hygiene at work, as well as certain environmental protective measures.

The employer must develop its welfare policy in such a way that it is a 'dynamic risk control system'. A feature of a dynamic risk control system is the planning of preventive and protective measures and/or policies through the performance of risk assessments. These include an analysis of the working environment, working conditions, working methods, machinery and equipment. The term 'dynamic' refers to the fact that the development and the implementation of a welfare policy should be an ongoing process, which is constantly re-evaluated and adapted according to the needs and/or changing circumstances or working conditions.

The employer must ensure that the workers have received the necessary information, instructions and training to allow them to perform their work in a healthy and safe manner. The information and instructions for the workers should be in writing and be comprehensible to the workers concerned. The employer should also check compliance with these work instructions.

Further, the employer is subject to the following obligations to ensure health and safety in the workplace, which should be contained in the company's welfare policy. It must:

- › provide and maintain all required working equipment, materials and protective devices;
- › provide adequate information, instructions and training to workers;
- › appoint competent supervisors and provide suitable training for them, particularly in relation to their role of ensuring implementation of the welfare policy;
- › acquaint workers with any hazards in the workplace;
- › establish emergency procedures and practice emergency exercises;

- › remedy all hazardous workplace conditions;
- › cooperate with a joint health and safety committee when required under health and safety law;
- › co-operate with inspectors from the Labour Inspectorate;
- › take all reasonable precautions appropriate to the circumstances to protect workers.

Employees

Although employees have a right to work in safe conditions, employees themselves have a legal duty to protect themselves and others in the workplace and must play a role in ensuring workplace safety. In particular, they must:

- › refrain from all activities that could be harmful to themselves, their co-workers, their employer or any third party;
- › properly use all machinery, equipment, appliances, means of transportation and any other work equipment;
- › properly use any personal safety equipment provided by the employer and intended for employee protection and store it properly after use;
- › refrain from incorrectly turning-off, altering or replacing safety systems on machinery, equipment, appliances and/or buildings and use them correctly;
- › report to the employer and the internal health and safety service any circumstances that could lead to a serious and imminent danger to health or safety in the workplace or any failure in safety systems;
- › assist the employer and the internal health and safety service by allowing them to fulfill their duty to ensure the wellbeing of workers in the performance of their work;
- › assist the employer and the internal health and safety service by allowing them to fulfill their duty to ensure safe working conditions that do not give rise to health and safety hazards;
- › co-operate with and assist the employer in the implementation of health and safety policies on the protection of workers against violence, harassment, unwanted sexual behaviour and sexual intimidation in the workplace, and refrain from any such unlawful behaviour, including refraining from breaching the grievance procedure.

Health and Safety Committee

Health and safety law compliance also places great reliance on the activities of the joint health and safety committee ('Health Committee'). This is comprised of worker representatives and is a requirement in larger organisations. In smaller organisations (fewer than 50 employees) trade union representatives may take on the role of the health and safety committee.

If there is no health and safety committee and no health and safety trade union representatives, the employer must inform and consult with individual workers regarding any proposal or initiative in relation to health and safety at the workplace. This should be done by advertising the proposal in the workplace and asking workers to comment within 15 days.

Every employer must have at least one internal health and safety specialist, known as a 'prevention adviser'. This is the 'internal health and safety service' of the employer. The term 'internal' refers to the fact that the adviser must be on the pay-roll of the organisation (except if it has fewer than 20 employees, in which case the employer can personally fulfill the role of internal prevention adviser). The employer can also outsource specific tasks required of the internal health and safety service to an external health and safety service.

› What penalties exist for violations of OHS and criminal law?

All breaches of Spanish health and safety law can lead to prosecution and criminal penalties, under the Spanish Criminal Code, irrespective of whether there has been an accident. In the event of a workplace accident leading to death or personal injury, there is also a risk of criminal prosecution under the Spanish Criminal Code. In the event of criminal prosecution following a serious workplace accident, the Public Prosecutor will generally base its prosecution on the Spanish Criminal Code.

The Spanish Criminal Code provides that employers that fail to provide the necessary means to enable workers to do their jobs safely and therefore seriously endanger their lives or health may be found guilty of an offence and sentenced to imprisonment for six months to three years. Note that this offence is not dependent on any accident or harm to workers ever having taken place.

In addition, the Spanish Criminal Code also provides for offences relating to death and personal injury that have occurred in practice. These are punishable with imprisonment for one to four years and temporary disqualification from providing professional services for between three and six years.

› What are the risks of civil claims against the employer?

There is quite a high risk that an employer could face a civil claim, as an accident may involve third parties who have no employment relationship with the employer but nevertheless suffer harm. If a claim is successful in such a case, the insurance company may be required to pay compensation to those victims, possibly covering both physical and psychological harm.

The Act on Traffic Accidents which entered into force on 1 January of 2016 and includes health and safety matters provides for higher and broader compensation for victims than in the past.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

The Spanish Social Security Act defines a 'work accident' as:

- › a sudden occurrence;
- › causing any kind bodily injury to a worker (mental or psychologist illnesses included);
- › during and as a result of the performance of the employment contract (direct cause).

An accident 'in itinere' is an accident that occurs on the way to or from work. The three elements that must be present for this are that: 1) it happens on the way to or from work; 2) there are no interruptions of any kind between the workplace and the accident (i.e. the employee has not stopped mid-way or decided to go somewhere other than to work) and 3) that the usual route is taken and not a different one.

If an accident is considered a 'work accident', the victim or his or her relatives (in the event of a fatality) will receive workers' compensation from the employer's insurance. If the employer did not cover the illnesses that have arisen, the business itself will be required to pay the compensation.

There are different levels of sanctions for different gradations of breach. These depend on the seriousness of the fault and its consequences and are classified as minor, serious or very serious. However, there is no definition of a serious or very serious accident in Spanish Law. The Royal Decree of 27 March 1998 classifies a serious or very serious accident into the following categories:

A workplace accident leading to the death of a worker; or

A workplace accident that has caused permanent injuries, the occurrence of which is directly linked to one of the following events:

- › an electrical breakdown, explosion or fire;
- › an overflow, tipping over, leakage, emptying, evaporation or release;
- › the breaking, bursting, gliding, falling or collapsing of an object;
- › the loss of control over a machine, means of transportation, hand tool or other object;
- › a person falling from a height;
- › a person being caught or dragged by an object or by the force of speed of an object; or

With one of the following objects involved in the accident:

- › scaffolding or overground construction;
- › excavation works, trenches, pits, underground passages, tunnels or an underground water environment;
- › installations;
- › machines or instruments;
- › systems for closed or open transport and storage;
- › vehicles for transport over land;
- › chemical substances, explosives, radioactive substances or biological substances;
- › security systems and security equipment;
- › weapons;
- › animals, microorganisms or viruses; or

A workplace accident that has caused temporary injuries directly linked to one of the above events or objects, where one of the following injuries has occurred:

- › flesh-wounds with loss of tissue, resulting in incapacity of several days' duration;
- › bone fractures;
- › traumatic amputations (i.e. loss of limbs);
- › surgical amputations;
- › shaking and internal injuries that could be life-threatening without treatment;
- › harmful effects of electricity resulting in work incapacity for several days;
- › burns resulting in work incapacity for several days;
- › chemical or internal burns or freezing;
- › acute poisoning;
- › suffocation and drowning;
- › the effects of non-thermal radiation resulting in work incapacity for several days.

There is no specific definition of a workplace accident in the Criminal Code. Generally speaking, any workplace accident can give rise to criminal prosecution based on 'social' offences such as assault and manslaughter.

› What are the legal requirements on the employer following a workplace accident?

Employers have a legal obligation to put in place insurance cover, covering the risk of workplace accidents. The employer must provide a medical assistance voucher to an injured employee so that he or she can receive proper medical assistance. The voucher must be properly completed with the contact details of the company and information about how and when the accident occurred.

Workplace accidents must be reported to the insurer using a special declaration form that can be downloaded and sent from www.delta.empleo.gob.es. This website also contains information about how to complete the form. Each accident report is given a unique notification number. After reporting the accident, the employer will receive a copy of the completed form by email. The employer should forward a copy to the employee.

Employers are required to submit notification to the insurer within five days, or 24 hours in the case of a serious or very serious accident. If the accident is serious or very serious, an employer that notifies late or fails to notify the insurer may be fined between EUR 1,502.53 and EUR 40,985.

A workplace accident must be thoroughly investigated by the employer and must be the subject of a detailed accident report, submitted to the locally competent Labour Inspectorate.

In the event of a workplace accident (regardless of how serious it is) the employer must ensure that it is thoroughly investigated by its health and safety service and that a detailed accident report is put at the disposal of the Labour Inspectorate whenever requested. This internal accident report must contain a number of details, including:

- › the names and addresses of the parties involved;
- › information regarding the victim and his or her injuries;
- › the time and location of the accident;
- › a detailed description of the factual circumstances;
- › an analysis of the possible causes of the accident;
- › a list of remedial post-accident steps that will be taken to avoid reoccurrence.

An official communication describing the accident must generally be submitted to the Labour Inspectorate and to the affected employee within five days of the accident. In case of death, very serious accident or an accident affecting more than four people, it must be submitted within 24 hours. Note that this communication is in addition to the requirement for an accident report to be submitted.

› Must accidents to persons other than workers be reported?

Only the employer of the victim is obliged to report the accident to the workplace accident insurer. However, the law applies not only to employers and their workers, but also to sub-contractors, temporary agency workers, self-employed workers and any other third party performing work on the employer's premises.

Therefore, employers must investigate every serious workplace accident, even if it only affects third parties, and submit a detailed report to the Labour Inspectorate. If an affected worker is, for example, an employee of a subcontractor or is a temporary agency worker, there is a legal obligation to cooperate with the investigation.

› Is there a legal obligation to conduct internal investigations?

There is an obligation on employers to conduct a detailed internal investigation and to write a report of its findings, however serious or otherwise an accident is. Employers must keep their accident report in case the Labour Inspectorate request to see it.

› What other parties are involved in the reporting and investigation process?

Internal or External Health and Safety Service

The accident report written by the internal or external health and safety service on behalf of the employer must be drafted by a qualified 'prevention adviser'. The prevention advisers are trained health and safety specialists. They will conduct an investigation at the scene of the accident; talk to witnesses; analyse the possible causes of the accident and advise on what measures would be appropriate to prevent similar accidents occurring.

The joint Health and Safety Committee (or union delegation)

Prior to submitting an accident report to the Labour Inspectorate, a draft of the report must be discussed within the joint health and safety committee. Members of the health and safety committee have the right to make comments and suggestions on the draft report and these must be added to it before it is submitted to the Labour Inspectorate. The joint health and safety committee also has the right to appoint a delegation of its members to visit the scene of the accident and observe the investigation by the authorities.

Supervisors, line managers and/or directors

Supervisors have a legal duty to examine accidents that have occurred in the workplace and propose measures to prevent them happening again. Further, supervisors have a duty to cooperate with the internal or external prevention adviser who conducts the accident investigation. Supervisors may be important witnesses as they know the employees and the working conditions well. They plan the daily use of resources and certain crucial decisions, such as recruitment, training and rule-setting, depend on them.

Employees

In the event of a workplace accident, workers have a general duty to assist and cooperate with supervisors and the prevention advisers. Further, in the absence of a joint health and safety committee or health and safety trade union representatives within the company, the workers have the right to be informed about all health and safety-related matters, including work accidents, the results of accident investigations and accident reports. This should be done by posting or advertising all proposals (e.g. draft accident reports) and asking the workers to submit their comments and suggestions.

Third parties

The obligation to investigate a 'serious work accident' and to submit a detailed accident report to the Labour Inspectorate also applies in the event of an accident involving a worker of a third party or any self-employed person performing work on the premises. All parties involved have a legal obligation to cooperate to ensure a thorough investigation of the accident and to ensure timely submission of an accident report to the Labour Inspectorate.

› When must accident scenes be preserved and for how long?

If there is a serious work accident the employer must ensure that the accident scene is preserved to allow the authorities to investigate. There are no specific requirements on the length of time the scene of the accident needs to remain undisturbed. However, if it was a fatal accident or one causing permanent injuries, the public authorities and the Labour Inspectorate will usually visit the scene within the first few hours, so it is advisable to wait for their visit before disturbing the scene.

After visiting, the Labour Inspectorate might decide to temporarily seal or close-off the scene to allow the Inspectors to continue their investigation without disturbance.

› When is there an obligation to retain experts?

Examining and determining the causes of an accident can be a very complex process in some cases. If deemed necessary to determine the cause of the accident, the public prosecutor may take the lead in investigating the technical aspects of the accident and its circumstances. Sometimes employers also retain experts to defend their stance in court and try to avoid liability.



STOCKHOLM - SWEDEN

Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

The Occupational Health and Safety (OHS) rules in Sweden are put in place at three levels; at Parliamentary level by statute, at central government level through orders and at central authority level through non-statutory regulations, guidelines, injunctions and prohibitions.

The 1977 Work Environment Act defines the outer framework of OHS regulation. This Act applies to any employer (i.e. person, company and/or organisation) that employs workers in Sweden, as well as contractors, subcontractors and other third parties (either employers or self-employed persons) that perform work in Sweden.

The general OHS principles, as set out in the Work Environment Act are more fully described in more than 200 non-statutory regulations (the 'Statute Book') issued by the Swedish Work Environment Authority. The Statute Book provides specific and technical regulations regarding, for example, the use of machinery, special working equipment, specific health and safety risks and working with contractors.

▶ Who enforces OHS law?

A central authority, the Work Environment Authority, is responsible for the administration and the enforcement of OHS laws. It consists of five regional

inspection services. In the event of a serious workplace accident, the relevant regional OHS Inspectorate will visit the workplace and investigate. The location of the accident, rather than the head office of the employer, is used to determine which regional inspectorate has authority to act.

Both OHS law and criminal law apply.

▶ What powers do the inspectors have?

The OHS inspectorate consists of inspectors whose role is to monitor and enforce the statutory OHS standards. If an accident has occurred causing fatality or severe injury or affecting several workers simultaneously, the employer must notify the relevant inspectorate.

The Inspectorate can, for example:

- ▶ carry out an inspection at the workplace on account of the accident, generally with prior notice, but the Inspectorate has the right to enter the workplace unannounced;
- ▶ require the production of documents and records;
- ▶ be accompanied on the inspection by any person with specialist, expert or professional experience;
- ▶ make enquiries of any person in the workplace (e.g. supervisors or workers) who might be able to provide useful information for the investigation.

The Inspectorate may request police assistance when its own measures are

insufficient. This may be needed, for example, in gaining access to particular premises. The Inspectorate may also ask a public prosecutor for a search warrant to seize certain goods. For example, it may wish to seize a machine part or a tool for further examination.

If an Inspectorate discovers a breach, the Work Environment Authority can order the employer to remedy it. This can involve issuing either an Injunction or a Prohibition. Which one of these is appropriate depends on the facts and on what requirements need to be made. Generally speaking:

- › if concrete, active measures are needed in order to eliminate a work environment deficiency, an Injunction will be issued;
- › if the concern is to ensure that an activity or job is conducted in a particular way, a Prohibition will be issued.

The Injunction or Prohibition should:

- › clearly describe the breaches or risks on which the decision is founded;
- › contain a clear rationale for the decision, with reference to the relevant statutory provisions on which it is based.

An Injunction or Prohibition may be appealed or reviewed by the Work Environment Authority.

Both an Injunction and a Prohibition may also carry a fine. The amount of the fine will be based on the circumstances of the case. If an employer does not comply with a decision made against it, the Work Environment Authority may consider judicial proceedings.

› Which parties have duties to protect workers and establish safe workplace conditions?

Every party at the workplace, including employers, directors, officers, supervisors and workers, plays a role in ensuring health and safety at the workplace. Employers hold the primary responsibility for this, but other individuals (i.e. directors, officers and/or supervisors) can also be held personally liable for breaches of health and safety regulations.

Employees

All workers have a legal duty to protect themselves and others in the workplace and play a role in ensuring workplace safety. In particular, they have a duty to:

- › assist with work relating to the working environment and take part in implementing the measures needed to achieve a safe working environment;
- › comply with rules issued;
- › use safety devices and take other precautions needed for the prevention of ill-health and accidents;
- › immediately notify the employer or a safety delegate if work entails an immediate and serious danger to life or health.

The employer

The employer must:

- › take all precautions necessary to prevent employees from being exposed to health hazards or accident risks. Anything capable of leading to ill-health or accident must be altered or replaced in such a way as to eliminate the risk;

- › consider the special risks of ill-health and accident that may result from an employee working alone;
- › ensure that facilities, machinery, tools, safety equipment and other technical devices, are kept in good repair.

The employer must also:

- › systematically plan activities in a way that leads to compliance with the legal requirements for a good working environment;
- › investigate work injuries, keep the risks of injuries under review and take all necessary measures;
- › document the working environment and measures to improve it and draw up action plans;
- › ensure that there is a suitably organised scheme of job adaptation and rehabilitation;
- › ensure the necessary occupational health services are put in place. (i.e. an independent expert resource within the working environment to help prevent and eliminate health risks at the workplace).

The employer must ensure employees understand the working conditions and the risks the work may entail. It must ensure employees are trained and know what measures are being taken to avoid risk. Employers must make sure that only employees who have received adequate instructions are given access to areas where there is a real risk of ill-health or accidents and must make adjustments to the working conditions to take account of employees' different aptitudes for the work.

Joint health and safety committee

OHS compliance also places great reliance on the activities of the joint health and safety committees. These are comprised of worker and management representatives and are required in larger companies. In smaller companies (i.e. with fewer than 50 employees) trade union representatives may take on the role of the safety representative, or if there is no union representation at the work place, the staff may elect a safety representative.

› What penalties exist for violations of OHS and criminal law?

All breaches of the Swedish OHS rules can lead to prosecution and criminal penalties, irrespective of whether there has been an accident under the Work Environment Act. If there is a workplace accident leading to death or injury, there is also a risk of prosecution under the Penal Code. In the event of criminal prosecution after a serious workplace accident, a public prosecutor will base prosecution on both the Work Environment Act and the Penal Code.

The Work Environment Act states that any person who willfully or negligently violates an Injunction or Prohibition issued by the Work Environment Authority, will be fined or imprisoned for up to one year. Fines may be imposed on those who intentionally or negligently:

- › give incorrect information in matters of importance when the OHS Inspectorate has requested information, documents or samples or has requested investigations;
- › fail to provide notification to the Work Environment Authority of a death or serious injury at the workplace.

The Work Environment Authority may also directly impose payment of a 'sanction charge' for infringement of a provision it has issued, without reference to the courts. Sanction charges came into force in 2014 as a result of a government

report that established that fines were not the most effective way to ensure that regulations concerning the work environment were followed. The charge must be paid even if the infringement was not intentional or negligent. Most charges are differential, meaning that large organisations pay more than small ones. The way the charge has been calculated will be made clear by the Work Environment Authority based on the number of employees. Both regular employees and temporary workers are included in the calculation, regardless if the work full-time or part-time.

The amount of the charge is between SEK 1,000 and SEK 1 000,000. Liability for payment of the charge is on the employer, whether that be a company, public body or other organisation.

If there is a criminal prosecution following a workplace accident, the public prosecutor can base this not only on the provisions of the Work Environment Act (and the Work Environment Authority's 'Statute Book' of regulations), but also on the general Penal Code. Prosecution can also be for a special offence for incidents involving death or injury at the workplace.

› What are the risks of civil claims against the employer?

The risk of an employer facing a civil claim as a result of a workplace accident is limited by the fact that any victim of a workplace accident is entitled to compensation via industrial injury insurance, regardless of who was responsible for the accident, and even if it was caused by the behaviour of the victim.

If the industrial injury insurance does not cover the accident, the employee (or the employee's estate) may bring a civil claim for damages against the employer. Such claims are very rare in Sweden.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

In Sweden there is no legal definition of a 'work accident'. However, the Work Environment Authority has issued the following guidelines:

Work Accidents

Physical damage caused by a sudden occurrence. Note that sometimes, psychological damage may also count as an accident.

Serious personal injury

These include injuries:

- › resulting in a body fracture;
- › causing severe bleeding, or severe injury to a nerve or muscle;
- › involving damage to an internal organ;
- › involving second or third degree burns or other burns over more than 5% of the body and cold damage is as serious as burn damage.

Serious personal injury can also mean the loss of a part of the body or injuries to the senses, as well as injuries that may lead to chronic illness or future detriment.

› What are the legal requirements on the employer following a workplace accident?

An employer must promptly inform the Swedish Work Environment Authority and

the Social Insurance Agency of any death or severe injury sustained in connection with the performance of work. It must also promptly notify them of any injuries in connection with work that affect several employees simultaneously and any incidents involving significant danger to life and health. A minor accident need only be reported to the Agency.

An employer that fails to notify the authorities of a workplace accident is liable to pay a fine.

A detailed accident report must be submitted to the Work Environment Authority and the Agency and it must contain a number of mandatory details, including:

- › the names and addresses of the parties involved;
- › information regarding the victim and his or her injuries;
- › the time and location of the accident;
- › a detailed description of the factual circumstances;
- › an analysis of the possible causes of the accident;
- › a list of remedial post-accident steps that will be taken to avoid recurrence.

Any work accident must be promptly notified to the internal joint health and safety committee for organisations with 50 or more employees or the safety delegate for smaller organisations.

› Must accidents to persons other than workers be reported?

The reporting obligations are the same for persons other than workers as they are for workers.

› Is there a legal obligation to conduct internal investigations?

If a work accident has occurred, the employer must ensure that the accident is thoroughly investigated in order to avoid recurrence of the accident.

› What other parties are involved in the reporting and investigation process?

The joint health and safety committee (or the safety delegate if the company has less than 50 employees) must be informed of the accident and be allowed to be involved in the investigation process.

The obligation to investigate a work accident applies also in the event of an accident involving a worker of a third party or any self-employed person performing work on the premises. All parties involved have a legal obligation to cooperate to ensure a thorough investigation of the accident.

› When must accident scenes be preserved and for how long?

There are no rules about preserving a scene so that the Work Environment Authority or the police can investigate. However, if an incident was fatal or caused permanent injuries, the employer should immediately notify the OHS Inspectorate. In those circumstances, it is advisable to wait for their visit before disturbing the accident scene.

› When is there an obligation to retain experts?

There is no obligation to obtain expert opinions, but it can be useful for the employer to conduct a parallel internal investigation using a second expert so as to be able to challenge the opinion or conclusions of the first one, if necessary.



Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The Occupational Health and Safety (OHS) rules in Turkey are set out mainly in the Occupational Health and Safety Law of 20 June 2012, number 6331. This law applies to all businesses and workplaces in both the public and private sector, and to employers, employer representatives and all employees, including trainees and interns, irrespective of the jobs they do. However, there are exceptions, to which this law does not apply, such as domestic help, response activities to disasters and emergency units.

The general OHS principles are detailed in regulations, such as the Occupational Health and Safety Regulation, the Regulation on the Working Conditions of Women Employed on Night Shifts and the Regulation on Occupational Health and Safety in Mines, amongst others.

► Who enforces OHS law?

Occupational health and safety legislation is enforced by the Ministry of Labour and Social Security. The government has the right to monitor, supervise and inspect the implementation of legislation in business and this is done by labour inspectors. Employers are also required to ensure occupational health and safety regulations are complied with. Breaches of OHS law may result in the sanctions stipulated in the Occupational Health and Safety Law and/or in criminal law, depending on the breach.

The National Occupational Health and Safety Council has been set up to advise on policy in relation to occupational health and safety across the country.

In addition, employers must set up an occupational health and safety board at all workplaces with 50 or more employees and ones in which activities that take longer than six months are conducted, in order to ensure compliance with occupational health and safety law.

► What powers do the inspectors have?

The Ministry of Labour and Social Security is authorised to monitor and inspect workplaces and to take samples for inspection.

If a matter of life-threatening danger is found at a workplace, work can be stopped by the inspectors either partly or completely. Work will also be stopped if no risk assessment has been conducted at mining, metal or construction sites, where work is performed with hazardous chemicals or where there is a risk of a serious industrial accident.

A board consisting of three labour inspectors conducts the inspections and it may decide that work should be stopped within two days of the date of the decision. If emergency action is required, the labour inspector who decided on the emergency action can ask for work to be suspended pending the decision of the board.

An employer may object to the decision to stop work by making an application to a competent labour court within six business days of the decision. The court

will make a decision within six business days and its decision is final. The employer must pay the salaries of employees who become unemployed as a result of the stoppage or offer them another job.

› Which parties have duties to protect workers and establish safe workplace conditions?

The employer

Employers have primary responsibility for ensuring health and safety at the workplace. In order to prevent workplace accidents and avoid risks, employers must:

- › take the necessary action to prevent workplace risks, including taking precautionary measures, providing necessary tools and equipment, ensuring they react to changing conditions and keeping the situation under review;
- › ensure all occupational health and safety measures are implemented and stop all instances of non-compliance;
- › perform a risk assessment of the workplace;
- › consider the suitability of employees in relation to health and safety, when assigning their duties;
- › take all necessary measures to prevent the employees from entering dangerous places, except for those with sufficient information and instructions to be there safely.

Employers cannot recoup the cost of taking occupational health and safety measures from employees.

Every employer must assign an occupational safety specialist and a workplace doctor. Employers classed as performing highly hazardous activities employing ten or more employees must also assign other healthcare personnel.

Employers must assess emergency situations and take preventive measures, including preparing an emergency plan. In the event of a serious, unavoidable danger, the employer must instruct employees to leave the workplace immediately and go to a safe place. If the emergency continues, the employer must not ask the employees to continue working, unless they have the necessary equipment and have been specially assigned to the task.

Employees in hazardous and highly hazardous workplaces must not commence work without a health report indicating that they are suitable for the work.

Employers must inform the employees and employee representatives about health and safety risks in the workplace, the measures taken to protect them, their legal rights and liabilities, who can give first aid and what happens in an emergency. They must also ensure the employees' occupational health and safety training.

Employers must appoint employee representatives as follows:

- › between 2-50 employees: one employee representative;
- › between 51-100: two employee representatives;
- › between 101-500: three employee representatives;
- › between 501-1000: four employee representatives;
- › between 1001-2000: five employee representatives;
- › more than 2001: six employee representatives.

Before commencing work, employers in which significant industrial accidents

may occur must also prepare a significant accident prevention policy certificate or safety report.

Employees

Employees who are affected by dangers to their health and safety can raise the matter with the occupational health and safety board at the workplace. If there is no board, the employees can require the employer to assess the working conditions and can ask the employer to take any necessary measures to reduce the risk.

Occupational safety specialists and workplace doctors

Occupational safety specialists and workplace doctors are employed to offer consultation and guidance to the employer. They will assess any deficiencies and will give written advice on measures the employer can take to mitigate the risks.

› What penalties exist for violations of OHS and criminal law?

Employers may be subject to administrative fines for breaches of occupational health and safety law.

If an employer has been required to stop work but fails to do so, the employer or employer's representatives may be liable to imprisonment for between three years and five years. If an occupational accident or disease has caused the death or injury of an employee through the negligence of the workplace doctor or occupational safety specialist, the authority certificate of that person will be suspended. If the breach leads to a criminal offence, sanctions under criminal law may be imposed on those responsible. For example, if an employee is killed by reckless acts of the employer, the employer will be sentenced to imprisonment for between two and six years.

› What are the risks of civil claims against the employer?

If there is a serious danger and the necessary precautions are not taken upon the request of the employee, the employee may terminate his or her employment agreement.

Under the Turkish Code of Obligations, the employer must take all measures and keep all equipment necessary for occupational health and safety at the workplace. In the event of death, injury or a breach of the personal rights of the employee as a result of unlawful actions of the employer, the employer will be liable to compensate the employee.

Pursuant to the Social Security and General Health Law, if an occupational accident or professional illness has occurred through the fault of the employer, any expenses paid by the Social Security Institution for health services must be reimbursed by the employer.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

An occupational accident is defined as an event which has occurred at a workplace or due to the performance of work, which causes death, physical disability or a mental health condition.

› What are the legal requirements on the employer following a workplace accident?

Employers must keep track of all workplace accidents and diseases, conduct all necessary research and prepare relevant reports. The employer must inform the Social Security Institution as follows:

- › for occupational accidents: within three working days of the accident;
- › for occupational illnesses: within three working days of the date the employee first knew of the illness.

Healthcare service providers must notify the Social Security Institution about an occupational accident within ten days.

Employees and their representatives have the right to apply to the Ministry of Labour and Social Security if they believe that measures taken by the employer were insufficient.

A member of the occupational health and safety board at the workplace may call an extraordinary meeting in the event of an accident involving death or serious injury.

Employers must prepare reports regarding occupational accidents that have affected employees and caused a loss of more than three days and must keep records of those accidents.

Notifying employees

Employers must immediately inform employees who have been exposed to a serious danger or risk being exposed to a serious danger of the measures that have or will be taken to mitigate the risks. Employers must inform employees if they will be subject to a high level exposure to risk.

Notifying the employer

The employees must immediately inform the employer or employer representative if they encounter a serious danger to their health and safety arising from machinery, devices, tools, equipment, facilities or buildings at the workplace or if they notice a deficiency in the protection measures.

Occupational safety specialists must inform the employer in writing regarding the precautions to be taken in relation to occupational health and safety. They must consider and advise the employer about any measures to be taken in relation to occupational accidents and professional illnesses.

Occupational safety specialists must notify the employer that it must stop the work if there is a life-threatening danger that is unavoidable and requires emergency intervention.

If employees believe there is a serious and immediate danger at the workplace or they notice a deficiency in the protective measures, they must inform the employer or the employee safety representative immediately.

Notifying the authorities

If any deficiencies that are notified by the occupational safety specialist or workplace doctor require an emergency stoppage to the work or if there is a life-threatening emergency (e.g. fire, explosion, collapse, chemical leakage, or the presence of an environment that may cause occupational illness), and the necessary precautions are not taken by the employer, the workplace doctor

and occupational safety specialist must notify the Ministry of Labour and Social Security, the authorised union representative (if any) and the employee representative (if no union representative exists). If the workplace doctor and occupational safety specialist fail to notify as required, their certificate to practice will be suspended for three months (or six months for repetition).

Within one day, the decision to shut-down will be sent to the local authority and the provincial directorate of the Turkish Employment Agency where the workplace file is held. The decision to shut the workplace down will be implemented within 24 hours by the local authority, or immediately, in an emergency.

All early cancer diagnoses made by healthcare service providers or workplace doctors due to exposure to carcinogenic materials at the workplace must be notified to the Social Security Institution.

If a breach of health and safety regulations by the workplace doctor or occupational safety specialist has led to the death or disability of an employee, the employer must notify the General Directorate of Occupational Health and Safety.

› Must accidents to persons other than workers be reported?

Occupational health and safety legislation applies to employers and their workers, the representatives of the employers and all the workers including apprentices and trainees. The rules do not cover third party contractors, for example.

› Is there a legal obligation to conduct internal investigations?

There is no legal obligation on the employer to conduct an internal investigation. However, employers must keep track of all workplace accidents and diseases, conduct any necessary research and prepare relevant reports. Employers must also investigate any events that have occurred at the workplace which did not cause death or injury but did cause damage to the workplace itself or work equipment, or had the potential to cause such damage, and must prepare relevant reports.

› What other parties are involved in the reporting and investigation process?

Employers must assign one or more person at the workplace to help minimise the health and safety risks and to conduct preventive services. If there is no one at the workplace who can take on these duties, the employer can obtain this service externally. Employers may also undertake the task themselves, provided they have sufficient information, skill and equipment.

Employers must make contact with companies outside the workplace to obtain first aid, emergency medical intervention, rescue and fire-fighting. Private companies can provide these services.

Employers must assign an occupational safety specialist and a workplace doctor. Employers performing highly hazardous work and employing ten or more employees must also assign additional healthcare personnel, either internally from staff or externally.

Workplace health and safety units are units set up in the workplace to carry out occupational health and safety services. In cases where a workplace doctor and occupational safety specialist are required to be assigned full-time, the employer must set up a workplace health and safety unit. Workplace

health and safety units consist of at least one occupational safety specialist and one workplace doctor.

The supervision and monitoring of the implementation of OHS law is carried out by labour inspectors.

› **When must accident scenes be preserved and for how long?**

There are no rules in Turkish law about preserving the scene.

› **When is there an obligation to retain experts?**

There is no obligation on employers to obtain a private opinion about what happened, but an independent expert's opinion can be useful in the event of a dispute.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

UAE

The most important OHS principles are contained in the UAE Labour Law (Federal Law No. 8 of 1980, as amended). This law applies to all employers and employees, with exception of the following categories:

- ▶ employees of the Federal Government and governmental departments of the member emirates and municipalities;
- ▶ members of the armed forces, police and security;
- ▶ domestic servants employed in private households and the like; and
- ▶ farming and grazing labourers, other than those working in agricultural firms that process their own products, and those who are permanently employed to operate or repair mechanical equipment required for agricultural work.

In addition, employers in the UAE must comply with the provisions set out in Federal Law No. 5 of 1985 on civil transactions (the Civil Code) and Ministerial Resolution No. 32 of 1982 (Workers' Safety, Protection, Health and Social Care) issued by the Minister of Labour. Certain provisions of Federal Law No. 3 of 1987 (the Penal Code) may also mean that employers (or others) could

be held criminally responsible for breaches of OHS requirements in certain circumstances.

Companies operating within certain free zones in the UAE may be subject to further health and safety requirements contained in free zone specific regulations.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

OHS in the DIFC is governed by DIFC Law No. 4 of 2005, as amended (the DIFC Employment Law), DIFC Law No. 5 of 2005 (the Law of Obligations) and DIFC Law No. 7 of 2005. The DIFC laws are supplemented by the DIFC Personnel Sponsorship Agreement and the DIFC Authority Emergency Management Plan. Certain provisions of the Penal Code may mean that employers (or others) could be held criminally responsible for breaches of OHS requirements in certain circumstances.

▶ Who enforces OHS law?

UAE

There is no stand alone OHS inspectorate in the UAE. Instead, the Ministry of Labour (in consultation with the Ministry of Health) is responsible for issuing and enforcing ministerial resolutions and setting standards regarding the safety, health and protection of employees.

The Ministry of Labour may dispatch staff to conduct inspections of offices and workplaces without prior notice. While these inspections are usually to ensure correct work permits and visas for employees are in place, they may result in warnings and/or fines and penalties being issued for breaches of health and safety rules.

Where an employee suffers a work related accident or an occupational illness, the employer or its representative must immediately report the accident to the Dubai Police and the Ministry of Labour. If a police report concludes that one of the employer's staff or managers were at fault or negligent, they may face prosecution in a criminal court for the act or omission if this amounts to a crime.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

There is no particular body with responsibility for enforcement of OHS legislation in the DIFC. Instead, an employee who is impacted by the employer's failure to comply with OHS obligations may bring a claim against the employer in the DIFC courts.

› What powers do the inspectors have?

UAE

Labour inspectors may enter a workplace at any time during working hours, without prior notice and without a search warrant or court authority and may carry out any examination or inquiry necessary to verify compliance with labour law. In particular, they may:

- › Interview the employer or employees, either privately or in the presence of witnesses, about any matters related to compliance with health and safety rules and the law.
- › Examine and obtain copies and extracts of all documents required to be kept in accordance with labour law.
- › Take samples of materials used in industrial or other operations, where these are suspected of having harmful effects on the health or safety of employees, so as to have them analysed. They must then notify the employer or its representatives of the results and take appropriate measures.
- › Ensure that notices and announcements are posted at the workplace, as required by law.

The labour inspectors must notify the employer or the employer's representative of their arrival, unless they think the inspection requires otherwise.

The labour inspector may require an employer to make alterations to any installations or plans used in the facilities within certain time limits. If the inspectors consider there is an imminent threat to the health or safety of employees, they may require that changes are made immediately.

Labour inspectors may be accompanied by a specialised medical practitioner.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

The relevant laws do not set out clearly defined powers which may be utilized by any particular authority in respect of OHS breaches.

› Which parties have duties to protect workers and establish safe workplace conditions?

UAE

All parties (including employers, directors, managers, supervisors and the workers themselves), play a role in ensuring health and safety in the workplace. While there is some overlap between the obligations of workplace parties, employers have the primary responsibility for ensuring the health and safety of their employees whilst in the workplace. Nevertheless, other individuals (e.g. directors, managers and/or supervisors) can also be held responsible for breaches of health and safety regulations.

Employees

Employees must:

- › use the protective gear and clothing supplied for health and safety purposes;
- › comply with all instructions given by the employer to protect against hazards; and
- › refrain from taking any action that might obstruct the enforcement of the health and safety procedures set up in the organisation.

The employer however, always has the primary responsibility to protect the health and safety of others in the workplace. An employer's responsibilities in relation to OHS are as set out below.

The employer

Employers must protect employees from risks including:

- › injuries that may occur at work;
- › occupational illnesses;
- › fire hazards; and
- › any potential dangers arising out of the use of tools and machinery.

In addition, all employers must:

- › display, in a prominent place at the workplace, fire and safety warning signs both in Arabic and any other languages understood by the employees;
- › inform employees of dangers associated with their profession;
- › provide employees with the necessary precautions and preventative measures required to avoid employment-related injuries and fire hazards within the workplace;
- › provide a first aid box (one per 100 employees) which is easily accessible by all employees and assigned to a person trained in giving first aid;
- › ensure adequate cleanliness, ventilation, illumination, drinking water and bathroom facilities;
- › prevent alcoholic drinks or intoxicated employees from entering the workplace;
- › provide employees with access to medical care; and
- › provide adequate fire prevention and extinguishing materials.

The following minimum health and safety standards must also be maintained in the workplace:

- › each employee is entitled to an area of not less than four cubic meters in which to work;
- › the employer must ensure that employees are provided with clean air, and are not subject to sudden temperature changes, extreme heat or cold, or unpleasant smells and that any excessive humidity is eliminated;
- › the employer must provide adequate and proper lighting;
- › the employer must prevent or reduce noise and vibrations which are dangerous to the safety of workers;
- › the floor of the work room must be level;
- › space must be left around machinery to allow workers to pass by and to allow for adequate repairs to machinery;
- › passages must not be slippery, have protrusions or holes or be crowded or blocked with materials;
- › stairs and walkways must not be slippery, must be fenced on all sides and provide adequate means in order to prevent objects falling through them;
- › stairs must be durable and broad enough to allow safe passage and must be surrounded by rails; and
- › ladders must be durable and tops and bases of ladders must adequately prevent slipping.

The employer must also ensure the following:

- › that work operations are not harmful to workers' health and safety;
- › any operations that are harmful to workers' health are carried out using isolated equipment;
- › any harmful radiation is prevented from reaching workers;
- › all harmful substances are eliminated;
- › the use of a proper ventilation and exhaust system to eliminate dust, vapours, gases and fibres at source; and
- › all workers are provided with adequate protective clothing and other tools for their protection (e.g. clothing such as gloves, goggles, belts and masks) and not permitted to enter areas where machinery is operated, without adequate protective clothing.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

Employers in the DIFC are responsible for protecting their employees in the DIFC. That duty extends to an employer being liable for its employees' acts during the course of employment except, where an employer can demonstrate that it took reasonable steps to prevent the employee from undertaking the act.

› What penalties exist for violations of OHS and criminal law?

UAE

Once the employer has reported a work-related accident, the police will investigate and compile a report that includes the following:

- › testimony from any witnesses, the employer or its representatives and those injured;
- › whether the accident was work related;

- › whether the accident was caused intentionally; and
- › whether the accident was the result of misbehaviour on the part of an employee.

If a police report concludes that one of the employer's staff or managers was at fault or negligent, that person may face prosecution in a criminal court for the act or omission, if it amounts to a crime under the Penal Code.

If there is evidence in the police report that the employee intentionally caused the injury, for example, in order to receive compensation or medical leave, the employee will not be entitled either compensation or leave, and will be liable to face criminal charges.

A sentence of imprisonment and a fine of not less than AED 10,000 will be imposed on:

- › anyone who breaches the mandatory provisions of UAE labour law, regulations or orders; and
- › anyone who obstructs or prevents any official from performing his or her duty to inspect and enforce the provisions of UAE labour law.

Where an employer fails to comply with its obligations under UAE labour law, fines may be imposed of up to AED 5,000,000.

Broadly, the Penal Code provides for the following crimes, which may arise in the context of health and safety at work:

- › **Manslaughter:** Where one individual causes the death of another, the individual may be punished by a minimum custodial sentence of one year in addition to a fine (which is not subject to any cap) if the death occurs as a result of the individual failing in his or her duty. In this context, manslaughter charges could potentially be brought against a general manager, health and safety manager, or any other person responsible for ensuring health and safety at work who fails in that duty.
- › **Personal injury:** Where injury is caused by one individual to another, the individual may be punished by a maximum custodial sentence of one year and/or a fine not exceeding AED 10,000. Where personal injury leads to a permanent disability and is caused as a result of an individual failing in his or her duty, the penalties are more onerous. In such a case, the individual may be subject to a maximum custodial sentence of two years and/or an unlimited fine.
- › **Exposure to danger:** Where an individual causes exposure to danger, he or she can be sentenced to an indefinite prison sentence and an unlimited fine. It is not clear from the Penal Code what acts or omissions could be classified as causing exposure to danger. However, it is possible that individuals could be punished pursuant to this heading where safety protocols are not put in place to protect employees. In reality, this provision is more likely to be a concern for individuals working in construction or similar fields rather than those in an office environment.

In respect of the above, liability for any criminal acts would be limited to those who are directly responsible for the death or injury of another or those who should be ensuring that individuals are protected. For example, personal liability in most companies is likely to be limited to general managers, health and safety officers and/or the (more junior) individuals who are directly involved in the incident.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

There is no set penalty for breach of OHS provisions.

The penalties pursuant to criminal law would be the same as in the UAE.

› What are the risks of civil claims against the employer?

UAE

If it is proven that a workplace injury occurred as a result of the negligence of the employer, the injured employee may only claim compensation in respect of lost wages and any permanent or partial disability in accordance with specified ratios. The claim would be brought in the UAE Labour Courts.

Where an employee dies or is permanently rendered totally disabled, the employee and his or her family will be entitled to compensation equivalent to 24 months' basic wage, unless the employment contract or company policy provides for a more favourable amount. The compensation payable is subject to a minimum of AED 18,000 and a maximum of AED 35,000.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

Where an employee sustains an injury as a result of an accident at work, the employer must compensate the employee pursuant to DIFC employment law. The amount of compensation depends on the injuries sustained. However, the maximum amount of compensation is 24 months of the injured employee's salary. In addition, where the employee brings a claim pursuant to the DIFC Law of Obligations, the employee may seek financial or non-financial damages to compensate him or her for losses sustained as a result of the breach. The Law of Damages deals specifically with damages arising as a result of a breach of the Law of Obligations. Damages will ordinarily be measured by considering the amount required to put the individual in the position he or she would have been in but for the injury. In the case of personal injury, the injured party may also claim for additional compensation.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

UAE

UAE labour law describes a workplace accident as any of a narrow list of occupational diseases or any other injury arising from the employee's work and sustained by the employee while performing the work and as a result of it.

Additionally, any accident sustained by an employee on the way to or from work must be considered an employment injury, if the journey is made without any break, lingering or diversion from the normal route.

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DIFC employment law provides a list of permanent disabilities, dismemberments and injuries which constitute a workplace accident. The list is very similar to the list set out in UAE labour law.

› What are the legal requirements on the employer following a workplace accident?

UAE

Workplace accidents must be reported immediately to the police and the Ministry of Labour. In addition, it is common for employers in the UAE to obtain workmen's compensation insurance. On that basis, the relevant insurance policy is likely to require a declaration to be made within a specific timeframe following the accident.

All accidents must be reported. This includes accidents involving senior members of staff as well as workers. If a customer or client is on the premises and has a work-related accident, it is prudent to advise the police of this, though there is no obligation to do so.

Dubai International Financial Centre ('DIFC')

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There is no set timeframe for reporting workplace accidents in the DIFC. However, practically, it is common for employers in the DIFC to obtain workmen's compensation insurance. On that basis, the relevant insurance policy is likely to require a declaration to be made within a specific timeframe following the accident.

› Must accidents to persons other than workers be reported?

UAE

An employer employing 15 or more employees must maintain a written register of all workplace accidents.

Any workplace accident must also be reported to the police and the Ministry of Labour. The report must include the employee's name, age, occupation, address, nationality, and a brief account of the accident, its circumstances and the medical aid or treatment provided.

On receipt of the report, the police will carry out any necessary investigations and compile a report containing statements of witnesses, the employer or its representative and the injured employee (health permitting), and must indicate whether the accident was work-related, deliberate, or the result of gross misconduct on the part of the employee.

The police will send one copy of the report to the Ministry of Labour and another to the employer. The Ministry of Labour may also conduct a supplementary inquiry, if it finds it necessary to do so.

Dubai International Financial Centre ('DIFC')

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There are no specific reporting requirements in the DIFC.

› Is there a legal obligation to conduct internal investigations?

UAE

There is no legal obligation on the employer to conduct an internal investigation.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

There is no legal obligation on the employer to conduct an internal investigation.

› What other parties are involved in the reporting and investigation process?

UAE

Beyond the involvement of the police and/or the Ministry of Labour, there is no further compulsory involvement necessary. Work and trade unions are not allowed in the UAE and are considered illegal. If a company has a health and safety committee, it may choose to look into the matter further, in accordance with company policy.

Dubai International Financial Centre ('DIFC')

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There is no legal obligation to involve any additional parties in an investigation (other than in the case of a criminal complaint, where the police would automatically be involved).

› When must accident scenes be preserved and for how long?

UAE

There are no obligations about how long the scene of an accident must be preserved. Where an accident is reported to the police, guidance should be sought as to how long the accident scene should be preserved.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

There are no obligations about how long the scene of an accident must be preserved. Where an accident is reported to the police, guidance should be sought as to how long the accident scene should be preserved.

› When is there an obligation to retain experts

UAE

There is no obligation to retain experts, unless specified by the police and/or Ministry of Labour inspectors.

Dubai International Financial Centre ('DIFC')

DIFC is a federal financial free zone administered by the government of Dubai where different rules apply.

The position in the DIFC is the same as in the UAE.



LONDON - UK

Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The legislation governing OHS in the UK is extensive. The overarching statute is the Health and Safety at Work etc. Act 1974 and extensive secondary legislation, including the Management of Health and Safety at Work Regulations 1999, has been enacted to both give effect to EU Directives on Health and Safety and expand on and reinforce the provisions of the Health and Safety at Work etc. Act. The main regulator is the Health and Safety Executive.

The Health and Safety at Work etc. Act imposes a number of statutory duties on employers towards their employees, members of the public and others who are affected by employers' activities. Employers have an overarching obligation to ensure, as far as is reasonably practicable, the health, safety and welfare at work of their employees.

A large number of other statutes and statutory instruments govern more specific aspects of OHS in the UK. Failure to comply with the statutory duties imposed on employers can lead to criminal prosecution.

Additionally, under common law, employers owe their employees a general 'duty of care' to safeguard their safety and employers may face civil actions if employees suffer injury or damage to health because of a breach. Employees have duties under the Health and Safety at Work etc. Act to take

reasonable care for the health and safety of themselves and others who may be affected by their acts or omissions and to cooperate with their employer to enable the employer to comply with its duties.

► Who enforces OHS law?

The Health and Safety Executive is the main governmental body responsible for the implementation and enforcement of OHS law in the UK. Individual local authorities (i.e. the relevant county, district or borough council) also have responsibilities to enforce OHS law within their jurisdictions, as do certain other governmental bodies (such as the Office of Rail Regulation and the Civil Aviation Authority). The body with enforcing responsibilities in a particular case is known as the 'Enforcing Authority'.

In general, the Enforcing Authority for commercial premises tends to be the local authority. Local authorities also enforce OHS law at premises where the main activity is the sale and storage of retail or wholesale goods, office activities, catering services, most shops, sports grounds and the provision of residential accommodation, amongst others.

The Health and Safety Executive is usually the Enforcing Authority for industrial premises. It is also specifically responsible for agriculture, mining, quarrying, broadcasting, filming, any activity on-board a sea-going ship, pipelines, and local authority premises.

Breaches of OHS law can be brought before the courts by the relevant Enforcing Authority.

The Health and Safety Executive and other Enforcing Authorities exercise a range of enforcement powers to ensure compliance with OHS law. The Health and Safety Executive's other functions include proposing new or updated laws and standards, conducting research and providing information and advice.

The Health and Safety Executive may also approve and issue codes of practice on health and safety matters. Failure to comply with these will not give rise to civil or criminal liability but in criminal proceedings for a health and safety offence, non-compliance with the Approved Code of Practice will result in the accused having to prove compliance with the law by other means.

The Health and Safety Executive also publishes guidance and circulars concerning health and safety matters. This guidance does not have the same legal status as Approved Code of Practice, but may be referred to as indicators of good practice and compliance with OHS law.

The Health and Safety Executive publishes the names of those convicted of health and safety offences: see www.hse.gov.uk/enforce/prosecutions.htm.

► What powers do the inspectors have?

The body with enforcing responsibilities for a particular area or activity (the 'Enforcing Authority') will appoint inspectors to implement OHS law, use enforcement powers and bring prosecutions. These inspectors have a wide range of powers, including, the right to:

- inspect workplaces to detect non-compliance and offer practical guidance;
- direct that premises or anything on them be left undisturbed for as long as necessary for the purpose of the investigation;
- take measurements, photographs, recordings and samples;
- dismantle or retain articles and items;
- conduct interviews;
- require the production and inspection of any documents and take copies; and
- require the provision of facilities and assistance for the purpose of carrying out the investigation.

Inspectors also have the power to seize and render harmless items which they reasonably believe give rise to an imminent risk of serious personal injury.

In practice, Enforcing Authorities are more likely to investigate serious workplace accidents, organisations with a poor track record and organisations working in particularly dangerous sectors. It is HSE policy to investigate all workplace deaths which are reported to it.

Less serious breaches of OHS law are often dealt with by Enforcing Authorities informally with the aim of securing compliance. This may be through the offer of advice, verbal warnings, letters of advice and recommendations.

Where an Enforcing Authority believes that an organisation's breach (or potential breach) is more serious, it can issue a statutory notice and add the organisation to a public register.

'Improvement Notices' are issued by inspectors to businesses or individuals thought to be in breach of health and safety law or likely to become in breach, and require the recipient to take steps to rectify the breach.

'Prohibition Notices' are issued by inspectors who believe the recipient is engaged in a certain activity which involves a risk of serious personal injury or

risk of imminent danger. When a Prohibition Notice is issued, the employer must stop carrying out the activity deemed to be unsafe immediately and must not resume it until the inspector confirms it is safe to do so.

These notices can be appealed within 21 days of service. However, refusal to comply with their requirements risks criminal prosecution, a fine, and/or imprisonment. Following conviction, the court may order the business or individual to remedy the matter.

Where a work activity involves significant hazards a 'permissioning' regime may be put in place. Under the regime, the activities cannot take place unless some form of consent or approval is given from the relevant regulator. Areas subject to some form of permissioning regime include the nuclear industry, railways, offshore installations and working with asbestos.

With effect from 1 October 2012, the Health and Safety Executive has been empowered to recover the costs of its regulatory functions from those found to be in 'material breach' of OHS law, which results in the service of a statutory notice (including an improvement notice or prohibition notice).

The fee is based on the amount of time that an Inspector has spent identifying the material breach, helping the duty holder to put it right, investigating and taking enforcement action.

The hourly rate for the fee was set at GBP 124. A review of the scheme in June 2014 reported that the average charges are around GBP 500.

Enforcing Authorities have the power to bring criminal charges against organisations and individuals in breach of OHS law. The decision to prosecute is often taken after non-compliance with a statutory notice. However, inspectors do not need to issue a notice before bringing charges and in practice they do not always do so, particularly in the case of workplace accidents.

Whether to bring charges or issue a statutory notice remains at the discretion of the inspector concerned. However, the Health and Safety Executive aims to encourage consistency through its Enforcement Policy Statement, available online through its website (see: <http://www.hse.gov.uk/pubns/hse41.pdf>). The policy statement provides that the public interest would normally require Enforcing Authorities to prosecute where one or more of the following circumstances apply:

- death was caused as a result of a breach of OHS law;
- the offence is a grave one and has resulted in serious actual or potential harm;
- the general record and approach of the offender warrants prosecution;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- work has been carried out without or in serious non-compliance with an appropriate licence or safety case;
- the offender's standard of managing health and safety is found to be far below what is required by the law and to be giving rise to significant risk;
- there has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk;
- inspectors have been intentionally obstructed in the lawful course of their duties;

- › where it is appropriate as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures; and
- › a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

As an alternative to prosecution, an inspector may issue a 'simple caution'. A simple caution is a statement by an inspector, accepted in writing by the offender, that the offender has committed an offence for which there is a realistic prospect of conviction.

› Which parties have duties to protect workers and establish safe workplace conditions?

Employers, employees, the self-employed and others who have control over workplace premises have duties under OHS law. These duties are explored in greater detail below.

The employer

The primary OHS obligations of Employers are prescribed by the Health and Safety at Work etc. Act 1974. Employers have an overarching a duty to safeguard employees' health, safety and welfare at work, as far as is reasonably practicable. This involves:

- › providing and maintaining safe plant and systems of work;
- › ensuring that articles and substances are safely used, handled, stored and transported;
- › ensuring that employees are provided with training, information, instructions and supervision which allows them to work safely;
- › keeping any place of work under the employer's control well maintained to ensure it is safe to work in and has safe routes for accessing and exiting it; and
- › providing a safe working environment with adequate facilities for welfare at work.

Employers with five or more employees are also obliged to prepare and regularly revise a written health and safety policy, and to inform employees of its existence and of any changes to it.

Employers must not charge their employees for anything done or provided for the purposes of complying with OHS law.

A number of additional general duties are placed upon employers by the Management of Health and Safety at Work Regulations 1999, including the duty to:

- › conduct a risk assessment of threats to employees and others at work or in connection with the employer's undertaking;
- › record the findings of that assessment if the employer engages five or more employees;
- › provide employees with information on risks to their safety identified by the assessment, the preventive and protective measures taken, and procedures in the event of an imminent danger to those at work and who is responsible for implementing them;
- › train employees in health and safety matters on recruitment and whenever the employees are exposed to new or increased risks; and
- › appoint an officer responsible for assisting with compliance with

health and safety laws (this person need not be an employee, but must be competent to perform these duties, properly informed and resourced).

In addition, a number of other regulations place a variety of OHS-related obligations on employers and give effect to EU Directives on health and safety. Examples include:

- › Control of Noise at Work Regulations 2005: employers must identify excessive noise at work and protect employees and others from it;
- › Electricity at Work Regulations 1989: employers are ordered to construct, maintain and operate electrical equipment and systems safely;
- › Health and Safety (Display Screen Equipment) Regulations 1992: employers must analyse the effect of using computer workstations on employees' health and safety, to and offer employees eye and eyesight tests if requested;
- › Health and Safety (First Aid) Regulations 1981: employers should ensure that each workplace appoints a person to provide simple first aid, with tougher requirements for more dangerous workplaces;
- › Health and Safety Information for Employees Regulations 1989: the Health and Safety Poster 'what you need to know,' or a similar leaflet, must be given to each employee or displayed in a reasonably accessible place;
- › Health and Safety (Signs and Signals) Regulations 1996: where there is no other appropriate way to reduce certain risks, a safety sign in a prescribed form must be used to warn employees of the danger;
- › Manual Handling Operations Regulations 1992: employers should avoid their employees conducting manual handling at work which risks injury, or take steps to counteract these risks, such as informing employees of the weight of items;
- › Personal Protective Equipment at Work Regulations 1992: these Regulations require Employers to provide suitable personal protective equipment where necessary, maintain and replace such equipment and take reasonable steps to ensure it is properly used;
- › Provision and Use of Work Equipment Regulations 1998: these Regulations govern the selection, provision, use and maintenance of any machinery, appliance, apparatus, tool or installation used at work;
- › The Regulatory Reform (Fire Safety) Order 2005: these set out employers' responsibilities to take precautions against the risk of fire at their premises.

Employers have a statutory duty to avoid their activities exposing others to health and safety risks if reasonably practicable and this duty extends to protect, amongst others: customers, visitors, contractors (and their employees), the emergency services and the general public.

Employers must consult with employees over health and safety matters. Workforce health and safety representatives can be appointed by a recognised trade union, or elected by the workforce if no union is recognised. If no such election takes place, the employer has a duty to consult the entire workforce. In addition, an employer must organise a health and safety committee if requested to do so by two or more health and safety representatives appointed by the recognised union.

The rights and responsibilities of health and safety representatives depend on whether they are union-appointed or workforce-elected. Both sets of representatives have the right to be consulted by the employer on matters relating to health and safety at work and to make representations to them. Union-appointed representatives have wider powers which allow them to

carry out inspections and investigate complaints and potential hazards.

Workforce health and safety representatives are protected from detrimental treatment by their employer on account of their activities, and dismissing them on such grounds will give them a right to make a legal claim for automatic unfair dismissal.

The Working Time Regulations 1998 provide that workers are entitled to paid annual leave, a 48-hour limit on the working week (which workers may opt-out of) and minimum breaks and rest periods. The primary goal of this legislation is to safeguard the welfare of workers through the regulation of working time.

An employer is under a duty to make 'reasonable adjustments' for a disabled employee, if the employee is placed at a substantial disadvantage by a provision, criterion or practice imposed by the employer or by a physical feature of the employer's premises, in comparison with those who are not disabled. The duty will not arise if an employer does not know, or could not reasonably have been expected to know, that the employee is a disabled person and likely to be placed at a substantial disadvantage.

Under the common law, the employers have a duty of care to safeguard the health and safety of their employees. Often this duty of care is described more specifically as a set of obligations to provide a safe place of work, safe plant and equipment, competent employees and a safe system of work (although this is not an exhaustive list of the duty's components).

Employers must take out insurance against liability for bodily injury or disease suffered by employees arising out of and in the course of their employment (known as employers' liability insurance).

Employees

Employees have a duty under the Health and Safety at Work etc. Act to take care of their own health and safety, as well as others affected by their work. They must also cooperate with their employer (or other persons under health and safety obligations) as far as necessary to enable compliance with health and safety requirements.

Employees must also take care to use machinery, equipment, dangerous substances, means of production and safety devices provided by the employer in accordance with instructions and in line with statute. They also have a duty to alert the employer to dangerous situations and shortcomings in the employer's health and safety arrangements.

Since managers and supervisors are also employees, it follows that they must exercise their responsibilities in line with these duties. All employees can be personally liable under the tort of negligence for any of their acts or omissions which cause damage, although in practice the employer will be on the receiving end of a claim under the principle of vicarious liability.

The self-employed

Historically, self-employed persons have been required to comply with OHS law. However, since 1 October 2015, self-employed persons are exempt from compliance with OHS law unless they work in certain prescribed industries or if their work poses no harm to the public. The prescribed industries are: agriculture (including forestry), asbestos, construction, gas, genetically modified organisms and railways. The HSE estimates that as a result of this change 1.7 million self-employed persons will be taken out of compliance with

OHS law. Note, however, that a self-employed person may have employees, and will therefore be subject to the OHS obligations which apply to employers.

Occupiers

Under the Health and Safety at Work etc. Act, those in total or partial control of work premises, plant and the substances within them must take 'reasonable' measures to ensure the health and safety of those who are not their employees.

The Occupiers' Liability Act 1957 places a duty on an 'Occupier' of premises to visitors to those premises in respect of dangers due to the state of the premises or to things done or omitted to be done on them. The duty is to take reasonable care to ensure that a visitor will be reasonably safe in using the premises for the purposes for which they are on the premises. A party will be deemed to be an 'Occupier' if they have 'sufficient' control over the premises. The Occupiers' Liability Act 1984 in certain circumstances places a duty of care on Occupiers towards trespassers.

Manufacturers

Manufacturers, designers, importers and suppliers of any articles, equipment or substance for use at work have duties to ensure that those items are appropriately designed, constructed and tested as safe for use and to inform those supplied with them about how to use them safely.

Note that it is unlawful for any person (e.g. an individual or a company) to intentionally or recklessly interfere with or misuse anything in the interests of health, safety or welfare in pursuance of OHS law.

► What penalties exist for violations of OHS and criminal law?

It is a criminal offence for 'a person' to breach OHS law. The term 'person' is widely construed and includes individuals, corporate bodies (i.e. companies) and incorporate bodies. The liability arises from status as a 'duty-holder' under OHS legislation, whether that be as an employer, a person in control, an employee or any other number of duty-holder situations in respect of which OHS law imposes obligations.

Offences under OHS law often impose 'strict liability' meaning that the prosecution does not need to prove that the alleged offender intended the act to happen or even to show negligence. It is sufficient that the alleged offender caused the act to happen. Where OHS obligations are to be met so far as is 'practicable' or 'reasonably practicable' it is for the accused to prove that what was actually done met the required standard.

A person may be prosecuted for secondary liability even where the principal offender is not prosecuted (provided that an offence was committed by the principal offender) as there is an offence (under section 36 Health and Safety at Work etc. Act) for those whose act or default causes another to commit a health and safety offence.

If safety breaches within a workplace cause a death, then those responsible may also face prosecution for manslaughter. In the case of an organisation (for example, a company or partnership), the offence is the statutory offence of 'corporate manslaughter' under the Corporate Manslaughter and Corporate Homicide Act 2007 (and if an individual is responsible, the offence is individual gross negligence manslaughter).

The offence of corporate manslaughter is punishable by an unlimited fine where an organisation commits a gross breach of its duty of care to a victim whose death was caused by the way it organised or managed its activities. There have only been a small number of convictions under the Act, but prosecutions have become noticeably more frequent.

All prosecutions of criminal offences begin in the lower court, the Magistrates' Court. Offences related to breaches of OHS law may be 'summary' offences dealt with in the Magistrate's Court, 'indictable' offences dealt with in the higher court, the Crown Court, or 'either way' offences which can be dealt with in either. Most OHS offences are 'either way' offences.

The maximum term of imprisonment in the Magistrates' Court for OHS offences is currently six months (although this may be increased to 12 months). Prior to 12 March 2015, the maximum fine available in the Magistrate's Court for breach of OHS law was GBP 20,000. However, as a result of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 12 March 2015, the Magistrate's Court can impose an unlimited fine for offences committed after that date.

For OHS offences dealt with in the Crown Court, the penalty may be a fine unlimited in amount and/or imprisonment for up to two years.

The courts also have a range of other remedies open to them, such as ordering compensation of up to GBP 5,000 (section 130 of the Powers of Criminal Courts (Sentencing) Act 2000), disqualifying the offender from holding directorships (Company Directors Disqualification Act 1986), a prosecution costs order (Criminal Practice Rule 76) and a remedial order (section 42, Health and Safety at Work etc. Act).

In 2013/14 there were 881 convictions for health and safety offences in Great Britain, leading to an average fine of GBP 18,944. Over recent years custodial sentences have become increasingly frequent and the level of fines has increased.

Managers and directors, as employees, owe duties under OHS law and as such may be criminally liable for breaches of their obligations.

In addition, under section 37 of the Health and Safety at Work etc. Act, criminal liability will apply to 'a director, manager, secretary or other similar officer of the body corporate' where it can be shown that the OHS offence arose due to their consent, connivance or neglect. Consent means knowledge and awareness of the risk and circumstances. Connivance means knowing and not doing anything about the risks. Neglect means an unreasonable breach of a duty of care.

This type of liability is aimed at those in a position of real authority i.e. the decision-makers within the organisation who have both the power and responsibility to decide company policy and strategy (referred to as those with the 'controlling mind'), rather than junior individuals who do not manage the affairs of the organisation in a governing role. A director convicted of a breach of section 37 of the Health and Safety at Work etc. Act can be disqualified from being a director for up to 15 years.

The HSE has issued guidance on the prosecution of managers and directors. This acknowledges that if there is an offence by a company then there is likely also to be some measure of personal failure by one or more individuals. However, this does not mean that the HSE will automatically prosecute individuals. In practice, prosecutions of managers and directors for OHS offences are rare. There would need to be a high level of culpability on the

part of managers or directors. The decision as to whether to prosecute would depend on the facts.

Since 1 February 2016, new sentencing guidelines for OHS offences, corporate manslaughter and food safety and hygiene offences have come into force in England and Wales (with similar guidelines expected in Scotland). The guidelines encourage courts to set fines at a level which will cause 'real economic impact' so that both shareholders and boards understand the importance of providing a safe working environment. The guidelines provide sentencing ranges which are linked to the different levels of culpability and harm that can result from such offences, as well as the turnover of the offender. As a result, there is likely to be a significant increase in the level of fines, with the upper end of the range of fines for 'large organisations' (organisations with a turnover of GBP 50 million or more) being GBP 10 million for OHS offences and GBP 20 million for corporate manslaughter and potentially higher for organisations where turnover greatly exceeds GBP 50 million. The guidelines reflect the steady increase in recent years in penalties imposed by the courts for OHS offences.

► What are the risks of civil claims against the employer?

Civil claims may be brought against employers by those who have suffered injury or damage to health as a result of breach of a duty to care owed to them by an employer (e.g. employees, customers, visitors, contractors (and their employees), and the general public).

Such claims are based on the tort of negligence and usually called 'personal injury' claims. To succeed in their claim, the claimant will need to show that:

- the employer has breached the duty of care owed to the claimant;
- the employer's breach of duty caused the claimant injury; and
- the injury was a reasonably foreseeable result of the breach.

The claimant must prove their claim on the 'balance of probabilities', which is lower than the criminal standard of proof ('beyond reasonable doubt'). Personal injury claims must be brought within three years, otherwise the claimant will be out of time to bring the claim.

An employer's duty of care towards its employees extends to the employees' mental well-being. Accordingly, where an employee has suffered mental illness or psychiatric damage as a result of work (e.g. a high workload or bullying by the employer), the employee may have a personal injury claim against the employer.

An employer is generally vicariously liable to people injured by the wrongful acts of its employees if committed in the course of their employment. Accordingly, where the injury or damage to health suffered by the claimant was as a result of the negligence of an employee, the claimant can bring their claim against the employer (as well as the employee in question).

If an employee suffers a personal injury in the course of their employment as a result of a defect in equipment provided by the employer for the purposes of the employer's business, and the defect is the fault of a third party, then the injury is deemed also to be attributable to negligence by the employer. A successful personal injury claim will result in an award of damages to the claimant, usually in the form of a one-off lump sum. The guiding principle is that the award of damages should put the claimant in the position they would have been in had the employer complied with its duty. The amount of damages is assessed by judges in accordance with previously decided cases. Most awards will be paid out of the employer's insurance against such claims.

Damages are assessed under two broad headings, 'general damages' and 'special damages':

- › General damages relate to compensation for an injury, for example, a payment for 'pain and suffering'. The calculation of compensation for 'pain and suffering' is often complex as the sums that may be awarded depend on the location of the injury on the body and its severity. The calculation is often made by reference to well-known resources such as Kemp & Kemp's 'The Quantum of Damages' and the Judicial Studies Board Guidelines.
- › Special damages are paid as compensation for itemised expenses, loss of earnings up to the date of the trial and possible future loss of earnings. These can include damage to clothing or other belongings, the costs of care, travel and medical or nursing expenses.

Where a claim is successful, the amount of damages awarded may be reduced in proportion to the degree to which the claimant failed to take reasonable steps to ensure their own safety.

Historically, in addition to the common law duty of care, persons injured at work have relied on OHS legislation as a means of obtaining compensation. The position used to be that claims could be brought for the tort of 'breach of statutory duty' under OHS legislation, except in respect of the general duties contained in the Health and Safety at Work etc. Act 1974 or where the legislation itself excluded civil liability.

Most breaches of this type gave rise to 'strict liability'. The existence of strict liability made civil actions under Health and Safety at Work etc. Act attractive for claimants and such claims were often made as an alternative to, or instead of, a claim under the common law tort of negligence.

In response to a perceived 'compensation culture', the UK government enacted section 69 of the Enterprise and Regulatory Reform Act 2013, which significantly altered the law in this area. For alleged OHS breaches after 1 October 2013, it is no longer possible to bring a breach of statutory duty claim, unless the legislation relied on allows for such a claim to be brought – which is rare in practice.

The result is that claimants are no longer able to rely on strict liability for OHS breaches. Employers now only face civil claims for breaches of their OHS duties where their breach is negligent.

An employer is likely to be an 'Occupier' of premises and thus subject to 'Occupiers' Liability' for acts occurring on its premises. An employer may face civil claims in respect of injuries or accidents suffered by visitors to their premises (such as employees or customers) as a result of its status as an Occupier.

Various OHS-related claims may be brought against employers under employment laws, including:

- › claims in respect of dismissal or detrimental treatment resulting from certain health and safety activities (including refusal to work in situations of serious and imminent danger) and 'whistleblowing' on health and safety issues;
- › claims in respect of disability discrimination (e.g. where an employer has failed to make reasonable adjustments); and
- › claims in respect of 'constructive dismissal', where an employee resigns as a result of a breach of the employer's duty of care.

Most of these claims are brought in the Employment Tribunal. The time limit to submit a claim is usually three months from the date of the act complained of.

Those who suffer injury because of a defect to a product can usually bring a civil claim under the Consumer Protection Act 1987.

Chapter 2

Immediate mandatory post-accident steps

› What is a 'work accident'?

Only 'accidents' which are 'work-related' are potentially reportable to the body with enforcing responsibilities (the 'Enforcing Authority').

There is no definition of 'accident', but it includes acts of non-consensual physical violence. Health and Safety Executive Guidance states that an accident is a 'separate, identifiable, unintended incident that causes physical injury (including acts of non-consensual violence)'.

An accident is likely to be 'work-related' if it was related to the way the work was carried out, any equipment that was used or the condition of the workplace where the accident happened.

In the context of civil litigation relating to workplace accidents, levels of compensation are determined by the court. No workers' compensation laws apply.

› What are the legal requirements on the employer following a workplace accident?

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 ('RIDDOR') requires Employers (and others who are in control of work premises) to report events giving rise to death or certain specified injuries, diseases or dangerous occurrences. These reports must be made to the body with enforcing responsibilities for the relevant area or activity (the 'Enforcing Authority').

RIDDOR's reporting requirements do not apply to deaths and injuries resulting from medical and dental treatment or to members of the armed forces on duty, whilst mines and quarries have their own reporting regime. There are also exceptions to the reporting requirements of RIDDOR in relation to road accidents.

Reportable work-related accidents

A work-related accident is reportable under RIDDOR where it results in death, injuries incapacitating a worker for more than seven days, or certain 'specified injuries'.

Specified injuries include injuries resulting in:

- › bone fractures;
- › amputation;
- › blindness or permanent reduction in sight;
- › damage to the brain or internal organs from crushing;
- › burns covering 10% or more of the body's surface or damaging the eyes or vital organs;
- › scalping requiring hospital treatment;
- › loss of consciousness caused by a head injury or asphyxia; or

- › any other injury arising from working in an enclosed space which leads to hypothermia, heat-induced illness or requires resuscitation or admittance to hospital for more than 24 hours.

- › occupational disease: a report should be made as soon as the diagnosis is received.

Reportable Occupational Diseases

Certain occupational diseases must be reported under RIDDOR where these are likely to have been caused or made worse by work. These include tendonitis, dermatitis, asthma, carpal tunnel syndrome, hand-arm vibration syndrome, cramp, occupational cancers or any disease attributed to occupational exposure to a biological agent. These must be formally diagnosed by a registered medical practitioner (in writing) before they become reportable.

Reportable Dangerous Occurrences

There are a large number of specified 'dangerous occurrences' (i.e. incidents with the potential to cause harm) which must be reported under RIDDOR. The most common types of dangerous occurrences include hazardous 'escapes of substances', the collapse of lifting equipment, structural collapses and electrical incidents causing explosions or fires which halt operations for more than 24 hours or cause a significant risk of death.

Fatalities

Where the reportable event under RIDDOR is a fatality (whether of a worker or non-worker), a 'specified injury', or a 'dangerous occurrence', as defined in the legislation, notification must be made without delay by the quickest practical means. A formal report under RIDDOR should then be made within ten days of the accident.

In the case of a fatality or specified injury, a notification can be made to the Health and Safety Executive's Incident Contact Centre by telephone and an emergency out-of-hours telephone line is also available for this purpose. In addition, where an employee dies within one year of being injured as a result of a reportable accident, the employer must inform the body with enforcing responsibilities (the 'Enforcing Authority') as soon as it becomes aware of the death.

Gas-related reporting

Under RIDDOR, employers that regularly transport flammable and liquefied petroleum gas must notify the Health and Safety Executive immediately they become aware that someone has lost consciousness, died or been taken to hospital due to an injury connected with the gas they convey. They must also send a report to the Health and Safety Executive concerning the incident within 14 days, together with any information they are aware of which demonstrates that the design, construction, installation, modification or servicing of a gas fitting was to blame.

Procedure

The procedure for making a report under RIDDOR depends on the type of reportable event in question:

- › death, specified injury or dangerous occurrence: notification must be made immediately, followed up by a written report within ten days of the incident;
- › injury incapacitating a worker for more than seven days: a report should be made within 15 days of the incident; and

A report is made to the body with enforcing responsibilities (the 'Enforcing Authority') online at www.hse.gov.uk/riddor/report.htm.

Penalties for non-compliance

A breach of RIDDOR is a criminal offence punishable by an unlimited fine and/or up to six months' imprisonment in the Magistrates' Court. In the Crown Court, conviction can lead to two years' imprisonment and/or an unlimited fine.

It is a defence if the defendant was unaware of facts triggering a RIDDOR duty and had taken reasonable steps to make sure he or she would be aware in good time if such circumstances did arise.

Record keeping

Social security legislation requires employees to report certain accidents for which state benefits may be available to their employer, and employers with ten or more employees must enable employees to make reports. Through custom and practice, these obligations have been satisfied by employers by keeping an accident book. The details which must be recorded are:

- › full name, address and occupation of injured person;
- › date and time of accident;
- › place where the accident happened;
- › cause and nature of the injury; and
- › name, address and occupation of the person giving the notice, if different from the injured person.

The Health and Safety Executive has produced an approved form of accident book employers (Form BI 510) which may be used by employers for the purposes of complying with their RIDDOR record keeping obligations.

Employers must keep records of all events that are reportable under RIDDOR. In addition, a record must be kept of any other work-related accident which results in a worker being away from work or incapacitated for more than three consecutive days (not counting the day of the accident itself).

Major accident hazards

In addition to the requirements of RIDDOR, the Control of Major Accident Hazards Regulations 2015 impose, amongst other things, special reporting requirements on operations involving dangerous substances in amounts that exceed certain thresholds.

› Must accidents to persons other than workers be reported?

Events to individuals other than workers (i.e. members of the public) which must be reported are those events resulting in death or if the person is injured and is taken from the scene of the accident to hospital for treatment for the injury.

› Is there a legal obligation to conduct internal investigations?

There is no specific legal obligation requiring the investigation of accidents. However, other statutory requirements effectively demand some level of investigation is carried out.

In particular, the Management of Health and Safety at Work Regulations 1999 requires every employer to make a 'suitable and sufficient' assessment of the health and safety risks posed by its operations. Following an accident, it is necessary to review the adequacy of existing risk assessment processes for this purpose. In practice this makes it mandatory to investigate workplace accidents.

► What other parties are involved in the reporting and investigation process?

Union-appointed health and safety representatives are responsible for establishing the causes of accidents at work, investigating health and safety complaints made by employees, and making representations to employers. They have the right to inspect the workplace in which an accident has occurred. The employer must facilitate this inspection if notified of it and grant access to documents required by health and safety representatives to fulfil these functions.

Employers must disclose accident data to health and safety representatives, whether or not the workforce is unionised.

An employer may also need to pass accident data onto legal representatives of claimants for damages for fatalities and/or personal injury for the purposes of disclosure during legal proceedings.

The body with enforcing responsibilities (the 'Enforcing Authority'), through an Inspector, may investigate the circumstances of an accident and has powers to enter and search premises, examine and remove evidence, conduct interviews and see any documentation relevant to the investigation, as long as it is not legally privileged. Failure to co-operate with the Enforcing Authority's exercise of these powers is a criminal offence. Evidence obtained by an inspector can be used for the prosecution of breaches of OHS law.

A number of government agencies may be involved in investigating the circumstances surrounding a work-related death. The Enforcing Authority will investigate potential breaches of OHS law, the police will investigate potential criminal offences of manslaughter and the Crown Prosecution Service ('CPS') may be involved in bringing manslaughter prosecutions.

The Health and Safety Executive has issued a 'Work-related Deaths Protocol' (the 'Protocol') which is designed to co-ordinate action between the Enforcing Authority, the police and the CPS. Whilst not legally binding, each of these organisations has signed the Protocol and compliance is checked through a Work-Related Deaths National Liaison Committee.

Under the Protocol, the police take the lead in investigating workplace accidents involving fatal or potentially fatal injuries. If they suspect that a serious criminal offence, other than an OHS offence, has caused the death, the police will assume responsibility for the investigation. The police can refer cases to the CPS, which will decide whether to prosecute. If there is insufficient evidence to bring such charges, the investigation should be handed over to the Enforcing Authority.

Both the police and the Enforcing Authority should report the death to a coroner, who will conduct an inquest into the cause of death. An inquest does not attribute criminal liability for a workplace death but its evidential findings will be passed on to the Enforcing Authority and will be of interest to potential litigants. If a defendant has been charged with a serious criminal offence relating to the death, the police and CPS will notify the coroner, who may then adjourn the inquest until the end of the criminal investigation.

► When must accident scenes be preserved and for how long?

Inspectors have the power to direct that premises or any part of them be left undisturbed (generally or in particular respects) for so long as is reasonably necessary for the purposes of an investigation.

Under the 'Work-related Deaths Protocol' issued by the Health and Safety Executive (in cases involving work-related deaths) police officers attending the scene should identify, secure, preserve and take control of the scene. Subsequently they should agree arrangements for controlling the scene with the body with enforcing responsibilities (the 'Enforcing Authority'). If Enforcing Authority staff arrive on the scene first, they should inform the police and preserve the scene until the police arrive.

Mines, quarries and offshore workplaces are subject to tighter restrictions. After a reportable incident under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 ('RIDDOR') at such workplaces, the accident scene must not be disturbed within three days of the incident itself unless an inspector has visited or has given their consent.

► When is there an obligation to retain experts?

There is generally no legal obligation to consult experts following an accident. However, the use of experts by employers, other duty-holders under OHS law and enforcing authorities is widespread. It is often essential for an employer to obtain expert evidence to defend a criminal or civil claim stemming from a workplace accident or to challenge enforcement action taken by an inspector. The evidence is typically medical, technical or scientific. As well as producing written reports, experts may be called upon to give oral evidence during a trial.



Chapter 1

Risk to employer and others arising from a serious workplace accident

▶ The occupational health and safety (OHS) regulatory framework

The general rules of occupational health and safety (OHS) in Ukraine are provided by two laws, the Labour Code and the Law of Ukraine on Labour Protection. These apply to both public and private employers carrying out any type of activity.

Industry-specific OHS and technical rules are set out in regulations, standards and instructions. Some were brought in by the Soviet Union and are now obsolete but others are up-to-date and in line with European standards of labour protection.

▶ Who enforces OHS law?

Health and safety compliance is subject to inspection by the State Labour Service of Ukraine, the fire service, health and other supervisory authorities. These authorities may conduct routine and unscheduled inspections and impose administrative sanctions for breaches.

The rules are enforced by the State Labour Service of Ukraine, which is a newly-established central executive agency directed by Ukraine Cabinet Ministers through the Ministry of Social Policy. The Labour Service was set up in late 2014 to concentrate all OHS supervision functions in a single body, thereby amalgamating the functions of the Labour Inspection and the State

Service of Mining Supervision and Industrial Safety.

The Labour Service carries out state supervision of compliance with OHS law, including both standard investigations of accidents and special investigations. The latter covers so-called group accidents, where there is more than one victim, fatal accidents, accidents causing serious consequences (i.e. disability) or the disappearance of an employee whilst performing work.

The investigation of minor accidents (e.g. resulting in temporary disability) is performed by a committee headed by the employer. The committee must include the head of occupational health services in the organisation, a representative of the local social Insurance fund, a representative of the trade union or employee representatives, as well as a representative of the employer.

All investigations are conducted at the scene of the accident.

▶ What powers do the inspectors have?

Officers of the Labour Service have extensive powers, including the power to:

- ▶ enter a workplace at any time (day or night), without prior notice or a search warrant or court authority;
- ▶ request any documents and records that can be connected with OHS;
- ▶ request explanations;
- ▶ issue binding orders to eliminate breaches of OHS law;
- ▶ draft protocols about administrative offences, consider these offences

- and impose administrative penalties;
- › order employers to stop or limit business operations in cases of breaches of OHS law;
- › cancel permits and licences.

› Which parties have duties to protect workers and establish safe workplace conditions?

Every workplace party (including employers, directors, officers, supervisors and the workers themselves), plays a role in ensuring health and safety at the workplace. Despite this, employers always bear the primary responsibility for ensuring health and safety at the workplace. Note that individuals can be held personally responsible for breaches of health and safety law.

Employees

All employees have a legal duty to protect themselves and others in the workplace and play a role in ensuring workplace safety. In particular, they have a duty to:

- › ensure their personal health and safety, as well as the health and safety of others during the performance of work or whilst at the workplace;
- › know and comply with all OHS rules, including rules for handling machinery, equipment and other means of production, and rules about collective and individual protection;
- › cooperate with the employer in ensuring safe working conditions;
- › take any measures that they can take personally to eliminate risks to their life or health, or those of the people around them;
- › report dangers to their line manager;
- › take periodic medical examinations;
- › take part in training on safety, first aid and the rules of conduct in the case of an accident.

Employees also have the following rights and guarantees:

- › they may terminate the employment agreement if the employer does not comply with OHS legislation, or fails to comply with the terms of a collective agreement on these issues;
- › they may be reassigned to a more suitable position if this is suggested by a medical report;
- › in organisations with harmful or dangerous working conditions, pollution or adverse weather conditions, they should be provided with special clothing, footwear and other personal protection equipment at no cost to themselves.

The employer

The employer always has the primary responsibility to protect the health and safety of those in the workplace. An employer must:

- › finance OHS measures;
- › implement modern safety methods;
- › inform the Labour service if it is unable to eliminate risks as well as ask for additional time (free from sanctions) to do so;
- › train employees about OHS rules and fire protection;
- › develop policies about health and safety and establish work rules;
- › set up health and safety services within the organisation and appoint individuals responsible for them;
- › ensure compliance with all statutory requirements;

- › implement preventative health and safety arrangements;
- › ensure the maintenance and monitoring of work equipment, buildings and machinery;
- › eliminate causes of accidents, where possible;
- › arrange for workplaces to be certified as meeting statutory requirements;
- › inform employees about safety and the working conditions at the start of employment;
- › provide employees with access to information and documents about working conditions and safety;
- › take urgent measures to help victims and call the rescue services in the event of accidents.

A series of statutory health and safety requirements cover the following areas:

- › the safety of technological processes, machinery, devices and other means of production;
- › collective and individual protection equipment;
- › health and hygiene at work.

Employers have the power to monitor safety policy and prevent health and safety breaches, suspend employees and apply disciplinary sanctions. The health and safety executive appointed by the employer supervises compliance with internal policies and statutory requirements. It is directly subordinate to the employer. It may consist of a contractor (i.e. for organisations with fewer than 20 employees) or trained staff member on a part-time basis (i.e. for organisations with fewer than 50 employees) or on a full-time basis (i.e. for organisations with over 50 employees).

The executive has the right, in the case of breaches of OHS law, to:

- › order the heads of divisions of the organisation to resolve defects and provide them with information;
- › order the suspension from work of any workers who fail a medical examination or training, or otherwise do not fulfil the requirements of OHS law;
- › stop production, including the use of vehicles, machinery, equipment and other means of production if a breach endangers the life or health of employees;
- › recommend the employer discipline employees who breach safety regulations.

Only the employer can cancel orders made by the executive and it can only be dissolved if the organisation as a whole is closing down.

Health and safety committee

A health and safety committee can be created by a decision of the labour collective to resolve health and safety or environmental issues. The committee consists of representatives of the employer and trade unions, as well as representatives from the employees, specialists in health and safety. The committee is able to make recommendations only.

› What penalties exist for violations of OHS and criminal law?

The supervising authorities may impose sanctions on employers as well as on individuals responsible for health and safety compliance (i.e. the CEO or health and safety executive appointed by the employer).

The State Labour Service of Ukraine is the main authority for the performance of health and safety inspections. It may impose financial sanctions of up to 5% of the employer's salary fund on organisations that fail to comply with statutory requirements.

Individuals responsible for health and safety compliance may be liable not only for administrative or disciplinary sanctions, but may also bear criminal liability.

State Labour Service officers may impose administrative fines on violators of OHS rules or apply to court for them to be sanctioned. Administrative penalties may be imposed on those responsible for setting the OHS rules in the organisation. The fines are up to EUR 80. An employer can appeal a decision to impose an administrative fine to a higher instance court or the general court.

Article 271 of the Criminal Code provides criminal liability for breaches of OHS rules. This may result in a fine of up to EUR 150 or imprisonment for up to two years if the violation caused harm to an individual's health. If the violation has caused death, the offender may face imprisonment for up to seven years.

► What are the risks of civil claims against the employer?

According to Ukrainian law, individuals responsible for health and safety compliance may be liable for an administrative, disciplinary or criminal offence. Generally, employers are not sued in the civil courts, even if the accident was their fault. This is because employees who suffer harm as a result of a workplace accident are entitled to compensation from the social insurance fund, regardless of who was responsible for the accident. If the accident was caused not only by the employer, but also as a result of breaches of the OHS rules by the employee, the amount of compensation may be reduced, but not by more than 50%.

There are some exceptions to this. First, compensation for moral harm to victims of workplace accidents or occupational illnesses and to their families does not form part of the insurance payment and applies irrespective of when the incident occurred. This means that victims can claim in the civil courts for moral harm.

Second, the employer must compensate for any damage caused under the general rules of the Civil Code to other legal entities, individuals and the state (as opposed to under OHS law).

Third, as a matter of civil law, an employer is liable for any harm caused by the activities of a third party contractor to any individual, if the contractor performs work for the employer and therefore a claim could be made against the employer in the civil courts for compensation.

Chapter 2

Immediate mandatory post-accident steps

► What is a 'work accident'?

A work accident is a time-limited event or a sudden impact on an employee by hazardous, industrial or environmental factors that occurred during work and which caused injury or death. There is an official list of events (i.e. traffic accidents, the effect of moving machinery and electric shocks), reasons (e.g. technical or organisational) and machinery, equipment and vehicles which can cause a workplace accident. Workplace accidents are subject to investigation if they have led to the incapacity for work of an employee for at least one

working day or to his reassignment to another more suitable position for at least one working day, disappearance and death.

Occupational illnesses are illnesses caused by professional activities, either wholly or mainly as a result of harmful substances, the type of work or other factors related to work. There is a list of occupational illnesses, adopted by the Ukraine Cabinet of Ministers. All cases of occupational illness, regardless of seriousness, must be investigated.

If an accident is considered a work accident or occupational illness, as defined above, the victim or his or her relatives (if fatal), will receive workers' compensation from the social insurance fund.

► What are the legal requirements on the employer following a workplace accident?

According to a Resolution of the Ukraine Cabinet Ministers on 30 November 2011 (No 1232) on 'certain issues of investigation and registration of workplace accidents, occupational illnesses and breakdowns in production' employers must report accidents involving 'temporary disability' to the local social insurance fund within one hour by any means of communication and within one day formally in writing. Employers must also form a committee of at least three people and plan the investigation of the accident within one day.

In the case of a serious workplace accident - which is subject to special investigation (i.e. accidents involving more than one victim; fatal accidents; accidents causing serious consequences (i.e. disability) or the disappearance of an employee during work) - the employer must report the accident within one hour using any means of communication and must file a formal paper notification within three hours. It must report the accident to the following bodies:

- the local State Labour Service (i.e. the Ukrainian labour inspectorate);
- the local social insurance fund;
- the prosecutor's office in the location of the accident;
- sectoral trade union, or if none, the local professional association;
- if necessary, the State authority for the protection of the population and territories from emergencies.

The Local social insurance fund must also immediately file a formal written notification of the serious workplace accident to:

- the local State Labour Service;
- the local prosecutor's office;
- the local state administration;
- the local professional association;
- if necessary, the State authority for the protection of the population and territories from emergencies.

Workplace accidents resulting in temporary disability

The employer must set up a committee to investigate minor workplace accidents (e.g. resulting in temporary disability). The committee must, within three working days of its formation:

- examine the place of the accident;
- obtain written testimony from the victim and witnesses;
- determine whether working conditions and safety requirements at the workplace comply with OHS law;
- clarify the circumstances and causes of the accident;

- › determine whether the workplace accident was connected with work production;
- › identify those who have breached OHS legislation;
- › fill in a report on the investigation (special Form N-5 approved by the Ukraine Cabinet Ministers) and produce five copies, along with a report of the accident (special Form N-1 approved by the Ukraine Cabinet Ministers) and submit them to the employer for its approval.

The employer must ensure the committee is able to do its work in a timely way. For example, it may provide accommodation, communication facilities, office equipment and vehicles). It must pay all expenses related to activities, including paying the cost of any experts and other professionals. If laboratory research or other tests are needed, the time taken for the investigation may be extended with the written agreement of the local State Labour Service.

Within one day of completion of the investigation, the employer must send Form N-5 and Form N-1 to:

- › the (internal) health and safety executive;
- › the victim or his or her representative;
- › the local social insurance fund;
- › the local State Labour Service;
- › the primary trade union or employee representatives.

If the employer was not immediately aware an accident had taken place, the investigation must begin within one month of filing a statement from the employee. If the organisation has since closed down, the court will make a finding of fact about whether a workplace accident has taken place.

The State Labour Service and the social insurance fund are responsible for monitoring the timeliness and objectivity of accident investigations.

‘Serious workplace accidents’

Investigations into serious workplace accidents are performed by the Special Investigation Commission of the local State Labour Service. The Commission consists of:

- › a State Labour Service officer (who will head the Commission);
- › a social insurance fund representative;
- › a local state administration representative or an representative of the employer;
- › a representative of the main trade union (or if none, an employee representative);
- › a representative of the sectoral trade union, or if none the local professional association.

A special investigation must be completed within ten working days. If necessary, this can be extended by the State Labour Service.

If laboratory research, medical legal expertise or other testing is needed, an expert committee must be formed. The employer must reimburse the costs of the research and all expenses related to the investigation of the Special Investigation Commission. Form N-5 and Form N-1 must be completed at the end of the special investigation and these will be relied on in terms of insurance payments from the social insurance fund. These documents must be retained on record by the employer for 45 years.

Occupational illness

If a doctor suspects that an employee is suffering from an occupational illness, the doctor must direct the employee to a professional injury doctor. If necessary, once the professional injury doctor has examined the employee, the employee must be directed to a specialised hospital for final diagnosis.

The hospital will issue a formal report about occupational illness (Form P-3) and sent it to the employer, the state health body and the social insurance fund. Cases of occupational illness must be investigated by the Special Investigation Commission within ten working days of its formation.

The Special Investigation Commission consists of representatives from the state health body, the hospital, the employer, the main trade union (or if none, an employee representative), the social insurance fund and the sectoral trade union. Within three days of the end of the investigation, a report on the reasons for occurrence of professional illness (Form P-4) must be completed. It must be sent to the affected employee, the employer, the social insurance fund, the main trade union or employee representative, the sectoral trade union and the professional injury doctor. The social insurance fund must pay out insurance accordingly and must retain form P-4 for 45 years.

Anyone who becomes aware of a workplace accident must immediately notify his or her direct supervisor, provide victims with emergency assistance and do what is necessary to preserve the accident scene until the arrival of commission inspectors.

There is no general obligation to inform the police about a workplace accident. However, this is required in specific situations, for example, if the accident has occurred in an educational establishment as a result of the misbehaviour of students.

Finally, employers must take out insurance to cover the risk of workplace accidents.

› Must accidents to persons other than workers be reported?

Employers must also report accidents to:

- › the head of the main trade union, whether or not the victim is a member, or if none, the employee representatives;
- › the head of the company, if the victim is an employee of another company;
- › fire safety in the employer's location if the cause of the accident was fire;
- › the state health authority if the accident was a case of acute occupational illness (e.g. toxicity).

› Is there a legal obligation to conduct internal investigations?

Based on the findings in the Commission's investigation report, the employer must analyse the reasons for the accident periodically after three months, six months and one year. It must also introduce a plan of action for preventing similar accidents happening in future.

› What other parties are involved in the reporting and investigation process?

The investigation Commission comprises representatives of occupational health services in the organisation, a representative of the local social Insurance

fund, a trade union representation or employee representative, along with a representative of the employer. Each member of the Commission inputs into the investigation and signs off on the report.

› **When must accident scenes be preserved and for how long?**

In the case of a workplace accident, the direct supervisor must preserve the accident scene, workplace environment, machinery, equipment in the same condition as it was at the moment of the accident, provided this does not endanger the life and health of present employees, until the Commission arrives (within 24 hours).

› **When is there an obligation to retain experts?**

During an investigation, the commission will decide whether additional experts are needed, depending on the complexity and special features of the accident. If so, a special expert commission will be convened. It may perform technical calculations, do laboratory research and use medical expertise, for example. Usually, if an expert commission is involved, the timeframe for the investigation will be extended.



Chapter 1

Risk to employer and others arising from a serious workplace accident

► The occupational health and safety (OHS) regulatory framework

The Occupational Safety and Health Act of 1970 is the main federal law governing health and safety in the United States. The Occupational Safety and Health Act covers most private sector employers and their workers, in addition to some public sector employers and workers. It applies to employment performed in a workplace within the United States, as long as the employer has one or more employees.

There also are a number of state plans approved by the Occupational Safety and Health Administration ('OSHA'). These state plans are operated by individual states instead of the federal OSHA. State-run plans must set workplace safety and health standards that are at least as effective as OSHA standards. OSHA approves and monitors all state plans and provides as much as fifty percent of the funding for each programme.

There also is a workers' compensation system in the United States. Each state has its own law and procedures. Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees who are injured or become ill in the course of employment. Workers' compensation laws are designed to provide employees who are injured or disabled on the job with fixed monetary awards. These laws also provide benefits for dependents of those workers who are killed as a result of work-related accidents or illnesses. In return, employers are immune from any liability (such as for negligence) above the

amount provided by the workers' compensation statutory framework. In some states, there are exceptions if the employee proves the employer intentionally or recklessly caused the harm. Workers' compensation benefits vary widely from state to state.

Because of this complex regulatory framework, only the Occupational Safety and Health Act will be addressed in subsequent parts of this Guide.

► Who enforces OHS law?

The Occupational Safety and Health Administration ('OSHA') was created to ensure safe and healthy working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA is part of the US Department of Labor. The administrator of OSHA is the Assistant Secretary of Labor for Occupational Safety and Health. OSHA's administrator answers to the Secretary of Labor, who is a member of the cabinet of the President of the United States. In addition to its national office in Washington, DC, OSHA has ten regional offices and multiple area offices to enforce the Occupational Safety and Health Act.

► What powers do the inspectors have?

The Occupational Safety and Health Administration ('OSHA') conducts two types of investigations: programmed and unprogrammed. Unprogrammed inspections include those triggered by: (1) a complaint made by an employee or civilian about health and safety concerns at the employer's job site; (2) notification of an accident at the employer's job site; (3) random selection of an employer's

job site by OSHA; or (4) as follow up to confirm compliance by an employer cited for a breach of the Occupational Safety and Health Act.

Employers subject to programmed inspections are selected pursuant to one of the several programmes designed to identify employers with high injury rates, histories of prior serious citations or employees exposed to conditions deemed particularly hazardous.

During an inspection an OSHA investigator generally has the right to review all records that the employer is required to maintain under the Occupational Safety and Health Act. OSHA investigators have the right to speak with individual employees. If an employer refuses entry to an OSHA investigator, OSHA may seek a warrant from a federal district court.

If a determination is made that the employer has violated the Occupational Safety and Health Act, OSHA will issue a citation listing the specific violations, proposed penalties and the date by which the alleged violations must be remedied. If the matter is not settled, employers can contest the citations or penalties or both in the administrative process and eventually seek a review by a federal court of appeal.

► Which parties have duties to protect workers and establish safe workplace conditions?

Under the Occupational Safety and Health Act, employers have responsibility to provide a safe workplace. The following is a short summary of key employer responsibilities:

- To provide a workplace free from serious recognized hazards and comply with standards, rules and regulations issued under the Occupational Safety and Health Act.
- To examine workplace conditions to make sure they conform to applicable OSHA standards.
- To make sure employees have and use safe tools and equipment and properly maintain them.
- To use colour codes, posters, labels or signs to warn employees of potential hazards.
- To establish or update operating procedures and communicate them so that employees follow safety and health requirements.
- To provide safety training in a language and vocabulary workers can understand.
- For employers with hazardous chemicals in the workplace, to develop and implement a written hazard communication programme and train employees on the hazards they are exposed to and proper precautions (and a copy of safety data sheets must be readily available).
- To provide medical examinations and training when required by OSHA standards.
- To post, at a prominent location within the workplace, the OSHA poster (or the state-plan equivalent) informing employees of their rights and responsibilities.
- To report to the nearest OSHA office all work-related fatalities within eight hours, and all work-related inpatient hospitalizations, all amputations and all losses of an eye within 24 hours.
- To keep records of work-related injuries and illnesses. (Note that employers with 10 or fewer employees and employers in certain low-hazard industries are exempt from this requirement.
- To provide employees, former employees and their representatives with access to the Log of Work-Related Injuries and Illnesses (OSHA Form 300). On 1 February each year, and for three months thereafter, covered employers must post a summary of the OSHA log of injuries and illnesses at the workplace (OSHA Form 300A).

- To provide access to employees' medical records and exposure records to employees or their authorised representatives.
- To provide to the OSHA compliance officer the names of authorised employee representatives who may be asked to accompany the compliance officer during an inspection.
- Not to discriminate against employees who exercise their rights under the Occupational Safety and Health Act.
- To post OSHA citations at or near the work area involved along with abatement verification documents or tags. Each citation must remain posted until the violation has been corrected, or for three working days, whichever is longer.
- To correct cited violations by the deadline set in the OSHA citation and submit required abatement verification documentation.

► What penalties exist for violations of OHS and criminal law?

Citations and penalties by the Occupational Safety and Health Administration ('OSHA') are determined based on the seriousness of the violation. A 'de minimis' violation means one that has no direct or immediate relationship to safety or health but nonetheless is a violation of an OSHA standard. A de minimis citation relieves the employer of the need to abate the cited hazard and the need to pay any penalty.

An 'other-than-serious' violation has a direct relationship to job safety and health, but probably would not cause death or serious harm. A penalty of up to USD 7,000 may be assessed for other-than-serious violations.

A 'serious' violation exists if there is a substantial probability that death or serious physical harm could result from it unless the employer did not and could not reasonably know of the existence of the violation. A penalty of up to USD 7,000 may be assessed for a serious violation.

For a repeat violation, OSHA must show that the employer has previously been cited for a violation of the same or similar regulation and that the prior citation had become final before the occurrence of the repeated violation. Repeated violations have a minimum penalty of USD 5,000 and range of up to USD 70,000.

A willful violation occurs when an employer knew of the violation and either knew the conditions violated the law or exhibited a general indifference to a known or obvious hazard. Willful violations have a minimum penalty of USD 5,000 and a range of up to USD 70,000.

The Occupational Safety and Health Act also contains a non-discrimination provision. Employees may not be dismissed or otherwise discriminated against for filing a complaint, participating in an investigation, or exercising any right afforded by the Occupational Safety and Health Act. Available remedies include reinstatement, back pay and lost benefits.

The Occupational Safety and Health Act authorises criminal penalties for certain violations. An employer may be subject to a fine of not more than USD 10,000 or imprisonment for not more than six months, or both, where it willfully violates any OSHA standard and that violation causes the death of an employee. Any person who gives advance notice of any OSHA inspection without authority from the Secretary of Labor is subject to a fine of not more than USD 1,000 or imprisonment for up to six months, or both. Any person who knowingly makes any false statement or representation filed or maintained under the Occupational Safety and Health Act is subject to a fine of up to USD 10,000 or by imprisonment for up to six months, or both. These penalties may be imposed only by the federal courts following a criminal conviction obtained by the US Department of Justice or local US Attorney's Office.

›What are the risks of civil claims against the employer?`

The Occupational Safety and Health Act does not create a private right of action that would allow employees to sue for injuries caused by violation of the Occupational Safety and Health Act or Occupational Safety and Health Administration standards. The Occupational Safety and Health Act does not affect state workers' compensation laws. Remedies under those laws are established by each state's law. There are limited exceptions that could allow an employee to sue his or her employer. The Occupational Safety and Health Act does not preclude a lawsuit by an employee based on rights created by state statutes or common law. For example, an employee or his or her family may sue an employer other than the employee's own employer for negligence or wrongful death. If an employee is able to sue outside the workers' compensation system, potential awards by a jury can range from thousands to millions of dollars, depending on state law.

Chapter 2

Immediate mandatory post-accident steps

›What is a 'work accident'?

An 'accident' is not defined by the Occupational Safety and Health Act. The Occupational Safety and Health Act defines an injury or illness as an abnormal condition or disorder. Injuries include cuts, fractures, sprains or amputations. Illness includes both acute and chronic illnesses, such as a skin disease, respiratory disorder or poisoning. Certain injuries must be reported to the Occupational Safety and Health Administration ('OSHA') within a specific timeframe. Others must be recorded on forms specified by OSHA.

›What are the legal requirements on the employer following a workplace accident?

An employer is required to report to Occupational Safety and Health Administration ('OSHA') within eight hours of the time the employer learns of the death of any employee. Employers also must report to OSHA any hospitalisation, amputation, or loss of an employee's eye resulting from a work-related incident within twenty-four hours.

Generally, under state workers' compensation laws notice of an accident or illness is required to be given by or on behalf of an employee to the employer. The time limits for this vary from state to state.

Most employers have their own policies requiring their employees to report a workplace accident or illness within a specified time.

The recordkeeping regulations of OSHA require employees to record injuries or illnesses that meet certain criteria. An employee's injury or illness falls within general recording criteria if it results in: death; days away from work; restricted work or transfer to another job; medical treatment beyond first aid; or loss of consciousness. An employee also is required to record as work-related any injury or illness that is 'significant', as diagnosed by a physician or other licensed health care professional, even if it does not trigger one of the other recording criteria.

OSHA recordkeeping forms are maintained on a calendar year basis. They are not sent to OSHA or any other agency. They must be maintained for five years at the establishment and must be available for inspection by representatives of OSHA or other specified government agencies. Employees and their representatives are also entitled to have access to information maintained in these forms.

- › The OSHA 300 Log of Work-Related Injury and Illnesses: Each recordable occupational injury and illness must be logged on this form within seven

calendar days from the time the employer learns of it. The employer should provide a case number and information about the incident. This is an ongoing cumulative chart.

- › The OSHA 301 Injury and Illness Incident Report: This form contains much more detail about each injury or illness. One form for each OSHA 300 Log case number must be maintained. It also must be completed within seven calendar days from the time the employer learns of the work-related injury or illness. Copies of OSHA 301 Reports must be made available to a requesting employee or employee representative by the next business day following the request.
- › The OSHA 300A Summary of Work-Related Injuries and Illnesses: Information on this form comes from the OSHA 300 Log. The OSHA 300A Summary must be posted at the workplace from February 1 to April 30. It contains information from the prior year. Information contained on this form includes the total number of cases, total number of days away from work, transfers and restrictions, along with injury and illness types.

If an employer has a collective bargaining agreement with a union representing its employees, there may be language in the agreement requiring notification to the union of a workplace accident. There could also be a requirement under state or local law to report certain accidents to governmental agencies within specified periods of time.

› Must accidents to persons other than workers be reported?

Generally, under state workers' compensation laws, employers must report injuries to their employees to their workers' compensation insurance carrier.

› Is there a legal obligation to conduct internal investigations?

Generally, there are no legal obligations to conduct internal investigations.

›What other parties are involved in the reporting and investigation process?

If an employer has a collective bargaining agreement with a union representing its employees, there may be language in the agreement providing a role to the union in the reporting and investigation process.

In a non-union setting, an employer may choose to set up health and safety committees that might have a role in the reporting and investigation process.

› When must accident scenes be preserved and for how long?

When there is a requirement for the Occupational Safety and Health Administration ('OSHA') to be notified of a fatality or other injury, employers should preserve the scene for OSHA inspectors to arrive and inspect. There are no specific requirements about the length of time the scene of the accident needs to be preserved. However, there could be state or local laws regarding accident scene preservation.

›When is there an obligation to retain experts?

There is no requirement for employers to obtain experts because of a workplace accident. However, because of potential OSHA investigations, workers' compensation claims, and the possibility of private lawsuits, a prudent employer will consult with its safety personnel and legal counsel about obtaining an expert.

ARGENTINA

Funes de Rioja & Asociados

Av. Eduardo Madero 942
C1106ACW Buenos Aires
Argentina
T +54 11 4348 4100
F +54 11 4348 4115
www.funes.com.ar

BELGIUM

Claeys & Engels

280 Boulevard du Souverain
1160 Brussels
Belgium
T +32 2 761 46 00
F +32 2 761 47 00
www.claeysengels.be

DENMARK

Norrbom Vinding

Amerikakaj Dampfaergevej 26
2100 Copenhagen
Denmark
T +45 35 25 39 40
F +45 35 25 39 50
www.norrbomvinding.com

FINLAND

Dittmar & Indrenius

Pohjoisesplanadi 25 A
00100 Helsinki
Finland
T +358 9 681 700
F +358 9 652 406
www.dittmar.fi

FRANCE

Capstan

83 rue La Boétie
75008 Paris
France
T +33 1 44 95 48 00
F +33 1 45 63 99 62
www.capstan.fr

GERMANY

Kliemt & Vollstädt

Speditionstrasse 21
40221 Düsseldorf
Germany
T +49 211 88288 0
F +49 211 88288 200
www.kliemt.de

GREECE

Kremalis Law Firm

35 Kyrillou Loukareos street
114 75 Athens
Greece
T +30 210 64 31 387
F +30 210 64 60 313
www.kremalis.gr

ITALY

Toffoletto De Luca Tamajo e Soci

Via Rovello, 12
20121 Milan
Italy
T +39 02 721 44 1
F +39 02 721 44 500
www.toffolettodeluca.it

LUXEMBOURG

CASTEGNARO

67 rue Ermesinde
1469 Luxembourg
T +352 26 86 82 1
F +352 26 86 82 82
www.castegnaro.lu

NETHERLANDS

Bronseest Deur Advocaten

De Lairessestraat 137-143
1075 HJ Amsterdam
The Netherlands
T +31 20 305 33 33
F +31 20 305 33 30
www.bd-advocaten.nl

PERU

Estudio Olaechea

Bernardo Monteagudo 201
San Isidro, Lima 27
Peru
T +51 1 219 0400
F +51 1 219 0422
www.esola.com.pe

SPAIN

Sagardoy Abogados

C/Tutor 27
28008 Madrid
Spain
T +34 91 542 90 40
F +34 91 542 26 57
www.sagardoy.com

SWEDEN

Elmzell Advokatbyrå AB

Gamla Brogatan 32
111 20 Stockholm
Sweden
T +46 8 21 16 04
F +46 8 21 00 03
www.elmzell.se

TURKEY

Bener Law Office

Itiri Street, Number:32,
Balmumcu 34349, Istanbul,
Turkey
T +90 212 270 70 50
F +90 212 270 68 65
www.bener.com

UAE

Al Tamimi & Co

6th floor, Building 4 East
Dubai International Financial Centre
Sheikh Zayed Road
PO Box 9275
Dubai, UAE
T +971 04 364 1641
F +971 04 364 1777
www.tamimi.com/en

UKRAINE

Vasil Kisil & Partnersv

17/52A Bogdana Khmelnytskogo Street
Kiev 01030 Ukraine
T +38 044 581 7777
F +38 044 581 7770
www.vkp.ua

UNITED KINGDOM

Lewis Silkin LLP

5 Chancery Lane, Clifford's Inn
London EC4A 1BL
United Kingdom
T +44 20 7074 8000
F +44 20 7864 1200
www.lewissilkin.com

UNITED STATES

FordHarrison

271 17th Street NW, Suite 1900
Atlanta, Georgia 30363
USA
T +1 404 888 3800
F +1 404 888 3863
www.fordharrison.com

