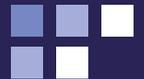




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FOR ALL



► **Support Kit for Developing  
Occupational Safety  
and Health Legislation**

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- ▶ **Support Kit for Developing Occupational Safety and Health Legislation**
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## Foreword

The Support Kit for Developing Occupational Safety and Health Legislation has been developed under the ILO Flagship Programme [Safety + Health for All](#) that aims at improving the safety and health of workers worldwide by building a culture of prevention. To this end, this global Programme seeks, among other key components, to create conducive national legislative and policy OSH frameworks as these are the bedrock of safe and healthy working environments.

A sound, comprehensive and prevention centred OSH legislation that is aligned with international labour standards and that has been developed in consideration of contemporary legislative models and cutting edge comparative country practice is a foundational pillar of strong national OSH systems. It is also a *sine qua non* condition to build and sustain a culture of prevention at both national and workplace levels.

This tool responds to the call of the [Global Strategy on OSH](#) adopted at the 91<sup>st</sup> session of the International Labour Conference in 2003 to that asked the ILO to assist to strengthen capacities of constituents to develop, process and disseminate knowledge on the application of international labour standards and national legislation on OSH as a prerequisite for building a preventative culture.

The Support Kit aims to meet the needs of governments, employers and workers by informing the legislative process that pursues the development of an OSH normative framework, which specific and responsive to the particular and evolving challenges related to the prevention of occupational accidents and diseases. It does so by identifying and illustrating the key principles and components of a sound, comprehensive and prevention-based, overarching OSH law that follows an up-to-date regulatory approach. It discusses various design options of certain components and provides examples from countries with different legal traditions to enrich and broaden the users' viewpoint.

This tool has a two-fold objective: support law makers in identifying gaps in legal frameworks relative to international labour standards and assist them to explore various policy and legal design options that may serve to address the specific needs and circumstances of the country.

It is our hope that the technical materials composing this pack will equip our constituents with the necessary knowledge and insights to fruitfully and productively engage in enhancing and reinforcing legislative OSH frameworks capable of responding to the many changes in the world of work.

*Joaquim Pintado Nunes*

Chief

Labour Administration, Labour Inspection  
and Occupational Safety and Health Branch (LABADMIN/OSH)

## Acronyms

<b>BOHS</b>	basic occupational health services
<b>CEACR</b>	Committee of Experts on the Application of Conventions and Recommendations
<b>EII</b>	employment injury insurance
<b>EU</b>	European Union
<b>EU-OSHA</b>	European Agency for Safety and Health at Work
<b>GDP</b>	gross domestic product
<b>ICOH</b>	
<b>ILO</b>	International Labour Organization
<b>ILO-OSH 2001 Guidelines</b>	<i>Guidelines on Occupational Safety and Health Management Systems: ILO-OSH 2001</i>
<b>ILS</b>	international labour standards
<b>ISSA</b>	International Social Security Association
<b>LEGOSH</b>	ILO Global Database on Occupational Safety and Health Legislation
<b>MSMEs</b>	micro, small and medium-sized enterprises
<b>OSHA</b>	Occupational Safety and Health Administration
<b>OSH</b>	occupational safety and health
<b>PPE</b>	personal protective equipment
<b>SDGs</b>	Sustainable Development Goals
<b>WHO</b>	World Health Organization

## Acknowledgements

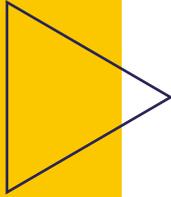
The Support Kit for Developing Occupational Safety and Health Legislation was conceptualised by Tzvetomira Radoslavova, who lead its development under the technical guidance and supervision of Joaquim Pintado Nunes and Nancy Leppink. Jessica Stirling provided research and drafting support.

The Support Kit benefitted from the technical expertise of numerous ILO officials from various departments and field offices. We would like to convey our sincere appreciation to Marialaura Fino and Erica Martin (NORMES) and Julia Lear (LABOUR LAW) who reviewed the drafts and provided numerous and detailed inputs. We would like to extend our heartfelt thanks to colleagues in the LABADMIN/OSH Branch and field occupational safety and health and labour administration and labour inspection specialists who contributed with invaluable advice throughout the various stages of development of the tool: Amin Al-Wreidat, Ana Catalina Ramirez, Andrew Christian, Ariel Pino, Arsenio Fernández, Carmen Bueno, Felix Martin Daza, Fernando García, Franklin Muchiri, Frédéric Laisné-Auer, Halim Hamzaoui, Italo Cardona, Mahandra Naidoo, Rainer Pritzer, Schneider Guataqui Cervera, Tsuyoshi Kawakami, Valentin Mocanu, and Yuka Ujita. Many thanks as well to Anne Marie La Rosa and Cristina Lloret for their advice on content related to employment injury insurance schemes and to Ana Torriente, Claire Hobden, Esteban Tromel, Jurgen Menze, Katerine Landuyt and Natalia Popova for their advice on Section VI on provisions protecting workers in specific conditions of vulnerability.

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The brief was edited by Michael Rose. The graphical design and layout of the publication was prepared by Maurizio Costanza.





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# Evolution of OSH legislation: From early OSH laws to modern legislative OSH frameworks

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# Introduction

Support Kit for Developing Occupational Safety and Health Legislation

## Introduction

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# Introduction

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## Disclaimer

The purpose of the Support Kit for Developing Occupational Safety and Health (OSH) Legislation is to assist ILO Member States who are seeking to develop or improve their framework OSH law based on ILO international labour standards, codes of practice and guidelines, and comparative country practice.

Examples of provisions in national legislation presented in this Support Kit constitute neither an endorsement by the ILO nor a suggestion that these legal provisions should be followed as a “model law” or “best practice”. Rather, their inclusion in this Support Kit is intended to illustrate how a given legislative element *could* be drafted once a policy decision has been made to include the element.

Significant efforts have been made to provide relevant examples of legal provisions that are illustrative. Given that laws evolve, the up-to-date status of these provisions cannot be guaranteed, especially over time.

## 1. The need for comprehensive, prevention-based OSH management and legislation: The business case

The negative human and economic consequences that poor occupational safety and health (OSH) performance has on workers, employers and communities are well documented and are a clarion call for action. The most recent global estimates from 2017 reveal that 2.78 million workers die every year as the result of occupational accidents and diseases, while hundreds of millions of workers suffer from non-fatal work-related injuries and diseases, both temporary and permanent.<sup>1</sup> These global estimates are regularly underlined by catastrophic events, from which no country is immune, that result in large numbers of worker deaths, injuries and ill health.

---

<sup>1</sup> See ILO, “[Global Action Needed to Tackle Rising Work-Related Injuries and Diseases, ILO Says](#)”, ILO News, September 2017.

The overall economic burden of poor OSH performance is estimated to be close to 4 per cent of the global gross domestic product (GDP), with an annual cost of almost US\$2.99 trillion. In addition to estimating the cost in GDP of poor OSH performance, several Member States have undertaken studies to evaluate how this economic burden is distributed across workers, employers and communities. In 2012, [Safe Work Australia](#) estimated that the vast majority of the economic costs of OSH-related accidents and diseases are borne by workers and society, with workers bearing 77 per cent, the community 18 per cent (through social security and health care costs) and employers 5 per cent of the economic costs (Australia 2015<sup>2</sup>).

Studies on the benefits of investment in improving OSH performance are reframing the perceived “costs” of implementing OSH improvements in the workplace. On a microeconomic level, an [EU-OSHA report](#) demonstrates that investments in OSH yield real returns for businesses (EU-OSHA 2014<sup>3</sup>). This reframing of these “costs” as an investment is particularly important in the context of micro, small and medium-sized enterprises (MSMEs), which incur a disproportionate number of workplace accidents and illnesses and for which the investment of limited financial resources in OSH improvements compete with other business priorities (EU-OSHA 2014). In 2013, an [ISSA report](#) estimated that the investment by individual businesses of US\$1 in preventive OSH strategies yields a US\$2.2 return (ISSA 2011<sup>4</sup>).

Tables 1 and 2 provide brief summaries of the key elements of a cost-benefit analysis of implementing OSH strategies in the workplace.

**Table 1:** Costs generated by poor or non-existent OSH strategies

Category of cost	Employers	Workers	Government/society
<b>Health</b>	Rehabilitation expenses Cost of workplace modifications, adjustments and aids due to illness or injury or workers Increased insurance premiums	Physical and psychological injuries Increased health care costs Cost of aids, carers and so on	Increased burden for the social security system and workers' compensations schemes
<b>Administrative</b>	Legal costs of dealing with claims by injured/ill workers Time spent to investigate and discuss adverse events (by work team, by management and by external organizations); work reorganization Non-compliance with OSH laws leading to: <ul style="list-style-type: none"> <li>- penalties from government regulators</li> <li>- risk of imprisonment due to the application of penalties</li> </ul>	Legal costs related to making a claim against employer	Cost of administering social security, insurance and workers' compensation systems Cost of enforcement activities

2 Australia, Safe Work Australia. 2015. “The Cost of Work-Related Injury and Illness for Australian Employers, Workers and the Community 2012–13”.

3 EU-OSHA. 2014. “The Business Case for Safety and Health at Work: Cost-Benefit Analyses of Interventions in Small and Medium-Sized Enterprises”.

4 ISSA. 2011. “The Return on Prevention: Calculating the Costs and Benefits of Investments in Occupational Safety and Health in Companies”.

<b>Productivity</b>	Lost working days and cost of sick leave High staff turnover leading to recruitment/training/induction costs	Lost earnings (both current and future earnings)	Loss in GDP (results in a loss of 3.94% and 3.3% in Europe)
<b>Social</b>	Reputational damage	Follow-on effect that these factors can have on an individual's family and social life	Negative impact on society (fractured social cohesion)

**Table 2:** Benefits of effective OSH strategies

<b>Workers</b>
<ul style="list-style-type: none"> <li>- Sustained good health</li> <li>- Safe working conditions</li> <li>- Longer working lives</li> <li>- Improved living standard</li> <li>- Increased likelihood of sustained and stable income</li> </ul>
<b>Employers</b>
<ul style="list-style-type: none"> <li>- Competitive advantage in retaining talent</li> <li>- Safe working conditions leading to fewer accidents and lower incidence of ill health</li> <li>- Increased productivity and other operational effects (increased morale, more motivated and engaged staff, increased capacity for innovation within companies)</li> <li>- Improved well-being, job satisfaction and working environment</li> <li>- Avoidance of non-compliance costs such as fines and other penalties</li> <li>- Maintenance of low insurance premiums</li> <li>- Improved quality of products and services</li> </ul>
<b>Government</b>
<ul style="list-style-type: none"> <li>- Increased GDP and economic performance</li> <li>- Sustained social peace</li> <li>- Sustainable financing of rehabilitation and insurance costs</li> <li>- Community development and environment protection</li> </ul>

## 2. National OSH system

Effective OSH strategies and positive OSH performance depends on the existence of a sound national OSH system. Such a system is defined by the Promotional Framework for Occupational Safety and Health Convention, 2006 (No.187) as the “infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health”. A national OSH system consists of interconnected OSH capacities that together enable countries to improve their OSH performance, resulting in the prevention of occupational accidents and diseases. Each individual OSH capacity is necessary but is not sufficient by itself to lead to improved OSH performance at national and workplace levels.

A comprehensive, prevention-based OSH legal framework is a necessary capacity of a national OSH system. If well designed and drafted, it can ease workers’ and employers’ ability to understand and fulfil their rights and duties, as well as the government’s ability to administer and enforce legal provisions.

Other necessary capacities of a national OSH system are:

- ▶ education, training and capacity-building for employers and workers;
- ▶ use of tripartite social dialogue in policymaking processes;
- ▶ workplace inspection;
- ▶ occupational health services;
- ▶ employment injury insurance programmes;
- ▶ OSH professional institutions and networks; and
- ▶ reliable OSH data, among others.

In addition to the benefits and opportunities set out in table 2, well designed OSH legislation has the additional benefit of providing certainty and clarity to key stakeholders by:

- ▶ defining duty and rights holders in relation to OSH;
- ▶ defining the nature of such duties and rights and what steps must be taken to fulfil them;
- ▶ establishing a mechanism for the prevention of occupational diseases and accidents;
- ▶ setting up mechanisms that protect workers when they raise concerns about OSH;
- ▶ providing a mechanism for social protection, including to ensure income and health care in the event of an occupational disease or injury; and
- ▶ establishing a mechanism for social dialogue at the national level and in the workplace, making OSH improvement a common priority for employers and workers, as well as governments.

## 3. Support Kit for Developing Occupational Safety and Health Legislation

### 3.1 Concept

The Support Kit for Developing OSH Legislation has been developed under the ILO Flagship Programme “[Safety + Health for All](#)”. This Global Programme, launched by the ILO in 2015, seeks to support Member States in implementing the national OSH system required by Convention No. 187 and building the interconnected OSH capacities that together lead to improved OSH outcomes at the national and enterprise levels. As noted above, one of these necessary capacities is an OSH legal framework that comprehensively addresses OSH and integrates OSH into other related legal frameworks.

This Support Kit aims to meet the needs of ILO constituents by providing a framework for approaching the establishment or reform of OSH legislation. It systematically articulates and analyses the key principles and components of a comprehensive, prevention-based, framework OSH law. For each component and to the extent possible, it identifies and discusses key policy and design choices, coupled with examples of legislative elements from countries with different legal traditions. The Support Kit takes a “layered” approach, allowing for it to be used to identify gaps in legal frameworks relative to international labour standards in order to support in some instances more complex decision-making on underlying issues of OSH policy and regulatory design.

## 3.2 Objectives

This Support Kit has the following two key objectives:

### 1. Provide a foundation for policymakers, lawmakers and other constituents to effectively participate in legislative discussions leading to the adoption of OSH laws, by:

- ▶ easily identifying the components of the legal framework and their legislative elements (based on international labour standards (ILS) and other legislative provisions that are being increasingly regulated) that should be given due consideration;
- ▶ understanding why these components and their legislative elements are important;
- ▶ becoming aware of the different policy choices that underlie the components and legislative elements; and
- ▶ learning how other countries have regulated those elements in their OSH legislation and what design options are available when drafting related provisions.

### 2. Enable the International Labour Office to:

- ▶ proactively engage with Member States in their legislative processes at an early stage, ideally before policymakers and lawmakers initiate the drafting or reforming of OSH laws;
- ▶ provide faster and more comprehensive technical assistance when consulted on draft OSH laws; and
- ▶ adopt a consistent approach across the Office (headquarters and field staff) when providing technical assistance on OSH legal frameworks.

## 3.3 Audience

The target audience of this Support Kit consists of:

- ▶ ILO constituents, including policymakers and lawmakers, employers' and workers' representatives and labour inspectors, who are participating in the development of OSH legal frameworks;
- ▶ other stakeholders who may participate in the legislative process, such as civil society and organizations of OSH professionals; and
- ▶ ILO officials who provide technical support to Member States.

This Support Kit has been mainly designed for countries with an outdated or incomplete approach to OSH that wish to adopt an umbrella (framework) OSH law or revise and modernize their existing law.

## 3.4 Scope and limitations

The Support Kit has a large scope but also has limitations, as set out below.

### 1. OSH legal framework

The Support Kit encompasses all the legislative elements that the OSH legal framework should include. Most prescriptions would be embedded in the main, general, framework OSH law; however, some elements could be found in labour, administrative and even criminal laws, as well as in implementing regulations.

### 2. Economic sectors

The Support Kit does not include detailed discussions of requirements targeting specific economic sectors and hazards. Its focus is on the components of a comprehensive, prevention-based OSH legal framework and on the legislative elements that are applicable across all branches of economic activity and apply to all workers.

### **3. Effectiveness of legislative elements**

The Support Kit attempts to map the components of a comprehensive, prevention-based and general OSH law and, to the extent possible, the policy choices that need to be made. The Support Kit does not provide an empirical analysis of the impact or the effectiveness of the various legislative elements, policy choices and examples discussed. This is due to the fact that studies that critically assess the impact of OSH legislation are few and their findings unique to the context in which the legislation has been implemented.

Evaluation of the effectiveness of OSH legislation is a complex undertaking. For example, an indicator that is traditionally used for measuring OSH performance is the increase or decrease in the number or frequency of occupational accidents and diseases. However, in reality any changes in national OSH performance are likely to be the result of a number of interventions acting together and not solely the result of OSH legislation.

### **4. Legal theory and practice**

The Support Kit has attempted to strike a balance between incorporating both legal theory and practice. However, the overarching objective of the Support Kit is to be a practical tool that can be readily and expeditiously used by ILO constituents. Therefore, the Support Kit is intended to be a hands-on and user-friendly tool that can be used in variety of contexts and support discussions by constituents with varying levels of OSH expertise.

### **5. Substantive legal provisions**

The Support Kit is designed to deal primarily with substantive OSH law and intentionally does not cover procedural legislation or regulations. Substantive laws consist of legal provisions that deal with legal relationships; that is, they define the rights and obligations of natural or legal persons. Procedural laws consist of rules that govern administrative and court proceedings and play an essential role in enforcing substantive laws. Such procedural considerations of OSH law enforcement can be included partially or entirely within the OSH law or can be included in other legislative instruments.

### **6. Universal resource**

The Support Kit is intended to be a universal resource that can be used by Member States in any region and within any legal tradition, although the main focus is on countries with outdated or incomplete OSH systems. Consequently, the Support Kit could not address the specific circumstances of different countries and legal traditions without losing its universal functionality and becoming overwhelmingly complicated to use. The components of the OSH legal framework presented in this Support Kit should be discussed by governments, social partners and other stakeholders in each country according to the local context, socio-economic and political situation, national resources, legal traditions, priorities and challenges, and they should be incorporated into national law according to and consistent with the national context.

### **7. Sources**

The Support Kit has taken into consideration a limited literature review and legislative analysis (confined to data available for the 130 countries covered in the ILO Global Database on Occupational Safety and Health Legislation (LEGOSH) and has relied on the significant contributions of various legal experts.

### 3.5 Background and context

The ILO provides technical assistance to countries in building and strengthening their national OSH policies, systems and programmes. Over the last decade, there has been a steady increase in the number of Member States that have determined that their laws addressing OSH are either insufficient or out of date and in need of reform. Among Member States seeking assistance are those that have traditionally included OSH in their general labour laws or codes and want to develop separate and more comprehensive OSH legislation, as well as those that previously addressed OSH in “Factory Acts” and are working to update and expand the scope of coverage to a greater number of workers and workplaces. The Support Kit responds to that increased demand for ILO technical assistance.

Member States that embark on reform often want to learn from countries that have reached a level of development of their OSH legislation at which they have established a comprehensive set of key principles (scope, coverage, duties and rights); a range of hazard and risk assessment mechanisms (management systems, hierarchy of controls, occupational health services); mechanisms for social dialogue (safety and health representatives, safety and health committees, national and sectorial OSH councils); and government administrative and enforcement responsibilities and powers (data collection systems, OSH enforcement authority, OSH institutes and laboratories); as well as sectorial and hazard-based legislation that includes technical performance and/or prescriptive standards to regulate implementation. This Support Kit attempts to be comprehensive and to encompass to some extent all of these elements.

One of the tools that the ILO has built to support constituents in the development of OSH legal frameworks is the LEGOSH global database, which features examples of OSH legislative provisions from more than 130 Member States (as of 2017) and allows for a comparative analysis. This Support Kit builds on the LEGOSH tool and other resources to meet the needs of ILO constituents by providing a framework for approaching the establishment or reform of OSH legislation.

The time window of opportunity for the ILO to engage in legislative development or reform processes is often narrow. Moreover, the ILO can be engaged in any phase of the legislative process. This has evidenced the need for a tool that is readily available and relevant for constituents at whatever stage they may be in the process of preparing legislation for parliamentary approval, including even before the first draft law has been developed. This tool aims to respond to this need.

### 3.6 Methodology and time frame

#### 1. Inception phase

Prior to commencing work on this Support Kit, a concept note detailing the initiative was shared for consultation and validation with departments in ILO headquarters that have expertise in the technical areas addressed by the Support Kit, as well as with OSH specialists working in ILO field offices. The feedback received strongly supported the initiative and confirmed the need for a tool that would assist constituents in designing and drafting OSH legislation. Consultations included a workshop organized in January 2017, which was attended by specialists on labour law reform and OSH legislation from both the ILO and leading academic institutions.

#### 2. Outline development

The outline of the Support Kit is based on the overriding ILS on OSH and labour inspection (see table 3), comprehensive prevention-based OSH laws (see table 4) and approaches such as management systems (ILO-OSH 2001). The outline of the Support Kit is also aligned to the extent possible with the structure of LEGOSH in order to facilitate the integrated use of these two resources.

**Table 3.** Overriding ILS on OSH and labour inspection

Convention/Protocol	Recommendation
<a href="#">Occupational Safety and Health Convention, 1981 (No. 155)</a>	<a href="#">Occupational Safety and Health Recommendation, 1981 (No. 164)</a>
<a href="#">Protocol of 2002 to the Occupational Safety and Health Convention, 1981</a>	
<a href="#">Occupational Health Services Convention, 1985 (No. 161)</a>	<a href="#">Occupational Health Services Recommendation, 1985 (No. 171)</a>
<a href="#">Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)</a>	<a href="#">Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197)</a>
<a href="#">Labour Inspection Convention, 1947 (No. 81)</a>	<a href="#">Labour Inspection Recommendation, 1947 (No. 81)</a>
<a href="#">Labour Administration Convention, 1978 (No. 150)</a>	<a href="#">Labour Administration Recommendation, 1978 (No. 158)</a>

**Table 4.** Comprehensive prevention-based OSH laws

Country	Law
<b>Australia</b>	Work Health and Safety Act 2011
<b>EU</b>	Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work
<b>Singapore</b>	Workplace Safety and Health Act, 2006
<b>Spain</b>	Act 31 on Prevention of Occupational Risks, 1995
<b>United Kingdom</b>	Health and Safety at Work etc. Act 1974
<b>United States</b>	Occupational Safety and Health Act of 1970

### 3.6.3 Content development

The ILO engaged OSH experts, academics and practitioners to develop the content of the 12 sections of the Support Kit, which were further elaborated based on (a) a desk review of academic literature, including research publications and reports from national, regional and international organizations; (b) data available in LEGOSH of national legislation that allowed for a transversal analysis of legal provisions regulating the various components and their elements; and (c) comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

### 3.6.4 Peer review and validation

The Support Kit was submitted for peer review by external academics with significant expertise and experience in research and practice in OSH, in particular on OSH policy and legislation. The content of the Support Kit was further developed and adjusted based on comments and revision recommended by the peer reviewers. In addition, the Support Kit was widely shared for consultation with ILO officials from units whose technical areas encompass subject matters addressed by the Support Kit.

## 4. How to use this Support Kit

### 4.1 Structure

The Support Kit comprises 12 sections (I through XII) that address the key components of a comprehensive and prevention-based OSH law. Each section includes:

1. Introduction.
2. Discussion of the rationale for the component.
3. Relevant ILS.
4. Analysis of various policy and design options (where data is available).
5. Legislative examples and trends.
6. Bibliography/list of useful resources (academic literature, publications, tools, databases and so on) for users who seek to engage more deeply in the topics discussed.
7. A checklist to support the identification of issues and gaps.

Figure 1. Structure of the Support Kit



## 4.2 Modes of use

The Support Kit is intended to be used as a resource at any time in the legislative process by a country that has decided to embark on the development or reform of its OSH law. There are, however, two moments in the legislative process when use of the Support Kit can be particularly helpful, as described below.

### **1. Use of Support Kit at the beginning of the legislative development or reform process and when the decision to initiate OSH legislative reform has been made**

For countries that do not have an OSH law, the Support Kit will support constituents to understand what components should be included in a comprehensive prevention-based OSH law, why they are important and how they could be drafted. It also accompanies constituents in the legislative process, contributing to informed discussions and debate during decision-making processes.

When countries are seeking to reform existing OSH laws, the Support Kit can serve initially as an annotated outline of components and checklist of legislative elements to help determine what may be the issues, including gaps in existing legislation, and can provide guidance on how to address them. At the end of each section of the Support Kit, a checklist is provided to support the identification of issues and gaps.

### **2. Use of Support Kit during a reform process of OSH legislation**

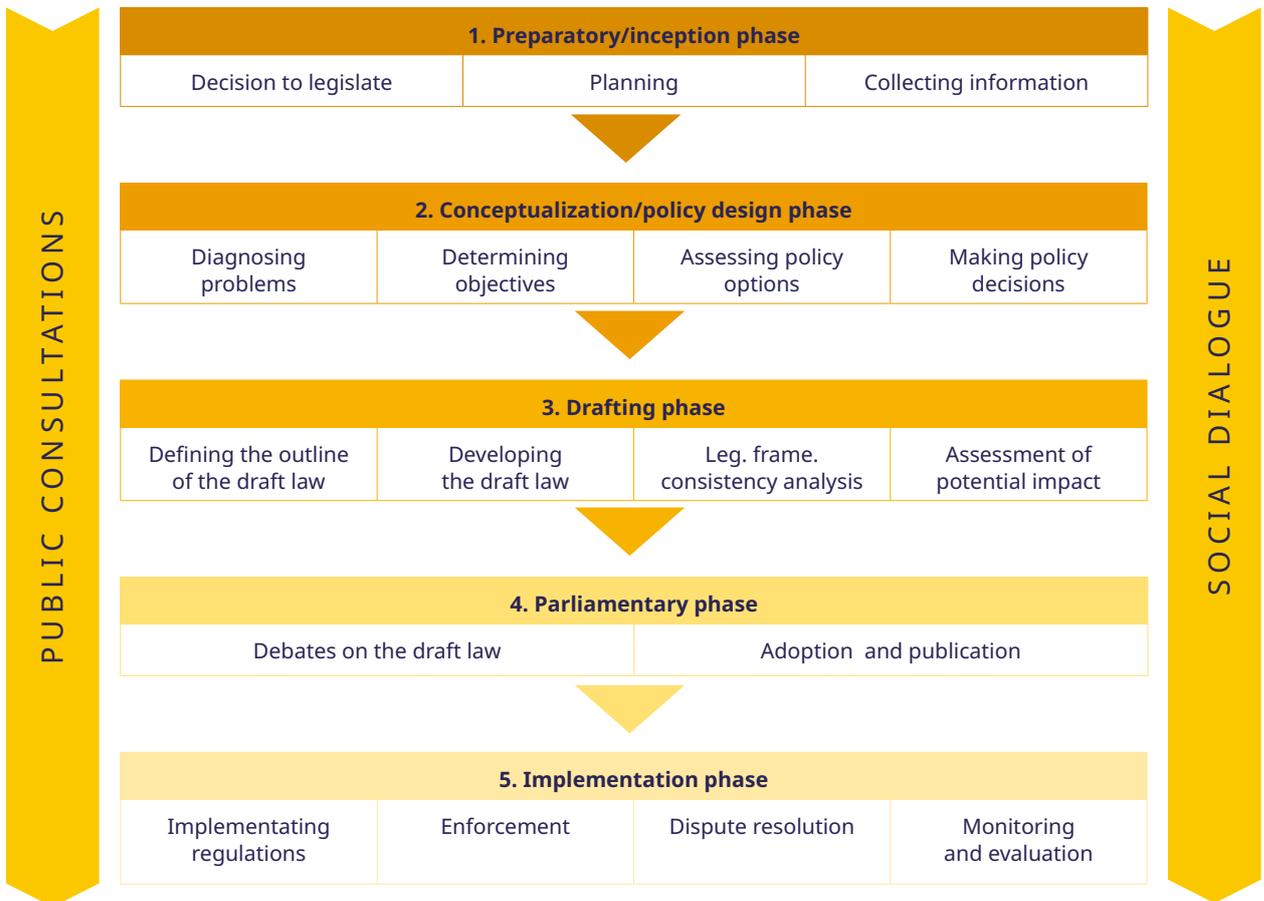
In this scenario, an OSH law is already in place and a review and update is sought and is the typical point at which ILO assistance is requested. In this situation, a draft law has been prepared and constituents typically want to assess the draft against ILS and other countries' OSH laws. Most often, countries are seeking examples of "good practices" or examples of laws that have addressed particular issues of concern. Again, the Support Kit helps constituents to engage in that assessment by providing an annotated outline of components and checklists of legislative elements that assist in identifying areas of possible concern, outdated provisions and gaps in their draft OSH laws. This Support Kit could be also useful when either the drafters or the members of the tripartite advisory committee have questions about the best approach to address a technical issue, or when there are differences of opinion about how a technical issue should be tackled.

If ILO assistance is sought, ILO officials may also use the Support Kit in preparing the Office's technical memoranda on the draft. Where circumstances permit, the Support Kit and how it is to be used should be introduced by an ILO official and the ILO official should facilitate its use. This will ensure that constituents understand how the tool is intended to be used and how it can help them throughout the legislative process. The 12 sections of the Support Kit allow the ILO official to optimally structure discussions around specific topics and ensure that all critical points are addressed in the discussions. The Support Kit content enables the ILO official to explain why a particular component or legislative element is important and to illustrate how it can be translated into specific legal provisions. The ILO official will have the ability to support discussions related to the advantages and disadvantages of different policy options and to provide examples of how countries have addressed those issues based on information provided in the Support Kit.

## 4.3 Key phases of the legislative process

National legislative processes vary. The key phases are determined by a country's form of government, as defined by its national constitution and legislation. Despite variations, there are key phases that are typically present in most countries' legislative processes. Table 5 groups these key phases in a possible logical flow, followed by brief summaries of each phase, to help users understand when in the legislative process the Support Kit could be a useful resource; the table does not represent a "standard" legislative process, as this varies from one country to another.

**Table 5.** Key phases of a legislative process



Source: ILO, labour law and reform workshop, 2017.

**1. Preparatory/inception phase**

If a decision to develop a new law or reform an existing law is taken, a preparatory process should follow. There are a variety of circumstances and actors who may initiate a legislative process. Once triggered, an action plan may be developed to define who will be engaged in the policy design and drafting phases, the information and data that needs to be gathered to inform the policymaking and drafting process, time frames for preparing the initial draft, and the stakeholders who will be consulted, among other aspects.

It is important that during the preparatory phase, constituents carefully analyse and discuss the legislative proposal to be put forward, including an impact assessment on the economic, social and environmental effects that the proposed legal reform may have; the state’s ability to enforce such proposals, taking into account the national OSH situation, including the OSH infrastructure and the informal economy; the ability of the duty holders to comply with such legislation (in MSMEs); the potential disadvantages of legislation; and possible alternatives. These considerations may play a role in other phases of the legislative process, in addition to the preparatory phase.

**2. Conceptualization/policy design phase**

During this phase, policymakers (a) establish legislative objectives; (b) identify the issues and challenges that they seek to address and the objectives they want to achieve; (c) analyse legislative and non-legislative policy options and solutions that could help them solve the identified issues and challenges; (d) assess the costs and benefits of various policy alternatives (including non-intervention); and ultimately decide what are the most appropriate policies in the given context and circumstances.

### 3. Drafting phase

Once policy decisions are made, the drafting of the law is initiated. This can be done in a structured and systemized way by sequencing the drafting process as follows: first developing the outline of the Law and then translating the policy decisions that have been made into specific legal provisions.

Policy analysis, decision-making and drafting often take place simultaneously, involving an iterative exchange between policymakers and drafters if these roles are played by different persons. Consequently, the legislative process may go back and forth between the policy design phase and the drafting phase.

### 4. Parliamentary phase

The parliamentary phase takes place once the legislation is drafted. The procedures will again vary from one country to another. This phase consists of readings, debates and amendments to the draft legislation by the parliament that will result in adopting new law and/or reforming existing legislation.

### 5. Implementation phase

The implementation phase in a broad sense covers all actions that need to be taken once the legislation has been adopted and becomes law. This encompasses (a) establishing the necessary institutional capacity and resources to administer and enforce the new legislation; (b) drafting and issuing implementing technical standards and guidance; (c) devising strategies that are needed to achieve compliance with the legislation; (d) ensuring that dispute resolution and judicial mechanisms are in place; and (e) monitoring and evaluating the impact and effectiveness of the new law.

**This Support Kit mainly targets the preparatory/inception phase, the conceptualization/policy design phase and the drafting phase of the legislative process.**

#### Stakeholder consultations

Critical to the success of any policy and legislative initiative is the active engagement of government bodies at all levels, social partners and other stakeholders that will be impacted by the new or reformed policies and laws. Consultations should ideally happen at all stages of the policymaking and legislative process, starting at an early stage, even before a decision to legislate is taken.

Consulting social partners is a requirement under ILS. A broader consultation that includes civil society and other interested parties may be beneficial. Mapping all relevant actors and developing a plan for consultations will be important to ensure that effective engagement is achieved. Consultations usually take place through the national tripartite OSH committee, where such a body exists. Alternatively, committees or task groups can be created specifically.

Table 6. Sample list of relevant stakeholders

#### **Relevant stakeholders**

- relevant government bodies at both national and state/provincial levels (including labour, social security, health, finance, education, employment and economic sectors such as agriculture, construction, mining, ports and fisheries and so on)
- enforcement bodies (including the labour inspectorate) and judicial authorities
- employers' and workers' organizations
- ILO specialists responding to requests for assistance sent to ILO country offices
- NGOs and organizations with subject matter interest and expertise, such as associations of OSH professionals and private insurance companies
- academic and research experts
- community leaders and community-based organizations

## 5. Lexicon

This Support Kit uses icons to help users navigate this tool by visually identifying ILS, examples, useful tools, definitions and more. Consult the lexicon below in order to get familiar with the icons used throughout the Support Kit.

**Definition** 

**International labour standards** 

**Policy options / design choices / legislative techniques** 

**Country example** 

**Questions for discussion** 

**Attention** 

**Useful tools and relevant resources** 

**Checklist** 



SECTION

01

**Evolution of OSH legislation:  
From early OSH laws to modern  
legislative OSH frameworks**

# Evolution of OSH legislation: From early OSH laws to modern legislative OSH frameworks

SECTION

01

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# 01

## Evolution of OSH legislation: From early OSH laws to modern legislative OSH frameworks

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### 1. Introduction

The purpose of section I is to assist governments and social partners to understand different types of standards and regulatory approaches that can be used to develop their OSH laws. It further attempts to enable users to differentiate between outdated regulatory approaches and modern legislative OSH frameworks by analysing their main features and key historical shifts. It also attempts to take stock of aspects that makes OSH legislation effective. However, section I does not discuss in detail the various academic theories and views on regulatory approaches and their effectiveness.

### 2. Brief overview of the evolution of OSH legislation

The industrial revolution began in the United Kingdom in the late eighteenth century. It brought in new manufacturing processes and prompted the transition from an agrarian-dominated economy to an economic model that mainly relies on factory-based work. This transformation gave rise to the use of dangerous machinery, tools, substances and agents (such as mineral dusts, fibres, toxic metals, anthrax) and overcrowded workplaces. Consequently, it created the need for governments to intervene by defining minimum standards for safety and health.

## 2.1 Early OSH laws: The Factory Acts era

1800

The first United Kingdom Factory Acts, enacted in the first half of the nineteenth century, established requirements related to the working conditions for children and women, laid down hygiene and machinery-related rules and required the appointment of factory inspectors. Their provisions focused on establishing highly technical specification standards to protect workers from the hazards caused by the use of dangerous machinery. The standards prescribed in great detail specific safeguards to be implemented by the employer. The national government defined and enforced these rules, without leaving much room for employers to assess and decide how to best manage risks at the workplace.



### Country example 1

#### Factory Acts

The British Factory Acts were mirrored throughout current and former British colonies. By the latter half of the twentieth century, similar laws could be found in Africa, Asia and the Pacific, the Caribbean and North America, including Australia, Bangladesh, Canada, India, Jamaica, Kenya, Malaysia, Nigeria, Pakistan, Singapore, South Africa, the United Republic of Tanzania and the United States. Apart from these former British colonial jurisdictions, legislation similar to the Factory Acts was adopted in countries such as China, France, Germany, Japan, Latin American States and the Russian Federation.

## 2.2 Rise of compensation systems

1884

The late nineteenth century saw the development of workers' compensation systems, led by the enactment in Germany of the Accident Insurance Law (Unfallversicherungsgesetz) in 1884. This was followed by the adoption of legislation in other industrializing countries, such as Spain (Acta de Compensación de los Trabajadores, Ley de Accidentes de Trabajo of 1900); France (Loi sur les accidents du travail of 1898); and the United Kingdom (Workmen's Compensation Act of 1906). These laws were reactive and focused on compensating occupational accidents rather than on preventing them (that is, they featured monetary payments to support injured workers as opposed to rules that would prevent such injuries from occurring).

## 2.3 First international labour standards on OSH

1919

The early OSH instruments of the ILO, adopted in the first decades of the twentieth century, mirrored the overall evolution of the first OSH laws. They tended to regulate single issues, such as exposure to hazardous materials, including lead, anthrax and white phosphorus; safeguards for dangerous machinery; sectors of industrial activity, including mining, the maritime industry, construction and manufacturing; and workers' compensation.

## 2.4 Weaknesses of early OSH laws

As new industrial processes developed, new hazards arose. OSH-related disciplines experienced significant development, including occupational hygiene; risk management (systems for identifying, measuring and controlling potentially harmful workplace exposures); occupational medicine; toxicology; epidemiology; safety design; and engineering.

Despite the burgeoning knowledge base concerning the science and engineering of prevention and control of OSH, there was relatively little change in the nature and orientation of the regulation and control of OSH in the workplace. Prescriptive measures continued to impose duties based on the established legal structure of employment relationships in most countries, either in relation to specific hazards or in relation to whole industries like mining or construction. While the introduction of welfare reforms in some countries served to improve

1972

the availability of financial compensation for injury and ill health arising from work, the principles concerning entitlements (that is, the rights of workers) changed little.

In the second half of the twentieth century, a number of major reforms of early OSH laws took place. The Robens report (United Kingdom 1972) was perhaps the most influential report to articulate the shortcomings of OSH laws for the first time.

### Shortcomings of the Factory Acts

- ▶ **Limited scope of application of OSH laws.** The ad hoc and reactive nature of standards that were developed in response to the emergence of particular safety issues for specific industries reflected a lack of universal coverage and therefore could not be applied to new risks.
- ▶ **OSH laws quickly outdated.** The inability of very specific and detailed standards to keep pace with and adapt to the rapid technological and scientific development rendered them very quickly obsolete and not fit for purpose.
- ▶ **Increasingly complicated OSH laws.** The huge volume of laws, with uneven coverage and a mass of detailed, technical, often unintelligible and piecemeal rules, kept increasing and became more and more lengthy and complicated to comply with.
- ▶ **Failure to incentivize employers to manage OSH effectively.** The failure to provide incentives for employers to take proactive measures to improve OSH in the workplace and to innovate, for example through internal rules and private compliance initiatives, made workplace risk management less effective.
- ▶ **Inability to incentivize workers to contribute to managing OSH effectively.** As OSH laws did not envisage collaboration mechanisms between employers and workers, the failure to incentivize workers to participate actively contributed to less effective workplace risk management.
- ▶ **Non-fulfilment of the overarching goal of ensuring that workers are safe and healthy.** Workers did not enjoy full protection from occupational accidents and diseases since the responsibility of employers under the Factory Acts ended with the execution of the command required by the law (to use a specific tool for example). If workers suffered a work-related disease or accident, employers could not be held responsible since they did not have a result-oriented obligation to ensure the safety and health of workers but a command-related obligation, which may not have resulted in achieving that goal.

1970s

## 2.5 Development of modern regulatory approach

Reforms in many countries from the 1970s sought to address the weaknesses of the early Factory Acts, embrace the principle of prevention and adopt a systematic approach to OSH management. These shifts underpin the modern regulatory approach.

### Reforms that address the shortcomings of the Factory Acts

- ▶ Expanding the scope of application of OSH laws. Reforms sought to extend the coverage of OSH laws to all kinds of workplaces and hazards (including psychological hazards, such as stress, harassment and bullying), thus making them universally applicable.
- ▶ Increasing powers of labour inspectors. Labour inspectors were granted more enforcement powers beyond monetary sanctioning, such as the power to stop work in the presence of an imminent danger to the health or safety of the workers.
- ▶ Incentivizing employers to manage OSH more effectively. Employers were prompted to create internal rules that were adapted to the nature of the risks present in their specific undertaking and industry, by stipulating the result-based obligation of the employer to ensure that workers are safe and healthy (as opposed to specification rules, which required a conduct rather than an outcome).

- ▶ Establishing arrangements for workers' participation in OSH management. Arrangements were introduced to spur cooperation between employers and workers and their representatives at national, sector and workplace levels, including by enabling workers to elect OSH representatives.
- ▶ Exploring new compliance mechanisms. This meant going beyond the simple imposition of monetary sanctions to include other compulsory and incentivizing mechanisms, such as procurement policies, financial incentives and private compliance schemes.
- ▶ Shifting the focus away from specification standards. Policymakers switched to adopting more general standards, such as principle-based standards, outcome-based standards, performance standards and process standards, in order to ensure that OSH legislation achieved its goals. Each of these approaches to standard-setting has its advantages and disadvantages, as explained further below.

These shifts form the bedrock of the modern approach to OSH regulation. They were reflected in and reinforced by the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985. This led to a sequence of regulatory reforms, first in Northwest Europe and then in other advanced market economies in North America and Australasia, which overhauled previous systems and replaced them with more goal-setting and holistic standards that were more flexible and therefore more appropriate to address OSH in the rapidly changing world of work.

## 2.6 Towards a systemic management of OSH

A further development in the 1980s was the move to a more risk-based and systemic management of OSH. This was partially underpinned by major industrial disasters (such as those in Seveso, Italy, in 1976; Bhopal, India in 1984; and Chernobyl, Ukraine in 1986) and by the advancement of the science of identification, analysis and control of risks in relation to hazardous exposures to chemical, physical and biological agents. Consequently, standards on OSH management systems were developed on a voluntary basis and systems for their certification introduced. In 2001, the ILO published its *Guidelines on Safety and Health Management Systems: ILO-OSH 2001*. Meanwhile, OSH laws have started to encompass key requirements of OSH management systems.

## 2.7 Focusing on the prevention principle

This involved a prevention-centred culture in OSH management. The prevention principle was enshrined in the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), another landmark ILO Convention. It requires Member States to develop a national preventive safety and health culture that is defined as “a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties, and where the principle of prevention is accorded the highest priority”. As a consequence, modern OSH laws are underpinned by duties and rights that ultimately seek to prevent injuries.

## 2.8 Recent legislative responses

Labour clauses in procurement, although not conceptually new, play an increasingly important role in securing labour rights in the subcontracting chain. Laws that require major companies to disclose and report on human and labour rights and conduct operations with due diligence vis-à-vis their subsidiaries and subcontracted undertakings have experienced an important growth over the last decades. Other emergent legislative initiatives aim to mainstream OSH throughout all stages of education.

1985

2001

2006

today



### Useful tools and resources

Safety and Health at the Heart of the Future of Work: Building on 100 Years of Experience

## 3. International labour standards on OSH: Milestones in the evolution of OSH legislation



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)
- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)

At the international level, the regulatory paradigm shift was introduced by Convention No. 155 in 1981, which laid down a number of elements that characterize modern OSH regulatory systems.



### Definition

#### Elements of modern OSH governance and regulatory systems

- OSH statute generally applicable to all branches of economic activity and all workers
- principle of prevention
- national infrastructure to govern OSH and governance instruments
- continuous improvement of national OSH governance
- general outcome-based OSH duties for all relevant stakeholders
- detailed specifications included in implementing regulations
- workplace processes to manage OSH
- Participative and collaborative arrangements at the workplace
- collaboration of undertakings engaging in activities simultaneously at one workplace
- key prerogatives of workers, such as the right to leave the workplace if in imminent and serious danger; the right to information; and the right to training and personal protective equipment at no cost

### OSH law generally applicable to all branches of economic activity and all workers

Convention No. 155 is not sector-specific but applies to “all branches of economic activity” (Article 1) and to “all workers in the branches of economic activity covered” (Article 2). The obligations in the Convention thus point to the adoption of a **universally applicable OSH law** (also referred to as a framework or overarching OSH law) that extends to all industries. Furthermore, while the Convention permits the exclusion of certain branches or limited categories of workers<sup>1</sup> (such as the self-employed), the CEACR has stated that the instrument

<sup>1</sup> The Convention permits, after consultation with the representative organizations of employers and workers, the exclusion of branches “in respect of which special problems of a substantial nature arise” and the exclusion of limited categories of workers “in respect of which there are particular difficulties”.

aims for a progressive extension of its scope and that governments and social partners could give further consideration to the continued appropriateness of excluding such categories or workers.<sup>2</sup>

Accordingly, framework or overarching OSH laws that are applicable to all branches of economic activity and all workers are greatly encouraged. These OSH laws may be complemented by sector-specific OSH laws or regulations that take into account the characteristics and address the needs of those specific branches of economic activity.

### Principle of prevention

Convention No. 155 requires the formulation, implementation and periodical review of a coherent national policy on OSH (Article 4) that is focused on **preventing** accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment. The principle of prevention is reinforced by the requirement to develop a national preventive safety and health culture that is embedded in Article 3(3) of Convention No. 187.

### National infrastructure to govern OSH and governance instruments

Article 4 of Convention No. 187 establishes the notion of a national OSH system that provides the main framework for implementing the national policy and national programmes on OSH. Article 4 of Convention No. 155 requires the development of a national OSH policy and Article 5 of Convention No. 187 requires the development of a national OSH programme, both of which are governance tools.

### Continuous improvement of national OSH governance

Article 4 of Convention No. 155 and Articles 4 and 5 of Convention No. 187 introduce the notion of continuous improvement in national OSH governance by subjecting the national OSH policy, system and programme to a periodic review (cyclical process).

### General outcome-based OSH duties for all relevant stakeholders

Convention No. 155 departs from the command-and-control approach towards **general outcome-based OSH duties** that are applicable to employers, workers and other persons at the workplace, as well as other parties who may have an impact on workplace safety. In this regard, Article 16 establishes the outcome-based duties of employers to ensure safety and health at the workplace by stipulating that:

- “1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control **are safe and without risk to health**.
2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control **are without risk to health** when the appropriate measures of protection are taken.”

### Detailed specifications included in implementing regulations

A corollary of the move to the imposition of general OSH duties is that **detailed specifications** (that characterize the command-and-control approach) can be removed from the principal OSH statute and transferred into other instruments, such as executive rules and regulations, which can be much more easily amended and updated than laws. However, these remain of paramount importance as they provide specific indications on how to fulfil specific OSH obligations to ensure the safety and health of workers.

<sup>2</sup> ILO, [Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 \(No. 155\), the Occupational Safety and Health Recommendation, 1981 \(No. 164\), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, ILC.98/III\(1B\), 2009, paras. 38–46.](#)

### Workplace processes to manage OSH

Paragraph 10(d) of Recommendation No. 164 explicitly points to the need to institute **organizational arrangements** regarding OSH and the working environment. The notion of organizational arrangements is very broad and may encompass key OSH management activities such as risk assessment, prevention planning, implementation of prevention and protection measures, worker participation and consultation and so on. Paragraph 6 of Recommendation No. 197 encourages countries to follow a **management systems approach** to OSH, which entails establishing management processes.

### Participative and collaborative arrangements at the workplace

Conventions No. 155 (Articles 19 and 20) and No. 187 (Article 4) require the establishment of **participative and collaborative arrangements** at both workplace and national level that involve workers and their representatives in the overall planning and management of OSH. This requirement includes ensuring the existence of workers' representatives and their consultation and participation in OSH management, including through joint OSH committees and workers' OSH committees. Recommendation No. 164 (Para. 12) also recommends that the measures taken to facilitate the cooperation should include, where appropriate and necessary, the appointment, in accordance with national practice, of workers' safety delegates, of workers' safety and health committees, and/or of joint safety and health committees.

### Collaboration of undertakings engaging in activities simultaneously at one workplace

Article 17 of Convention No. 155 introduces the requirement for undertakings that engage in activities simultaneously at the same worksite to collaborate in ensuring safety and health of their workers. This is a critical principle, as the work of each undertaking poses risks not only to its own workers but also to those of other undertakings operating at the same workplace.

### Key prerogatives of workers

Convention No. 155 introduces specific workers' prerogatives, including:

- the right of workers to remove from a work situation which they have a reasonable justification to believe presents an imminent and serious danger to their life;;
- the right for workers to be provided with OSH training;
- the right for workers to be provided with adequate protective clothing and equipment; and
- the right for workers to enquire into, and be consulted by the employer on, all aspects of occupational safety and health associated with their work.



#### Country example 2 Modern regulatory approaches

##### Do modern regulatory approaches make a difference?

###### European Union

The ex-post evaluation of European Union (EU) directives on OSH indicates that both the incidence and the number of accidents at work have considerably decreased over the evaluation period 2007–2012, while qualitative evidence from stakeholders confirms that in their view the directives have been at least reasonably successful in achieving their intended aims and that they contribute to benefiting the health and safety of workers, including a reduction in the number of accidents at work.

###### China

In China, the updating of OSH laws has coincided with a very significant reduction of the number of industrial accidents and fatalities over the last ten years (see ILO, National Profile Report on Occupational Safety and Health in China, 2012).

## 4. Contemporary challenges to OSH legislation

Challenges to OSH legislation that have always existed and still persist today in many countries include:

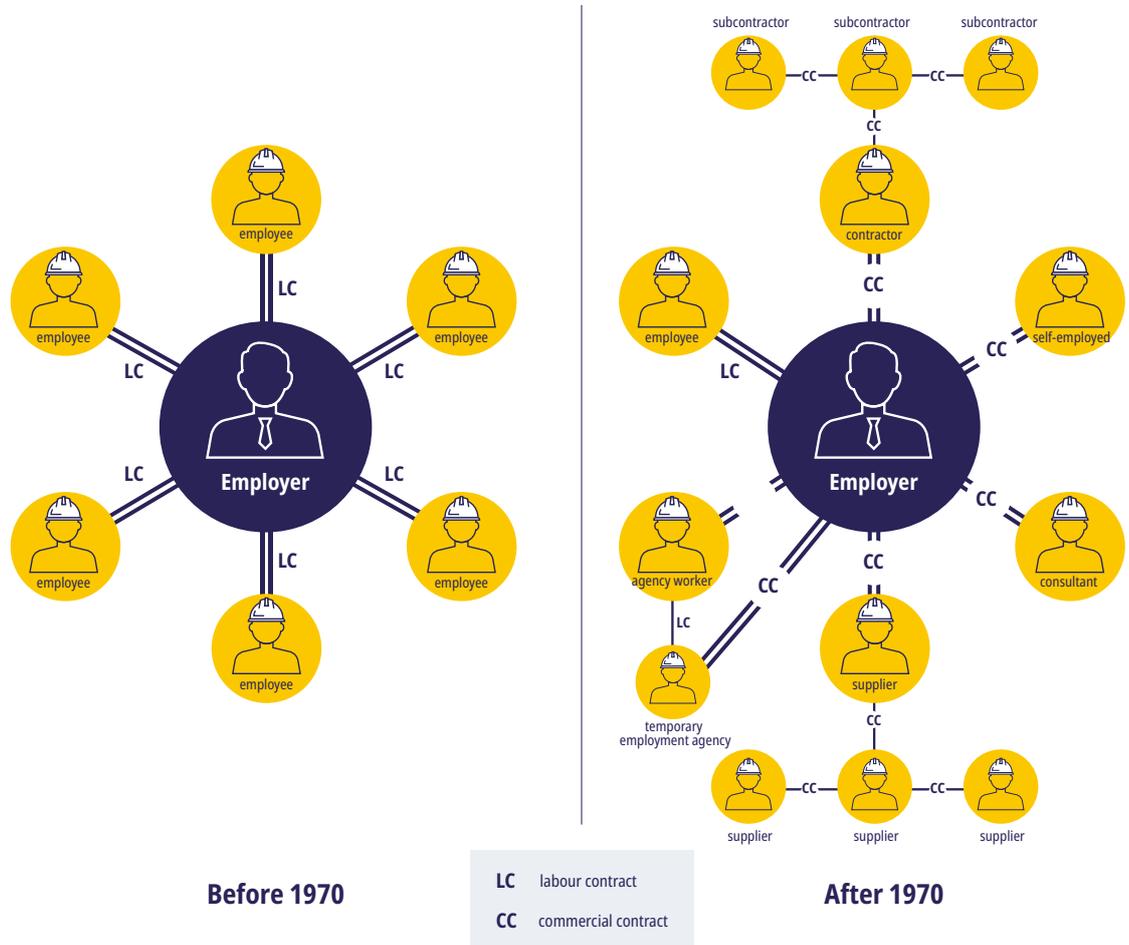
- ▶ an insufficient national OSH infrastructure or system;
- ▶ limited technical capacity and resources of authorities to create and enforce the law;
- ▶ inability of duty holders to comply due to lack of awareness and understanding of OSH-related issues, as well as financial constraints;
- ▶ lack of a corpus of well-trained OSH professionals that can assist employers with implementing legal requirements; and
- ▶ the informal economy;

Authorities play a key role in ensuring that OSH laws are realistic and enforceable and can be complied with by building a strong national OSH infrastructure. Such an infrastructure should include setting up support mechanisms for MSMEs and for the informal economy, as well as establishing research, information, advice and training services for duty holders at large.

In addition to these long-standing challenges, a number of other challenges have emerged more recently. Beginning in the 1980s, most countries have experienced changing work arrangements and relationships because of the fragmentation and redistribution of work tasks resulting from major economic restructuring, innovation in information technology, demographic change and globalization, among other phenomena. These changes in work organization, business and employment practices, include:

- ▶ changes to the status of employees (for example, from without-limit employment contracts to fixed term, on-call and zero-hours contracts, to casual or temporary employment arrangements or to self-employed contractor status);
- ▶ restructuring and fragmentation of the labour market through supply chains, subcontracting practices and triangular relationships that involve workforces supplied by agencies may create challenges to OSH, in particular when two or more companies operate simultaneously at the same workplace;
- ▶ remote or mobile work arrangements, telework and home-based work;
- ▶ non-standard forms of employment, including platform-based work;
- ▶ changes in working hours, increasing use of night work, longer shifts, part-time work and irregular working hours; and
- ▶ new and emerging risks triggered by digitalization, information and communication technologies, automation and robotics and nanotechnology, climate change, air pollution and environmental degradation (ILO 2019).

Figure 2. Fragmentation of the labour market



## 5. Modern legislative OSH frameworks

### 5.1 Composition of modern legislative OSH frameworks

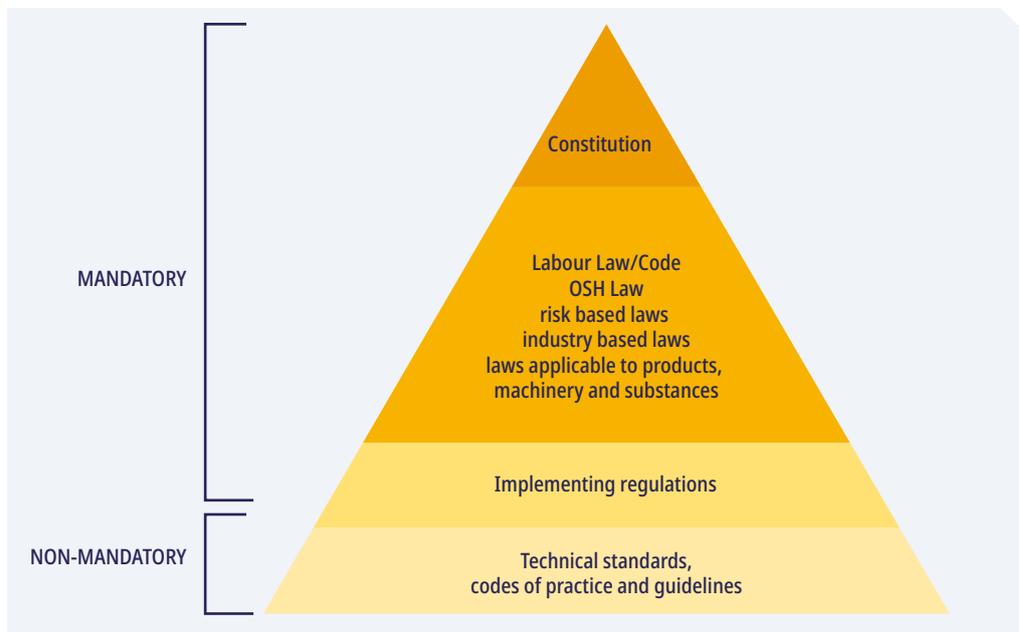
These consist of a comprehensive corpus of legal instruments of varying scope and legislative hierarchy. They usually include the constitution; general labour laws or codes; general overarching OSH laws; specific hazard-based and industry-based laws; laws applicable to the production of products, machinery and substances; their implementing regulations and technical safety standards; and codes of practice and guidelines (the latter support the implementation of legislation by providing guidance and good practice and may be non-mandatory). OSH provisions can be also found in other branches of law such as social security laws and public health laws.

The terms used to refer to the various types of legal instruments and their characteristics may vary from one country to another. Features that define the nature of each legal instrument include the process to be followed for its adoption, the competent authority to enact it, its position in the legal hierarchy, its scope and so on. Legal instruments are defined in the constitution of each country.

**Table 7:** Legal instruments classified according to their mandatory/non-mandatory nature and the process of development

	<i>Adopted by the legislative power: primary legislation</i>	<i>Adopted by the executive power: secondary legislation</i>
Mandatory	Constitution Overarching OSH law Hazard-based laws Industry-based laws Laws applicable to products, machinery and substances	Regulations Rules Decrees Orders Circulars Directive
Non-mandatory		Technical standards Codes of practice and guidelines

**Figure 3.** OSH legislative hierarchy



As mentioned above, modern legislative OSH frameworks utilize a mixture of regulatory approaches. The overarching OSH law tends to be generic; to be outcome-, principle- and process-based; and to be complemented by more detailed target-based implementing regulations that address specific hazards and branches of economic activity and additional detailed technical standards.

Independently from any specificities for each type of legal instrument that may be defined in each national constitution, there are some general considerations that are relevant for all countries. These are discussed below.

**Primary legislation**

Primary legislation is adopted by the legislative branch of the state, which is the national parliament. However, this body may be named and structured in different ways in different countries. Primary legislation is composed of laws, which are usually situated just below the constitution in the legislative hierarchy (see figure 1). This means that laws have to be aligned with the constitution and cannot establish anything that contradicts that supreme norm. Although laws are adopted by the legislative branch, the executive branch plays an important

role in the legislative process as it has the power to initiate such a process by proposing a law and it therefore also plays a key role in drafting OSH laws. OSH laws may be general or they may be hazard- or sector-specific. In any given country, there is usually one overarching OSH law and a variety of hazard-specific and sector-specific OSH laws.

► **Main OSH law**

The main OSH law (whether a stand-alone OSH law or a labour law/code) in any given country should ideally be overarching. This means that it should be applicable to all branches of economic activity and to all workers, in alignment with Convention No. 155 as discussed above. The main OSH law may also be referred to as the “overarching”, “umbrella” or “framework” to emphasize the key characteristic of this type of law – its universality.

► **Hazard-based OSH laws**

Hazard-based OSH laws are laws that regulate a specific hazard (for example, physical hazards such as noise, vibrations and radiation; chemical hazards such as asbestos; and biological hazards).

► **Sector-based OSH laws**

Sector-based OSH laws are laws that regulate specific industries or branches of economic activity such as construction, agriculture, mining, fisheries and so on.

## Secondary legislation

Secondary legislation is adopted by the executive branch. This type of legislation may be adopted by a minister, council or commission to which this power is designated by the constitution or by primary legislation. Depending on each country and its constitutional set-up, secondary legislation consists of legal instruments that may be referred to as regulations, decree, rules, order, circular, directives and so on. A given country may have a number of different legal instruments in the category of secondary legislation. The procedure for adopting each of these secondary legal instruments, their nature and purpose may vary and are usually regulated in the constitution.

Secondary legal instruments may have various functions, such as consolidating various versions of an existing law or further developing such laws so that their provisions can actually be implemented in practice. This is why regulations are also sometimes referred to as “implementing regulations”. A law usually sets out key provisions governing a specific matter; however, it may not envisage the additional mechanisms that may need to be in place to ensure compliance with its provisions. For example, an OSH law may require employers to notify occupational accidents and diseases to the competent authority but may not specifically regulate how such notification should be conveyed in practice (for example, what means should be used such as phone, email or mail or what specific information should be submitted). Such details will usually be regulated through secondary legislation.

Secondary legislation may mirror primary legislation and have a general nature or hazard- or sector-specific nature, depending on the type of primary legislation that the secondary legislation is related to. For example, an implementing regulation of an OSH in construction law would be a sector-based regulation. Countries may also choose to regulate specific hazards and OSH in specific sectors by means of secondary legislation instead of primary (and secondary) legislation; this is further explained below.

Secondary legislation is subordinate to primary legislation in the legislative hierarchy and therefore must be aligned with primary legislation. This entails that it cannot derogate or amend laws that are above it in the legislative hierarchy.

## 5.2 What type of legal instrument to choose to regulate OSH?

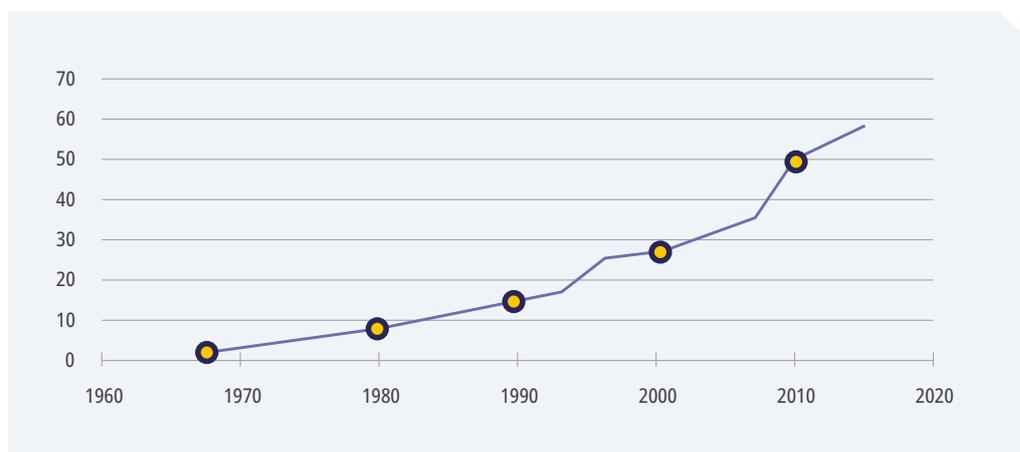
This is a recurrent question. Answering it requires examination of the following considerations.

- ▶ Does your country already have a main, general OSH law (whether a stand-alone OSH law or a labour law/code)? If the answer is no, then you may need to develop this type of law in the first instance.
- ▶ If your country already has a main, general OSH law (whether a stand-alone OSH law or a labour law/code), is it sufficiently comprehensive, that is, does it capture all key OSH requirements? If the answer is no, then you may need to proceed to an assessment of the scope of the main, general OSH law to identify any potential gaps. This assessment can be also referred to as “gap analysis”. This Support Kit contains checklists that can guide you in conducting such an assessment.
- ▶ If your country has a satisfactory main, general OSH law, the next question to consider (if not considered before) is whether there are any specific hazards or sectors that require OSH legislation. The national OSH situation and programme can readily shed light on this, as they usually reflect the national OSH priorities.
- ▶ Another consideration may be prioritization. Everyone has to prioritize. Legislative production is not an exception. If your country does not yet have a main, general OSH law or the existing one is incomplete, then this is likely to be a priority over developing sector- and hazard-specific legislation. However, it is of critical importance that policymakers conduct such prioritization based on the national OSH situation and priorities, in consultation with social partners.
- ▶ A further question that may arise is whether to regulate by means of primary legislation or secondary legislation. Primary legislation, as explained above, has precedence in the legislative hierarchy and therefore cannot be amended or derogated by secondary legislation. Primary legislation is more difficult to adopt since it requires approval by the parliament (or national legislative branch), which may entail more extensive negotiations and a more complex decision-making process than that of the executive branch. At the same time and for the same reasons, primary legislation is more difficult to amend than secondary legislation, while secondary legislation is easier to amend and derogate than primary legislation.

### 5.2.1 Stand-alone OSH law or part of the labour code?

A further question that arises in designing OSH legislation concerns whether the relevant law should be located in a dedicated statute or whether it should be included as part of a general labour law/code.

**Figure 4.** Number of countries with a stand-alone OSH law



There has been a steady increase of overarching OSH laws being enacted worldwide. LEGOSH shows that a growing number of countries that traditionally regulated OSH in their general labour laws or codes have now developed separate laws dealing specifically with OSH. These have been complemented by various regulations and technical standards, as well as sector-specific and hazard-specific OSH legislation. Graph 3 reflects the evolution of the adoption of stand-alone, framework OSH laws in the more than 130 countries covered in LEGOSH as of December 2017.



**Useful tools and resources**

- ILO, “ILO Global Database on occupational Safety and Health Legislation (LEGOSH)”.

Table 8 reviews the pros and cons of developing a stand-alone OSH law versus including OSH provisions in the general labour law/code.

**Table 8.** Pros and cons of labour law/code with OSH provisions versus a stand-alone OSH law

	<i>Labour law/code with OSH provisions</i>	<i>Stand-alone OSH law</i>
Pros	It groups labour-related provisions in a single legal instrument, making it easier for beneficiaries to locate it (as opposed to having numerous labour-related subject-matter laws)	<ul style="list-style-type: none"> <li>- An OSH law is usually more comprehensive than the OSH chapter of a labour code.</li> <li>- The coverage of the law may be broader than the labour code:                             <ul style="list-style-type: none"> <li>- it may include the obligations of key duty holders such as designers, producers, suppliers (in addition to the employer); and</li> <li>- it may apply to anyone present at the worksite, not only to employees, such as subcontractors, agency workers, independent workers and so on.</li> </ul> </li> <li>- Hazard and sector-specific laws and regulations (such as OSH in mining and OSH in construction) may be more coherent when linked to a stand-alone OSH law (which usually has a broader scope of application, as indicated above) than to a labour code.</li> </ul>
Cons	<ul style="list-style-type: none"> <li>- Obligations of employers are usually provided only in relation to employees.</li> <li>- Does not encompass obligations of OSH duty holders who are not in an employment relationship.</li> <li>- Consequently, does not legislate OSH comprehensively.</li> </ul>	<p>Having a variety of subject-matter laws as opposed to grouping all labour-related provisions in a single law (labour law/code):</p> <ul style="list-style-type: none"> <li>- may result in numerous and dispersed pieces of legislation, which may be difficult to locate;</li> <li>- may be challenging with regard to ensuring coherence and consistency among different pieces of legislation.</li> </ul>

### 5.3 What type of standards to use when drafting OSH laws and regulations?

Policymakers can adopt different strategies to achieve their OSH goals. One of the key decisions they should make is the type of standards to be used in drafting OSH legislation. The term “standards” may refer in this context to either a particular law or a particular provision (article/section) in a given law. Understanding the different types of standards, their nature and their pros and cons is likely to help legislators to make more appropriate choices when conceiving and drafting OSH legislation in order to attain their goals. This subsection provides some food for thought on the variety of standards that can be used to formulate provisions and laws.

It should be emphasized that there is no universally agreed classification of these standards and that some authors differ on their labelling and definition.

- **Specification standards** consist of detailed comprehensive and prescriptive rules indicating specific safeguards (preventive and protective measures) that should be implemented by the undertaking. They explain in detail what and how work should be done. For example: “an employer shall ensure that a ladder is constructed of appropriate material and is suitable for the purpose for which it is used, and (a) is fitted with non-skid devices at the bottom ends, and hooks or similar devices at the upper ends, of the stiles, which shall ensure the stability of the ladder during normal use ...”.
- **Principle-based standards** are built on key basic propositions or ideas that serve as the foundation of a system or a science. They may require some degree of interpretation in a particular context. For example: “The national programme shall promote the development of a national preventative safety and health culture”. This provision embeds the prevention principle by requiring the promotion of a prevention culture; however, it does not specify how this culture should be advanced. Another example is the principle that the working environment should be adapted to workers’ capacities.
- **Outcome-based standards** require the achievement of a result without indicating how this result should be attained. They may state the desired outcome of the legislator. For example: “Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health”. This provision requires an outcome: that working environments are safe and healthy.
- **Performance standards** specify certain levels, limits or thresholds to be respected or achieved, but leave it to the undertaking to determine the best methods for achieving that. For example: “No person shall be exposed to sound levels exceeding: (a) 85 dB(A) of reasonably constant level for eight hours continuously in any one day; (b) 135 dB(A) as measured with an instrument set at ‘fast’, in any one day; (c) 150 dB(A) in the case of impulse noise as measured with an instrument set at ‘fast’, in any one day”.
- **Process standards** or **management standards** prescribe a series of cyclical and systemic steps to manage risk. These are exemplified by provisions requiring elements that are typically found in systematic OSH management, such as hazard identification risk assessment and its periodical review and arrangements to ensure effective planning, organization, control, monitoring and review of preventive and protective measures, as well as ensuring worker consultation and participation in these processes and documenting them (ILO-OSH 2001).

Each of these approaches to standard-setting has its advantages and disadvantages. Table 9 shows some of the pros and cons that each type of standard may present. Some types of standards may share the same or similar characteristics.

**Table 9.** Different types of OSH standards

Type	Specification standards	Principle-based standards Outcome-based standards	Performance standards	Process or management standards
Pros	<p>Taking into account the detailed guidance on prevention and protection measures, which these standards provide:</p> <ul style="list-style-type: none"> <li>- They may be particularly valuable for undertakings with less OSH capacity and less resources. This is because these standards may be detailed enough and sufficiently self-explanatory to enable a non-expert to apply them.</li> <li>- Compliance may be easier to monitor than for other standards.</li> <li>- The cost of compliance may be easier to calculate than for other standards.</li> </ul>	<p>Given that these standards usually feature general duties, goals or core principles:</p> <ul style="list-style-type: none"> <li>- They may be adaptable and applicable to all kinds of hazards in all kinds of workplaces and branches of economic activity.</li> </ul> <p>Since these standards do not prescribe the way in which those duties, goals or principles shall be achieved:</p> <ul style="list-style-type: none"> <li>- They may provide room for the employer to choose the best implementation measures in any given circumstances.</li> <li>- They leave room for the employer to innovate.</li> <li>- They usually keep their relevance for longer than specification standards since they do not become as easily outdated because of scientific progress as specification standards do.</li> </ul>	<p>As performance standards usually impose a threshold or limit:</p> <ul style="list-style-type: none"> <li>- They may be adaptable and applicable to any type of risk that can usefully be measured.</li> </ul> <p>Since these standards do not prescribe the way in which that threshold or limit should be achieved:</p> <ul style="list-style-type: none"> <li>- They may provide room for the employer to choose the best implementation measures in any given circumstances.</li> <li>- They leave room for the employer to innovate.</li> <li>- They may keep their relevance longer than specification standards but possibly shorter than principle and outcome-based standards (new research findings suggest the need to change limits and thresholds).</li> <li>- Compliance may be easier to monitor than other types of standards.</li> </ul>	<p>Given that these standards are based on generic steps:</p> <ul style="list-style-type: none"> <li>- They may be adaptable and applicable to any type of risk for which the risk management process is the most efficient way of achieving the desired result.</li> <li>- They may provide room for the employer to choose the best implementation measures in any given circumstances.</li> <li>- They may keep their relevance for longer than specification standards since they do not become as easily outdated with scientific progress as specification standards do.</li> <li>- They give duty holders flexibility about both the OSH outcome (standard of care) they will achieve and the measures they will implement to achieve that outcome.</li> </ul>
Cons	<ul style="list-style-type: none"> <li>- They are likely to be rapidly outpaced by technological changes and are easily outdated.</li> <li>- They may suppress prevention initiatives and innovation by workplace actors and may inhibit workers' participation in OSH management, as well the search for improved risk controls and equipment.</li> <li>- They are not universally applicable across industries and risks.</li> </ul>	<ul style="list-style-type: none"> <li>- They present some degree of uncertainty as labour inspectors and courts are left to interpret the meaning of the principle in a particular context.</li> <li>- Their implementation may require more OSH expertise than specification standards for example.</li> <li>- They are usually vague in their requirements, making compliance and the monitoring of compliance difficult.</li> </ul>	<ul style="list-style-type: none"> <li>- For some hazards, it is not feasible to set a meaningful target.</li> <li>- A target removes the incentive to take measures to achieve an outcome that is better than the target (for example, less noise than the maximum exposure limits allowed by law).</li> </ul>	<ul style="list-style-type: none"> <li>- They do not impose a specific outcome or target to be achieved.</li> <li>- Their implementation may require more OSH expertise than specification standards for example and thus may be more costly for duty holders.</li> </ul>

Modern OSH frameworks do not rely on one or another type of standard exclusively but integrate all of them. The legislative landscape architecture that is increasingly observed features a stand-alone, overarching OSH law that incorporates principle, outcome and process-based provisions. These are also usually used in designing industry-centred OSH laws and regulations. Hazard-specific laws or regulations may also significantly employ performance standards. Technical standards that detail the design, operation and maintenance of materials, devices, tools and machines may mostly use specification standards.

## 5.4 What makes OSH legislation effective?

There are many variables that may contribute to legislation being effective. This Support Kit does not seek to acknowledge or discuss all of them but rather to suggest some key elements that can contribute to making OSH legislation more effective.

Research and (limited) country evaluations suggest that effective OSH legislation relies on the elements and characteristics of modern OSH systems discussed in section I and further developed in other sections of this Support Kit. In sum, effective OSH legislation:

- ▶ includes an overarching OSH law covering all branches of economic activity and all workers;
- ▶ uses a mixture of different types of standards, including:
  - ▶ *principle-based standards* that require duty holders to follow certain principles;
  - ▶ *outcome-based OSH standards* that require duty holders to achieve a concrete result, such as “safe and healthy workplaces”;
  - ▶ *performance-based standards* that require a specific target, output or level of performance, such as not exposing workers to more than a certain intensity of noise;
  - ▶ *process-based standards* that make mandatory systemic or cyclical steps, such as key phases of OSH management systems;
- ▶ is prevention-centred and based on the “hierarchy of controls” principle; that is, it prioritizes preventive and protective controls in their order of effectiveness, starting from the most effective;
- ▶ clearly stipulates OSH-related duties and rights and assigns them to workplace actors;
- ▶ provides for participative and collaborative arrangements at the workplace;
- ▶ features sufficiently persuasive incentives and dissuasive sanctions;
- ▶ addresses the current challenges of the continuously evolving world of work and is therefore up to date and relevant and undergoes regular review to that end;
- ▶ is optimally structured to ease navigation;
- ▶ employs well-crafted legislative language that is appropriate and relevant, clear, simple, precise, coherent, internally and externally consistent;
- ▶ is acceptable (its rationale and underlying assumptions are appropriate);
- ▶ is verifiable (simple to judge if it is in compliance or not);
- ▶ is developed in consultation with, and with the participation of, employers’ and workers’ representatives and other key stakeholders such as OSH professionals;
- ▶ contains measures to facilitate implementation and compliance among MSMEs;
- ▶ does not impose unnecessary administrative burdens on businesses; and
- ▶ places the responsibility for managing risks principally on the actors who create them.



### Country example 3

#### Evaluation of OSH legislation

##### Australia 2013

#### **Effectiveness of Work Health and Safety Interventions by Regulators: A Literature Review**

This study suggests that the following are key parameters that lead to compliance with OSH legislation:

- awareness of the existence of a law or regulation;
- agreeing with the terms of the law or regulation (perceiving its relevance);
- understanding the law or regulation and what needs to be done in order to comply;
- ability to comply (including OSH competence and financial resources); and
- compliance drivers, such as businesses' concern for reputational damage, sanctions and related financial losses.

##### EU 2017

#### **Evaluation of the Practical Implementation of the EU Occupational Safety and Health Directives in EU Member States**

This study evaluates the OSH regulatory framework of the EU based on the following criteria:

- *relevance*: whether the EU's OSH regulatory framework is consistent with the needs and problems experienced by the target groups (existing and emerging risks);
- *effectiveness*: whether the EU's OSH regulatory framework has achieved its objectives in improving the health and safety of workers and how significant these achievements are;
- *efficiency*: whether the benefits of the EU's OSH regulatory framework justify the related costs; and
- *coherence*: whether there are any inconsistencies, overlaps and/or synergies across and between the directives and whether the directives interrelate with other measures and/or policies that also cover aspects related to health and safety at work.



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## Checklist

### Section 01



Relevant ILS	Legislative element	YES	NO	If YES: Cite the relevant law and article (if applicable)	If NO: Explain (describe the issue and related challenges)	Recommendations on how to address the issue and related challenges	Other observations/ notes
<b>C155, Arts 1–2<sup>1</sup></b>	Is there an overarching OSH law covering all branches of economic activity and all workers?						
<b>R197, Para. 6 ILO–OSH Guidelines, 2001</b>	Are the key elements of OSH management systems mandatory under the OSH law?						
<b>C187, Art. 1</b>	Is the OSH law prevention-centred (based on the “hierarchy of controls” principle)?						
<b>C155, Arts 13, 16–21</b>	Does the OSH law cover workers’ and employers’ obligations and rights?						
<b>C155, Arts 19–20 R164, Para. 12</b>	Does the OSH law provide for participative and collaborative arrangements at the workplace?						
<b>C155, Art. 9</b>	Does the OSH law include sufficiently persuasive sanctions?						
<b>C187, Art. 4</b>	Is the OSH law developed in consultation with, and with the participation of, social partners and other key stakeholders (such as OSH professionals)?						

<sup>1</sup> An overarching OSH law is not explicitly required by C155; however, it can be used to implement Articles 1 and 2 of C155. Developing stand-alone overarching OSH laws is a trend, as discussed in section I.

Relevant ILS	Legislative element	YES	NO	If YES: Cite the relevant law and article (if applicable)	If NO: Explain (describe the issue and related challenges)	Recommendations on how to address the issue and related challenges	Other observations/ notes
-. <sup>2</sup>	Is the OSH law principle-, outcome- and process-based, accompanied by detailed and targeted implementing regulations?						
-. <sup>3</sup>	Does the OSH law address the current challenges sufficiently and adequately? Is there a specific challenge that it does not address but could address? Is it reviewed regularly to ensure that emerging challenges are being adequately addressed?						
-. <sup>4</sup>	Is the OSH law optimally structured and easy to navigate?						
-. <sup>4</sup>	Is the OSH law well crafted, appropriate, relevant, clear, simple, precise, coherent, and internally and externally consistent?						
-. <sup>5</sup>	Do stakeholders understand and accept the rationale and underlying assumptions of the OSH law?						
-. <sup>6</sup>	Is the OSH law verifiable (simple to judge whether or not it is being complied with)?						

<sup>2</sup> Not required by ILS; based on literature review.

<sup>3</sup> General consideration of the appropriateness of the contents of the law.

<sup>4</sup> General consideration of the user-friendliness of the law (appropriate use of legislative drafting techniques (see section XII)).

<sup>5</sup> General consideration of the acceptance of the law by stakeholders.

<sup>6</sup> For instance, there may be provisions, which are not clear or can give rise to several interpretations or require implementing rules

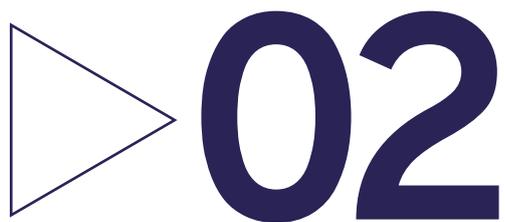


SECTION

02

**Scope and coverage  
of overarching  
OSH laws**

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# 02

## Scope and coverage of overarching OSH laws

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### 1. Introduction

The purpose of section II is to analyse different regulatory approaches towards defining the scope of application of an OSH law by discussing its three foundations:

- ▶ **Who are the persons that the OSH law applies to, that is, who are the persons who have duties and which persons are owed those duties under the law?**
- ▶ **When and where does the OSH law apply, that is, what are the places and situations in which the above duties arise?**
- ▶ **What is the subject matter covered by the duties in an OSH law, that is, what is occupational safety and health?**

Before considering each of these elements in depth, the following subsection discusses the principle of the universality of overarching OSH laws that is embedded in international labour standards.

### 2. Universality of overarching OSH laws

#### 2.1 Universal coverage of overarching OSH laws

Overarching OSH laws contain basic OSH principles that shall be applicable to **all** workers in **all** branches of economic activity. It is critical to extend the law coverage to all workers, so that no one is left without legal protection and in the informal economy.<sup>1</sup>

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<sup>1</sup> The Resolution concerning decent work and the informal economy, adopted by the ILO in 2002, defines the “informal economy” as all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements.



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)

Convention No. 155 has a universal scope of application; it applies to all branches of economic activity and to all workers. In addition, Recommendation No. 164 refers to the need, as may be necessary and practicable, to give self-employed persons protection analogous to that provided for in Convention No. 155.

Recommendation No. 164 also advises that, to the greatest extent possible, the provisions of Convention No. 155 and of Recommendation No. 164 should be applied to all branches of economic activity and all categories of workers.

Recommendation No. 197 also calls for the full coverage of workers: “With a view to preventing occupational injuries, diseases and deaths, the national system should provide appropriate measures for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers” (Para. 3).

Despite the universal character of Convention No. 155, it allows for **limited** exclusions of certain groups of workers and branches of economic activity in **exceptional cases and after consultation with employers’ and workers’ organizations. However, the CEACR has recalled the value of the progressive extension of the scope of application of OSH laws. In particular**, the CEACR has indicated that:

“Bearing in mind the context of the exclusions in the Convention, the overall aim of which is to protect all workers from workplace injury and disease, and that since 1981 there have been considerable technological advances which allow for a better protection of workers, the Committee is of the view that member States and social partners should give more thought to the continued appropriateness of excluding any workers from protection against workplace injuries and diseases”.<sup>2</sup>

## 2.2 Possibility to exclude groups of workers in exceptional cases

Article 2(2) of Convention No. 155 allows countries to exclude some categories of workers when there are **particular difficulties** that cannot be overcome or dealt with, thus providing some time for the authorities to address these difficulties. This requires consultation with workers’ and employers’ organizations before a decision to exclude a category of workers is made. Article 2(3) of Convention No. 155 requires ILO Member States to inform the CEACR about the reasons for such exclusion and to report on any progress made towards wider application.

In those countries and for those categories of workers and persons who are traditionally perceived as being in the informal economy (such as domestic workers, homeworkers and self-employed or independent workers), it may be beneficial for the OSH law to explicitly specify whether these categories fall under its scope of application. If the legislators decide to exclude any of these categories from the scope of the main, general OSH law, they would need to think if and how to regulate OSH issues for these workers and they may need to issue a stand-alone law for the particular category of workers that is being excluded from the OSH law.

<sup>2</sup> ILO, *Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981*, ILC.98/III(1B), 2009, para. 46.

A clear exclusion/inclusion prevents these categories of work situations from falling into a legal limbo and prevents judges and any player in the labour market from making inaccurate interpretations.



### Questions for discussion

Questions to be discussed with stakeholders before making exceptions:

- **Are there** certain category of workers that should **be excluded** from the scope of application of the OSH law? Why?
- What are the particular difficulties in including them?
- Is there a way to address those difficulties so that the scope of application of the OSH law can cover them?
- If a certain category of workers is excluded from the scope of the OSH law, what other means of protection can be used, such as a stand-alone labour/OSH law for a particular category of workers, collective agreements or self-regulation? Why?
- What steps can be taken to achieve full OSH coverage for all workers?

## 2.3 Possibility to exclude branches of economic activity in exceptional cases

Article 1(2) of Convention No. 155 allows for particular branches of economic activity to be excluded from its application, in part or in whole, such as maritime shipping or fishing, in respect of which **special problems of a substantial nature arise**. It requires consultation with workers' and employers' organizations before a decision to exclude a category of branches of economic activity is made. Article 2(3) of Convention No. 155 requires ILO Member States to inform the CEACR about the reasons for such exclusions, describe the measures taken to give adequate protection to workers in excluded branches and report on any progress made towards wider application.



### Questions for discussion

Questions to be discussed with stakeholders before making exceptions:

- Are there certain branches of economic activity that should be excluded from the scope of application of an OSH Law? Why?
- What are the special problems of a substantial nature in including them?
- Is there a way to address those special problems so that the scope of application of the OSH law can cover these branches of economic activity, or they can be covered by other relevant laws or sources of norms (collective agreements, self-regulation)?
- If certain branches of economic activity are excluded from the scope of the OSH Law, what other means of protection can be used to protect workers in those branches, such as a stand-alone labour/OSH law for a particular category of workers, collective agreements, self-regulation? Why?
- What steps can be taken to achieve a full OSH coverage in all branches?

### 3. Who are the persons that the OSH law applies to?

This subsection discusses some of the approaches that can be followed to define the duty holders and right holders of an OSH law to delimit its scope of application.

A key element that determines the scope of an OSH Law is the definition of the duty holders and right holders. The main duty holder may be the employer or other persons who have control over a business. Other key duty holders may include designers, manufacturers, importers or suppliers of substances, machinery and equipment for use in workplaces, as well as workers. OSH duties and rights are discussed in section IV of the Support Kit.

The principle underpinning OSH governance is to secure safe and healthy working conditions. Ensuring safe and healthy working environments is a complex endeavour that may require a mixture of different approaches and techniques. It may be helpful for policymakers to consider the following questions when discussing this topic.



#### Questions for discussion

- What is the responsibility of the company or person vis-à-vis the workers of temporary agencies and subcontracted entities that supply their services to that company/person?
- Is the owner/operator under a general duty to self-employed workers, agency workers and subcontracted workers?
- Is the responsibility of the owner/operator of a workplace different from the duty of the direct employer of employees that work at that workplace?
- If it is different, why should it be, since all workers may face the same hazards if they operate at the same workplace?
- What is the responsibility of the owner/operator to authorized visitors, guests, customers or other people that may be on the premises?
- What OSH responsibilities do workers have when they operate at a workplace (independently from whom their direct employer is)? Are they bound to comply with the safety rules established by the owner/operator of the workplace?
- Should an OSH law apply to relationships other than labour relationships (such as commercial relationship between the main undertaking with the subcontracted undertaking)?

Duty holders may be individuals (natural persons) and companies (legal persons) that are managed by natural persons such as directors, senior managers and CEOs. Therefore, it is desirable to ensure that mechanisms exist to allow the violations of OSH legal standards to be attributed to legal persons (in addition to natural persons), as they can only act via their employees, agents and managers. For example, the law could make a specific reference to organizations with a legal personality when referring to duty holders.



#### Country example 4

##### United Kingdom

*Health and Safety at Work etc. Act 1974, section 37(1)*

"Where an offence ... committed by a **body corporate** is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer ... he as well as the body corporate shall be guilty of that offence ..."

Similar provisions are contained in the OSH legislation of other countries such as Kenya (The Occupational Safety and Health Act No. 15 of 2007, section 108(5)) and Trinidad and Tobago (The Occupational Safety and Health Act, 2004, section 83(3)).

**Japan**

*Industrial Safety and Health Act No. 57, 1972, article 122*

“Where a representative of a juridical person or a deputy hired or other employee of a **juridical person** or a person has perpetrated in respect to the service of said juridical person or said person a violation stated in Articles 116, 117, 119 or 120, the punishment of a fine stated in each of said Articles shall be imposed on the juridical person or said person in addition to the perpetrator.”

**France**

*French Criminal Code, 1992, article 121–2*

“**Legal persons**, with the exception of the State, are criminally liable, as provided for in Articles 121-4 to 121-7, for the offenses committed on their account by their organs or representatives.”

Traditionally, duty holders have been defined around the employment relationship, that is the employer, on the one hand, and the persons who have signed a contract of employment with that employer, on the other hand. This architecture is usually employed by labour laws or codes and the OSH law may rely on those definitions.

However, the scope of application of OSH laws is usually broader than that of labour laws or codes since it regulates the responsibilities not only of employers and workers but also of those who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use.

In addition, the scope of OSH laws should be defined bearing in mind the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which provides that Members should adopt, review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units. This prompts the question of how to ensure such appropriate coverage and protection of *all categories of workers* (including those who are not in an employment relationship) if the OSH law is constructed around the employment relationship. Recommendation No. 204 applies to all workers and economic units – including enterprises, entrepreneurs and households – in the informal economy, in particular:

- (a) those in the informal economy who own and operate economic units, including:
  - (i) own-account workers;
  - (ii) employers; and
  - (iii) members of cooperatives and of social and solidarity economy units;
- (b) contributing family workers, irrespective of whether they work in economic units in the formal or informal economy;
- (c) employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households; and
- (d) workers in unrecognized or unregulated employment relationships.

Moreover, the fragmentation of the workforce that implies the use of independent workers, contractors and subcontractors, as well as the rise of non-standard forms of employment – including project, task-based and casual workers; gig economy or platform workers; on-call workers; and agency workers – may give rise to situations in which these workers do not enjoy OSH protections when they are not in an employment relationship.

If policymakers decide to use the employment relationship to determine the scope of application of the OSH law, it will be important to define what the employment relationship is. In this regard, the Employment Relationship Recommendation, 2006 (No. 198) recommends that Members should consider the possibility of defining in their laws and regulations, or by other means, specific indicators of the existence of an employment relationship. This could enable Member States to combat the so called “disguised employment relationship”, which occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee. For example, hiring workers under a service contract as self-employed persons while de facto such workers have exactly the same working

conditions as the employees of the hiring entity, thus depriving these workers of the protection they are due. For further guidance, see ILO, “Employment Relationship: An Annotated Guide to ILO Recommendation No. 198”, 2007.

### Useful tools and resources



The ILO study “[Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects](#)” analyses the rise of non-standard forms of employment and the challenges they pose. It identifies four categories of OSH risks that are associated with these forms of employment: injury-related risks and accidents; mental health and harassment risks; exposure to poorer working conditions and hazards; and fatigue issues.

Since, as seen above, adopting the employment relationship to define the scope of application of an OSH law may leave many persons unprotected from exposure to OSH hazards, some countries have come up with alternative legislative techniques so as to ensure broad coverage, as described below.<sup>3</sup>

### Policy options



#### Legislative techniques used by countries to expand the scope of application of OSH laws beyond the traditional employment relationship laws

- Employing new concepts instead of or in addition to “employer”
- Enlarging the employer’s duty to cover persons who are not in an employment relationship with that employer
- Expanding the definition of “employer” beyond the traditional employment relationship
- Establishing joint liability
- Broadening the term “employee” or “worker” to include persons who are not in an employment relationship in addition to those who are

## 3.1 Employing new concepts instead of or in addition to “employer”

Some countries have created new concepts for duty holders that depart from the employment relationship as a precondition for establishing OSH duties. Examples of such countries include Australia, New Zealand, Kenya and Singapore.

In Australia and New Zealand, the primary duty holder is referred to as a “*person conducting a business or undertaking*” (PCBU). A PCBU is defined as an individual, conducting a business alone or in partnership, or an organization, regardless of whether the business or undertaking is conducted for profit or gain (that is, a corporation, a partnership, a school, a franchise, a builder or an association) and creates obligations in relation to workers, the latter being defined in a very broad manner, including contractors, subcontractors, agency workers and outworkers, who are engaged or caused to be engaged by the PCBU, as well as workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are at work in the business or undertaking.

In Kenya and Singapore, the concept of the “occupier” has been created in addition to that of the “employer”. In Kenya, the notion of an occupier is broader than that of the employer and includes the latter. In Singapore, the term “occupier” is different from that of the term “employer” and includes the person who registers a factory and the person who is in charge, manages or controls the premises. However, the occupier is also considered to be the employer responsible for the workers’ safety and health, unless the occupier proves that the employer is another person. The law envisages a number of duties for the occupier who is not an employer, including the duty to ensure that the workplace, machinery and tools are safe. If the occupier is also an employer, they will be responsible as well for all other duties that the law assigns to employers.

<sup>3</sup> General reflection on the scope of application bearing in mind various country practices.



## Country example 5

### Australia

**Act:** *Work Health and Safety Act 2011 (similarly regulated in the New Zealand Health and Safety at Work Act 2015)*

**Definition:** *Section 5*

- (1) A person conducts a business or undertaking:
  - (a) whether the person conducts the business or undertaking alone or with others; and
  - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.
- (3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.
- (4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (5) An elected member of a local authority does not in that capacity conduct a business or undertaking.
- (6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.
- (7) A volunteer association does not conduct a business or undertaking for the purposes of this Act
- (8) In this section, *volunteer association* means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

**Duties:** *Section 19*

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:
  - (a) workers engaged, or caused to be engaged by the person; and
  - (b) workers whose activities in carrying out work are influenced or directed by the person while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

### Kenya

**Act:** *Occupational Safety and Health Act No. 15 of 2007*

**Definition:** *Section 2*

... "Occupier" means the person or persons in actual occupation of a workplace, whether as the owner or not and includes an employer;

**Duties:** *Section 6*

Every occupier shall ensure the safety, health and welfare at work of all persons working in his workplace.

### Singapore

**Act:** *Workplace Safety and Health Act No. 7 of 2006*

**Definition:** *Section 4*

... "occupier", in relation to any premises or part of any premises, means:

- (a) in the case of a factory where a certificate of registration has to be obtained in relation to the premises pursuant to any regulations — the person who is, or is required to be, the holder of the certificate or permit; and
- (b) in the case of any other premises — the person who has charge, management or control of those premises either on his own account or as an agent of another person, whether or not he is also the owner of those premises;

*Section 6 (5)*

Where a person carries on any work in a factory —

- (c) the occupier of the factory shall be deemed to be the employer of the person; and
- (d) the provisions of this Act shall apply as if the occupier of the factory were the employer of the person, unless the occupier of the factory proves that he is not the employer of the person.

**Duties:** *Section 11*

It shall be the duty of every occupier of any workplace to take, so far as is reasonably practicable, such measures to ensure that:

- (a) the workplace;
  - (b) all means of access to or egress from the workplace; and
  - (c) any machinery, equipment, plant, article or substance kept on the workplace,
- are safe and without risks to health to every person within those premises, whether or not the person is at work or is an employee of the occupier.

### 3.2 Enlarging the employer's duty to cover persons who are not in an employment relationship with that employer

If a country decides to define the term “employer” based on the employment relationship, it may expand their duty or liability to cover those other workers who are not in an employment relationship but whose workplace or working tools or methods are under the control or influence of the employer.

For example, in the United Kingdom, section 3 of the Health and Safety at Work etc. Act 1974 places a duty on employers and the self-employed to ensure “that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety”. This extends the employer's OSH obligations to workers (such as contractors, agency workers and volunteers) with whom it may not have a direct employment relationship. But it also creates a duty owed to a wide range of other people (customers, occupiers of premises and service users), broadening the scope of OSH into the field of public safety. It also creates duties for other persons who have control over the premises in relation to persons using those premises.



#### Country example 6

##### United Kingdom

*Health and Safety at Work etc. Act 1974*

##### Section 3

- (3) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.
- (4) It shall be the duty of every self-employed person (who conducts an undertaking of a prescribed Description) to conduct (the undertaking) in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.
- (5) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

##### Section 4

- (1) This section has effect for imposing on persons duties in relation to those who (a) are not their employees; but (b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there, and applies to premises so made available and other non-domestic premises used in connection with them.
- (2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.
- (3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to (a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or (b) the safety of or the absence of risks to health arising from plant or substances in any such premises; that person shall be treated, for the purposes of subsection (2) above, as being a person who has control of the matters to which his obligation extends.

**Singapore**

*Workplace Safety and Health Act No. 7 of 2006, section 12(2)*

It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him in the workplace.

**3.3 Expanding the definition of “employer” beyond the traditional employment relationship**

This approach has been adopted in some countries in various forms. As country example 7 shows, in Singapore and Spain, the laws treat temporary agency workers as if they were employees of the person/company they provide their service to, whom the law deems to be their employer, while in South Africa and Ontario, Canada, laws follow the practice of “*deeming*”, where by categories of persons can be treated as an employer or employee for the purposes of those laws even if they may not be in an employment relationship.



**Country example 7**

**Singapore**

**Act:** *Workplace Safety and Health Act No. 7 of 2006, section 6 (4)*

**Definition:** Where:

- (a) an employer places an employee (referred to in this subsection as the loaned employee) at the disposal of another person to do work for that other person; and
- (b) there is no contractual relationship between the employer and that other person regarding the work to be performed by the loaned employee, then, for the purposes of this Act —
  - (i) the loaned employee shall be regarded as if [they] were an employee of that other person (instead of [their] employer) while the loaned employee is at work for that other person;
  - (ii) that other person shall be regarded as if [they] were the employer of the loaned employee while the loaned employee is at work for that other person; and
  - (iii) the loaned employee shall be regarded as if [they] were at work when doing work for that other person.

**Spain**

**Act:** *Prevention of Occupational Risks Act No. 31 of 1995, article 3, refers to the Workers' Statute, approved by Royal Legislative Decree No. 2, 2015, article 1*

**Definition:** This law is applicable to workers who voluntarily provide their services against a remuneration to other persons and within the organization and under the direction of these other persons, whether legal or natural, called employer.

For the purposes of this law, employers are all persons, whether natural or legal, or communities of goods that receive the services of the persons referred to in the previous section, as well as from those hired to be transferred to user companies by temporary employment agencies.

**South Africa**

**Act:** *Occupational Health and Safety Act No. 85, 1993, section 1(2)*

**Definition:** The Minister may by notice in the *Gazette* declare that a person belonging to a category of persons specified in the notice shall for the purposes of this Act or any provision thereof be deemed to be an employee, and thereupon any person vested and charged with the control and supervision of the said person shall for the said purposes be deemed to be the employer of such person.

### Ontario, Canada

**Act:** *Occupational Health and Safety Act, 1990, section 1(1)*

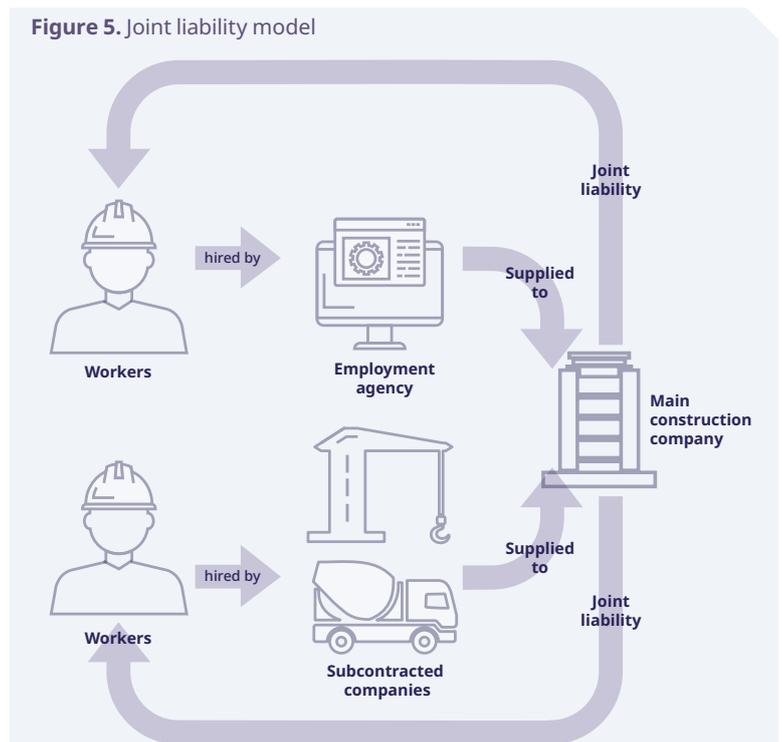
**Definition:** ... “employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

## 3.4 Establishing joint liability

Countries may opt to establish the *joint liability* doctrine by law. The joint liability doctrine refers to a situation in which there are various interrelated duty holders, each of them entirely liable for the sum of their obligations and the sum of damages they have caused. The objective of the joint liability doctrine is to ensure that a plaintiff can seek compliance with their rights and obtain the payment of a debt or a compensation due from a duty holder who is unwilling or unable to comply, where there are other subjects who have an interrelation with that primary duty holder and where such interconnection enables these other subjects to prevent a violation from happening.

The joint liability doctrine is not a new concept and has been applied in other fields of law, such as civil, commercial and fiscal law. In labour law, it is not rare to find legal provisions in national legislation that envisage the application of this doctrine for the recovery of unpaid wages, social security contributions and compensation for occupational injuries. For example, article 29 of the Employment Contract Law No. 20.744 of Argentina states that “Workers who, having been hired by third parties with a view to supplying them to companies, will be considered direct employees of the company that uses their services. In this case (...) the contracting third parties and the company for which the workers provide or have provided services will be jointly liable for all the obligations arising from the employment relationship and any related social security duties”.

The joint liability model is typically used to hold the main employer or undertaking *jointly* responsible for individuals who perform work for them but are formally employed by contractors and recruitment agencies (thus individuals who are not in an employment relationship with that main employer or undertaking), in particular when these workers perform at the premises of the main employer. Here, by the “main employer” we refer to the person or undertaking who owns the business/ generates the work and engages another company/agency to provide workers to execute such work. In order to ensure that these workers enjoy the same OSH protections as those directly employed by the main employer or undertaking, the latter may be placed under a duty to provide and ensure safe and healthy working conditions for these indirect workers. So for example, if a worker of a subcontractor suffers an occupational injury on a construction site, the joint responsibility doctrine could enable this worker to sue their direct employer (the subcontracted company), the main employer or client company that has contracted the subcontractor, or the owner of the construction site (property developer).





## Country example 8

### Nicaragua

*General Hygiene and Safety at Work Act No. 618, 2007, article 35*

The employer, owner or legal representative of the main undertaking shall require contractors and subcontractors to comply with the obligations of OSH legislation in their workplaces. In case of non-compliance, employers, contractors and subcontractors are jointly liable for the prejudice caused to workers.

### Peru

*Law No. 29783 on Safety and Health at Work*

Article 68 establishes that the employer in whose facilities workers carry out activities jointly with workers of contractors, subcontractors, special service companies and cooperatives of workers, or whoever assumes the main contract, is the one who guarantees:

- (c) The design, implementation and evaluation of a management system in occupational safety and health for all workers, people who provide services, personnel under training modalities, visitors and users who are at the same workplace.
- (d) The duty of prevention (in the field of) safety and health of workers and all personnel who are in the working facilities.
- (e) The verification of the insurance according to the current regulations contracted by each employer during the execution of the work. In case of non-compliance, the main company is jointly liable for damages and compensation that may arise.
- (f) The monitoring of compliance with the current legal regulations on safety and health at work by their contractors, subcontractors, special service companies or cooperatives of workers who provide work or services at the workplace ... to the main employer. In case of non-compliance, the main company is jointly liable for damages and compensation that may arise.

Article 77 establishes that workers, regardless of their contractual modality, who maintain a working relationship with the employer or with contractors, subcontractors, special service companies or cooperatives of workers, or are under training or service provision modalities, are entitled to the same level of protection in matters of health and safety at work.

Article 103 defines the liability of the principal employing entity in relation to OSH matters. It indicates that the principal employing entity shall respond directly for breaching the obligation to guarantee the safety and health of workers, those who provide services, personnel under training modalities, visitors and users, workers of companies and contractor entities and subcontractors that develop activities in their facilities. Likewise, companies that use companies providing temporary and complementary services respond directly for breaches of duty to guarantee the safety and health of the workers in their facilities.

### Malaysia

*Occupational Safety and Health Act 1994, Act 514, section 52(1)*

Where a body corporate contravenes any provision of this Act or any regulation made thereunder, every person who at the time of the commission of the offence is a director, manager, secretary or other like officer of the body corporate shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the body corporate or severally, and every such director, manager, secretary or other like officer of the body corporate shall be deemed to be guilty of the offence.

### United States

*Safety and Health Regulations for Construction No. 1926.16*

1926.16(c)

... With respect to subcontracted work, the prime contractor and any subcontractor or subcontractors shall be deemed to have joint responsibility.

1926.16(d)

Where joint responsibility exists, both the prime contractor and his subcontractor or subcontractors, regardless of tier, shall be considered subject to the enforcement provisions of the Act.

### 3.5 Broadening the term “employee” or “worker” to include persons who are not in an employment relationship in addition to those who are

As seen under subsection (b) above, the duty of care of the employer may be extended beyond their immediate employees or workers to cover anyone whose safety and health may be negatively impacted by the activity of the undertaking. The OSH laws in some countries, such as the United Kingdom and Singapore, explicitly refer to employers’ duties towards other individuals who may not be in an employment relationship with the employer but who may perform some work for the employer, such as self-employed workers, contractors and subcontractors and their workers, agency workers, volunteers, apprentices, trainees and interns.

Another legislative technique that some countries use to achieve the same objective is to define the term worker broadly so as to include these other persons, in addition to those in an employment relationship, who are under the control of the person(s) or entity in charge of the workplace, working practices or tools. This can be done by including specific categories of workers within the realm of the definition of “worker”. Figure 6 takes stock of these different categories of workers that have been included in the definition of “worker” in some countries and jurisdictions, including Australia, New Zealand and Ontario (Canada).<sup>4</sup>

**Figure 6.** Categories of persons that can be considered as “workers” under the OSH law



4 Another example is a bill submitted to the United Kingdom Parliament that proposed to equalize the concepts of worker and employee and provide a unique definition that relies on a single factual element: providing labour to another person. Consequently, anyone who provides labour, independently of the form of engagement it has with the party to whom labour is provided, would be considered a “worker” or “employee”.

*Workers (Definition and Rights) Bill (2017–2019), article 1*

- (1) There shall be a single employment status for workers and employees for the purpose of employment rights and employer responsibilities in the workplace.
- (2) *...Definition of “worker” and related expressions*
  - (1) In this Act “worker” means an individual who—
    - (a) seeks to be engaged by another to provide labour,
    - (b) is engaged by another to provide labour, or
    - (c) where the employment has ceased was engaged by another to provide labour, and is not genuinely operating a business on his or her own account.
  - (2) In this Act “employee” means an individual who—
    - (a) seeks to be engaged by another to provide labour,
    - (b) is engaged by another to provide labour, or
    - (c) where the employment has ceased was engaged by another to provide labour, and is not genuinely operating a business on his or her own account.
  - (3) In this Act a person is an “employer” if he or she engages another to provide labour, whether directly or through another, and the person providing the labour is not genuinely operating a business on his or her own account.



### Country example 9

#### Australia and New Zealand

*Work Health and Safety Act, 2011, section 7(1)*  
*Health and Safety at Work Act 2015, section 19(1)*

In this Act, unless the context otherwise requires, a worker means an individual who carries out work in any capacity for a PCBU, including work as—

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work in the business or undertaking; or
- (e) an outworker (including a homeworker); or
- (f) an apprentice or a trainee; or
- (g) a person gaining work experience or undertaking a work trial; or
- (h) a volunteer worker; or
- (i) a person of a prescribed class.

#### Ontario (Canada)

*Occupational Health and Safety Act, 1990, section 1*  
 “worker” means any of the following, [...]

1. A person who performs work or supplies services for monetary compensation.
  2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
  3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, private career college or other post-secondary institution
- [...]
5. Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation;



### Questions for discussion

- Brainstorm the advantages and disadvantages that each of the above options may have in your country?
- Which option do you think is the most appropriate in the socio-economic context of your country? Why?

#### 4. Where and when are the obligations of the OSH law applicable?

In addition to determining *who* owes OSH obligations and who those obligations are owed to, the question of scope requires consideration of *where* those obligations are owed.

As discussed in section I, early OSH legislation was directed only at a limited range of workplaces and industries. This meant that the scope of application was often defined in very precise and narrow ways.



##### Country example 10

###### United Kingdom

###### *Factories Act, 1937*

Section 151 specified activities such as “the business of hooking, plaiting, lapping, making-up or packing of yarn or cloth” and “printing by letterpress, lithography, photogravure, or other similar process, or bookbinding”. If a workplace did not fall within one of specified categories in that Act or other industry-specific legislation, then OSH duties did not apply.

As discussed above, this old-fashioned approach to delimit the application of laws to certain industries was replaced by the principle of universality introduced by Convention No. 155, which states in Articles 1 and 2 that OSH principles apply to “all branches of economic activity” and to “all workers”.

There are several ways to define **where and when** the OSH law is applicable. Some of them are presented below.



##### Design options

- (i) Defining the term “workplace” to indicate where the law is applicable.
- (ii) Using the formula “where work is carried out” and “being at work” to indicate where and when the law is applicable.
- (iii) Enumerating places or branches of economic activity to which the law applies.

Convention No. 155 defines the term **workplace** as follows: “**all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer**”.

The definition of workplace embedded in Convention No. 155 is broad and aligned with the principle of universality. Using the expressions “where work is carried out” and “being at work” may also allow for a wide coverage.

On the other hand, enumerating places or industries is a technique that presents serious limitations since it risks leaving outside the scope of application of the law all those industries which are not explicitly listed. If lawmakers wish to intentionally exclude a specific industry/workplace, a safer approach for doing so would be to define *when* and *where* universally and to explicitly exclude that industry/workplace. This would prevent over-delimiting unintentionally the scope of application of the OSH law.

Another option for lawmakers is to explicitly list workplaces where the law is applicable in addition to defining universally the scope of application of the law. While this option may seem redundant (as a universal application covers any workplaces including those listed), it may be useful in countries in which those workplaces have been traditionally left outside the scope of the OSH law. This would make it clear that those workplaces are covered by the law and thus prevent contrary interpretations. Country example 11 illustrates the above approaches.



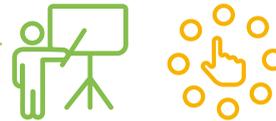
Country example 11					
	Bulgaria	Finland	New Zealand	Nicaragua	United Kingdom
Act	<i>Occupational Safety and Health Act, 1997, article 2.1</i>	<i>Occupational Safety and Health Act No. 738, 2002, section 5</i>	<i>Health and Safety at Work Act, 2015, section 16</i>	<i>General Hygiene and Safety at Work Act No. 618 of 2007, article 2</i>	<i>Health and Safety at Work etc. Act 1974, section 52</i>
Design option	Uses the formula “where work is carried out”	Explicitly enumerates places that are covered	Defines “workplace”	Enumerates branches of economic activity that are covered	Defines “at work”
Provision	This applies to all enterprises and places, <b>where work or training activities are carried out</b> , regardless of the form of organization, the type of ownership or the legal grounds on which the work or the training are performed.	This Act also applies to work which an employee performs in his or her home or some other place he or she has chosen, in the employer’s home or on the employer’s assignment in some other person’s home or under related conditions.	In this Act, unless the context otherwise requires, a <b>workplace—</b> <b>(a) means a place where work is being carried out, or is customarily carried out, for a business or undertaking; and</b> <b>(b) includes any place where a worker goes, or is likely to be, while at work.</b>	This Law, its Regulations and the Regulations are of mandatory application to all natural or legal persons, national and foreign, that are established or establish themselves in Nicaragua, for which work is carried out in industrial, agricultural, commercial, construction, public and private service or of any other nature, without prejudice to the faculties and obligations that other Laws grant to other public institutions within their respective competences.	An employee is <b>at work</b> throughout the time when he is in the course of his employment, but not otherwise; A person holding the office of constable is <b>at work</b> throughout the time when he is on duty, but not otherwise; and] A self-employed person is <b>at work</b> throughout such time as he devotes to work as a self-employed person;

## 5. What is the scope of the term “occupational safety and health”?

Convention No. 155 states that “Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control as well as the chemical, physical and biological substances and agents under their control are safe and without risk to **health**”.

**Occupational health** is defined by the Joint ILO/WHO Committee on Occupational Health as a discipline “aiming at the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize: the adaptation of work to man and of each man to his job”.<sup>5</sup>

Consequently, OSH covers not only physical but also psychological and mental safety and health at work. Many countries have explicitly clarified this in their OSH legislation in different ways.



Country example 12 Design options			
<b>Various design options</b>	Including a definition of occupational safety and health in the OSH law that encompasses both physical and mental status	Defining the scope/ purposes of the law to make it clear that OSH encompasses both physical and mental status	Encrypting both physical and mental status in the duties under the OSH law
<b>Country</b>	Angola	Finland	Republic of Kore
<b>Law</b>	<i>Safety, Hygiene and Health at Work Decree No. 31/1994, article 3(1)</i>	<i>Occupational Safety and Health Act No. 738/2002, section 1</i>	<i>Occupational Safety and Health Act of 2012, article 5(1)</i>
<b>Provision</b>	The law clarifies that the term “health”, in relation to work, concerns not merely the absence of disease or infirmity but also the physical and mental elements affecting health that are directly related to safety and hygiene at work.	The objective of the Occupational Safety and Health Act is to improve the working environment and working conditions in order to ensure and maintain the work ability of employees as well as to prevent occupational accidents and diseases and eliminate other hazards from work and the working environment to the physical and mental health of employees.	An employer shall observe the standards for the prevention of industrial accidents as prescribed by this Act and any order issued under this Act, provide workers with information on safety and health in the workplace, prevent workers’ health problems caused by physical fatigue, mental stress (...)”

<sup>5</sup> Adopted at the first session of the Joint ILO/WHO Committee on Occupational Health in 1950 and revised at its twelfth session, in 1995; see ILO document GB.264/STM/4.



## Useful tools and resources

### Relevant resources

Countouris, Nicola. 2019. *Defining and Regulating Work Relations for the Future of Work*. ILO.

Davidov, Guy, and Brian Langrille, eds. 2006. *Boundaries and Frontiers of Labour Law: Goals and Means in the*

*Regulation of Work*. Hart Publishing

Davidov, Guy, et al. 2015. "The Subjects of Labor law: "Employees' and Other Workers". In *Research Handbook in Comparative Labor Law*, edited by Matthew Finkin and Guy Mundlak, 115–132 . Edward Elgar Publishing.

Ewing, Keith, et al., eds. 2016. *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers' Rights*. Institute of Employment Rights.

ILO. 2016. *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects*.

## Checklist

### Section 02



Relevant ILS	Legislative element	YES	NO	If YES: Cite the relevant law and article (if applicable)	If NO: Explain why (describe the issue and related challenges)	Recommendations on how to address the issue and related challenges	Other observations/ notes
<b>C155, Arts 1-2</b>	<b>1.</b> Is the main OSH law applicable to all branches of economic activity and to all workers (is your main OSH law a framework, universal OSH law)? <i>Please list any exclusions, with reasons, and indicate whether OSH in the excluded economic activities or categories of workers is regulated in other laws.</i>						
<sup>-1</sup>	<b>2.</b> Is the scope of application of your OSH law based on the employment relationship?						
	(a) If "yes": How do you ensure OSH for workers who are not in an employment relationship?						
	(b) If "no": How is the scope of application defined? <i>Check all that apply:</i>						
	- employing new concepts instead of or in addition to "employer";						
	- enlarging the employer's duty to cover persons who are not in an employment relationship with that employer;						
	- expanding the definition of "employer" beyond the traditional employment relationship;						
	- establishing joint liability; or						
	- broadening the term "employee" or "worker" to include persons who are not in an employment relationship in addition to those who are.						
	- Other? <i>Please explain:</i>						

<sup>1</sup> General reflection on the scope of application bearing in mind various country practices.

Relevant ILS	Legislative element	YES	NO	If YES: Cite the relevant law and article (if applicable)	If NO: Explain why (describe the issue and related challenges)	Recommendations on how to address the issue and related challenges	Other observations/ notes
- <sup>1</sup>	<b>3.</b> Does the definition of “workers” in your (draft) OSH law refer to:						
	(a) only employees in a direct “employment relationship” with the employer?						
	(b) any workers who perform at the workplace or whose work or work tools are under the direct/ indirect control of the employer?						
	(c) supply labour/agency workers and contractors and subcontractors’ workers?						
	(d) any other category of workers? <i>Please explain:</i>						
<b>C155, Art. 12</b>	<b>4.</b> Does the OSH Law foresee other duty holders such as designers, manufacturers, importers and suppliers of machinery, equipment and substances?						
- <sup>1</sup>	<b>5.</b> Does the OSH law include any other rights holders that may be affected by the operations of the undertaking?						
<b>C155, Art. 3</b>	<b>6.</b> Does the OSH law include a definition of “a workplace”? Are there any challenges associated with that definition?						
<b>C155, Art. 3</b>	<b>7.</b> Is the scope of the regulated topic (OSH) defined?						



SECTION

03

**Duties of institutions in relation  
to national OSH systems and  
OSH governance instruments**

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# ▶ 03

## Duties of institutions in relation to national OSH systems and OSH governance instruments

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### 1. Introduction

#### International labour standards



- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)
- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)

Convention No. 187 requires all countries to develop a **national OSH system**. Article 1(b) defines the national OSH system as “the infrastructure which provides the main framework for implementing the national policy and national programmes on occupational safety and health”.

Article 4 of Convention No. 187 requires ILO Member States to establish, maintain, progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers.

**The elements of a national OSH system** are set out in article 4 of Convention No. 187 and are as follows:

- ▶ consultation with social partners
- ▶ OSH legislation
- ▶ authority responsible for OSH
- ▶ compliance mechanism, including inspection systems
- ▶ arrangements to promote cooperation at the enterprise
- ▶ national tripartite advisory body on OSH
- ▶ information and advisory services on OSH
- ▶ OSH training
- ▶ occupational health services
- ▶ research on OSH
- ▶ collection and analysis of data on occupational injuries and diseases
- ▶ collaboration with relevant insurance or social security schemes
- ▶ support mechanisms for MSMEs and the informal economy



### Useful tools and resources

ILO, “Training Package on Development of a National Programme of Occupational Safety and Health”: Module 2: **“Introduction to the National Occupational Safety and Health System”**, 2012.

## 2. Key considerations when establishing institutions with OSH competencies

Any public or parastatal institution that requires public funds for its operation should have a legal basis. When regulating institutions, legislation usually provides for the following:

- ▶ establishment;
- ▶ purpose, powers, functions and duties;
- ▶ resources (including funding and the institution’s capacity to employ, engage and appoint staff); and
- ▶ accountability.

While many OSH laws provide for the purpose, powers, functions and duties of institutions with OSH responsibilities and sometimes for their establishment, their resources and accountability are usually regulated in administrative laws. OSH laws may further regulate the governance aspects of the authority responsible for OSH.

### Establishment of institutions with OSH responsibilities

Within the given legal framework, the public authorities responsible for OSH may be established and organized by a ministerial order, directly through the OSH law or through specific laws. Legal instruments used to create a public institution with OSH competencies usually outline its structure, composition and functions.

### **Purpose, powers, functions and duties of institutions with OSH responsibilities**

The relevant public institution will usually have its powers and functions specified in the legislation that establishes it. However, OSH-related duties may also be set out in the OSH legislation that provides for the OSH system.

Convention No. 187 and its accompanying Recommendation No. 197 set out the elements of a national OSH system. Institutions are typically assigned with the function to develop these elements, including:

- (a) developing national OSH profile, policy, programme and legislation, including implementing regulations, codes of practice and technical standards, in consultation with the most representative organizations of employers and workers;
- (b) monitoring and securing compliance with OSH legislation, including through inspection systems (see Section X on Enforcement of OSH legislation);
- (c) conducting consultation and cooperating with workers' and employers' organizations and other stakeholders;
- (d) promoting, at the level of the undertaking, cooperation among management, workers and their representatives as an essential element of workplace-related prevention measures, including promoting collective agreements that incorporate OSH (see section V on Workers' representatives on OSH);
- (e) establishing a system for data collection (see section IX on OSH Data collection systems: recording, notification and statistics), the preparation of analyses and the publication of OSH statistics, including the possible use of classification schemes that are compatible with the latest relevant international schemes;
- (f) providing advice and information on OSH to duty holders under OSH legislation, as well as to the community (such as through institutional websites and telephone or online hotlines);
- (g) promoting and supporting research on OSH;
- (h) establishing OSH curricula for OSH professionals (see section VIII of the Support Kit);
- (i) developing occupational health services (see section VII on Occupational health services);
- (j) mainstreaming OSH into education and vocational training;
- (k) creating compensation mechanisms for work-related injuries, diseases or deaths, including provisions for related functions (such as prevention), governance board constitution and chairmanship, and the source of funding;
- (l) setting up support mechanisms for the progressive improvement of OSH conditions in MSMEs and the informal economy; and
- (m) coordinating with other public authorities with OSH competencies;

The OSH legislation could also include a provision that allows the public institution to perform any other functions or to exercise any other powers that are conferred on it under other laws (including regulations). Public authorities are also responsible for international relations in the OSH arena.

### **Resources of institutions with OSH responsibilities**

Public authorities must have sufficient financial and human resources at their disposal in order to effectively perform their functions. It is not generally necessary to provide for these resources in OSH legislation; instead provision can usually be made in legislation of wider application for the purposes of government, such as laws related to the state budget.

#### **Financial resources**

Various sources of funding are typically used to provide financial resources. National practice varies and depends on the relevant government policies on the funding of public sector bodies.

Funding models include:

- (a) central funding (that is, an annual budgetary appropriation);
- (b) income raised from fees for applications for and the issuing of licences and from the provision of other services (such as workplace audits);
- (c) an OSH levy payable by businesses that are covered by the relevant OSH laws;
- (d) OSH funding drawn from the premiums paid for compulsory worker's compensation insurance or a share of the budget of the employment insurance scheme or fund; and
- (e) fines for offences and associated costs that are ordered by a court to be paid to the responsible agency or department.

Central funding provided by a budgetary appropriation places the cost of OSH institutions on the community as a whole. Cost recovery places the funding costs directly on duty holders who are under the OSH regulatory regime. A combination of both is an option. Central funding is commonly provided for in annual budget appropriations, which are usually dealt with in budget legislation. On the other hand, cost-recovery mechanisms may need to be provided for in OSH legislation or in supporting legislation.

### Human and other resources

A public sector body with OSH responsibilities must have the necessary staff, technical equipment, transport and accommodation to be able to perform its functions in an efficient and effective way.

In determining what resources will be needed, decision-makers may find it helpful to assess the nature and size of the regulatory task. Useful measures include:

- (a) the size, nature and distribution of industry sectors and the types of work performed in them;
- (b) the number of businesses and other persons and entities that will come within the scope of the regulatory task;
- (c) geographical considerations, including the size of the country and the difficulties in accessing workplaces;
- (d) the types of work organization and work relationships that exist and their prevalence;
- (e) the number of worksites that will have to be inspected;
- (f) the optimal frequency of inspections and their relative priority (if data about OSH incidents and near misses are available, they may guide the setting of priorities);
- (g) the technical skills and equipment that will be needed to ensure effective inspections;
- (h) training and continuing education requirements for staff (particularly for OSH inspectors); and
- (i) the resources that may be necessary for efficient and effective information, assistance and education activities, as well as for enforcement action, including prosecutions.

Consideration of these factors may influence any budgetary appropriations made under legislation, but the actual decisions and their implementation will generally be administrative.

### Accountability of institutions with OSH responsibilities

Most public institutions are subject to well-established public-sector accountability requirements. Typical accountability arrangements for a public institution with OSH responsibilities will usually include those set out below. They are often included in broader legislation that covers all or most public institutions; however, some of them may also be included in OSH legislation.



<b>Checklist</b> Checklist of accountability requirements for public institutions with OSH responsibilities		
<i>Obligation</i>	<i>Yes/no</i>	<i>Observations</i>
Prepare an annual report, which normally includes details of activities, performance, trends and use of resources during the reporting year, including detailed financial statements.		
Prepare an annual report on labour inspection activities (required by Articles 20 and 21 of Convention No. 81; it may be included in the institution's annual report).		
Prepare annual financial statements.		
Mechanisms for administrative and judicial review of administrative decisions.		
Where responsible ministers are authorized to issue general directions about the operations of public institutions, prepare periodic reports on compliance with direction(s).		
Requirement to consult with social partners (such as through a standing tripartite committee or advisory body).		
Prepare reports due under anti-corruption legislation.		

### 3. Establishing OSH institutions within national OSH systems and defining their duties by OSH law

Figure 7. Institutions that constitute a national OSH system



### 3.1 Ministries, agencies and specialized OSH departments

Article 4(2)(b) of Convention No. 187 requires ILO Member States to assign an authority or body, or authorities or bodies with the responsibility for occupational safety and health. Usually there are various ministries with OSH competencies, including the ministries in charge of labour, health and social services.

These are usually charged with developing a national OSH profile, policy, programme and legislation, including implementing regulations, codes of practice and technical standards, in consultation with the most representative organizations of employers and workers.

They may also be responsible for developing other elements of the national OSH system, including to:

- provide advice and information on OSH to duty holders under OSH legislation and to the community (such as through institutional websites and telephone or online hotlines);
- fund or conduct research on OSH;
- collect and analyse data on occupational injuries and diseases, including statistics; and
- support mechanisms for the progressive improvement of OSH conditions in MSMEs and in the informal economy, such as awareness-raising and training activities.

The CEACR reported that ministries in charge of labour had key OSH responsibilities, including formulating and implementing OSH policy and administering and enforcing OSH legislation, but that the ministries in charge of health and of social services also had functions and responsibilities, particularly with regard to occupational health services and accident and disease compensation, and that some countries had merged their ministries of labour, health and social services.<sup>1</sup>

The CEACR also reported that many governments notified it that the designated national authority is a specialized OSH agency or specific OSH department within the ministry responsible for labour, while other governments also highlighted the role of the labour inspectorate, the ministry of health and national social security authorities in OSH governance.<sup>2</sup>



#### Policy options

##### Main constitutional modalities of central authorities responsible for OSH

- (a) **OSH department within the ministry of labour**
- (b) **OSH department within the ministry of health**
- (c) **Independent OSH agency**

1 ILO, [Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 \(No. 155\), the Occupational Safety and Health Recommendation, 1981 \(No. 164\), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, ILC.98/III\(1B\), 2009, para. 46.](#)

2 ILO, [Working Together to Promote a Safe and Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning the Promotional Framework, Construction, Mines and Agriculture, ILC.106/III\(1B\), 2017, para. 139.](#)



**Country example 13**

<b>Argentina: Superintendence of Occupational Risks</b>	
<b>Law</b>	<i>Occupational Risks Act No. 24557 of 1995, articles 35–38</i>
<b>Establishment</b>	The Superintendence of Occupational Risks is an autonomous body under the Ministry of Labour and Social Security. The Superintendent is the highest authority of the Superintendence and is appointed by the Executive Branch through a selection process.
<b>Purpose, powers, functions and duties</b>	<ul style="list-style-type: none"> <li>- Monitor compliance with OSH, with the faculty to dictate complementary rules</li> <li>- Monitor and supervise the operation of occupational risk insurers</li> <li>- Impose sanctions under this law</li> <li>- Require the necessary information to fulfil its responsibilities</li> <li>- Dictate its internal rules of procedure</li> <li>- Maintain the national register of occupational disabilities</li> <li>- Supervise and control self-insured companies and their compliance with OSH laws</li> </ul>



**Country example 14**

<b>Ireland: National Authority for Occupational Safety and Health</b>	
<b>Law</b>	<i>Occupational Risks Act No. 24557 of 1995, articles 35–38</i>
<b>Establishment</b>	The National Authority for Occupational Safety and Health shall continue in being and shall from the commencement of this Act be known as the Health and Safety Authority ... The Authority shall be a body corporate ...
<b>Purpose, powers, functions and duties</b>	<ul style="list-style-type: none"> <li>(a) to promote, encourage and foster the prevention of accidents, dangerous occurrences and personal injury at work in accordance with the relevant statutory provisions;</li> <li>(b) to promote, encourage, foster and provide education and training in the safety, health and welfare of persons at work;</li> <li>(c) to encourage and foster measures promoting the safety, health and welfare of persons at work;</li> <li>(d) to make adequate arrangements for the enforcement of the relevant statutory provisions</li> <li>(e) to monitor, evaluate and make recommendations to the Minister regarding implementation of and compliance with—             <ul style="list-style-type: none"> <li>(i) the relevant statutory provisions, and</li> <li>(ii) best practice relating to safety, health and welfare at work, and the review and maintenance of relevant records by employers;</li> </ul> </li> <li>(f) to promote, encourage and foster cooperation with and between persons or bodies of persons that represent employees and employers and any other persons or bodies of persons, as appropriate, as regards the prevention of risks to safety, health and welfare at work in accordance with the relevant statutory provisions;</li> <li>(g) to make any arrangements that it considers appropriate for providing information and advice on matters relating to safety, health and welfare at work;</li> </ul>

<b>Purpose, powers, functions and duties</b>	<p>(h) to make any arrangements that it considers appropriate to conduct, commission, promote, support and evaluate research, surveys and studies on matters relating to the functions of the Authority and for this purpose -</p> <p>(i) to foster and promote contacts and the exchange of information with other persons or bodies of persons involved in safety, health and welfare at work in and outside the State; and</p> <p>(ii) as it considers appropriate, to publish in the form and manner that the Authority thinks fit, results arising out of such research, studies and surveys;</p> <p>(i) to prepare and adopt a strategy statement and to monitor its implementation;</p> <p>(j) to prepare and adopt a work programme;</p> <p>(k) to comply with any directions in writing, whether general or particular, relating to its functions, other than those functions referred to in paragraph that the Minister may from time to time give to the Authority;</p> <p>(l) to give to the Minister any information relating to the performance of its functions that the Minister may from time to time require; and</p> <p>(m) to perform any additional functions conferred on the Authority by order.</p>
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### Useful tools and resources

- Data from other countries is available at ILO, "[LEGOSH](#)", under theme 3.1, "Institutions and programmes relating to OSH administration and/or enforcement".
- ILO, [Ministries of Labour: Comparative Overview. History, Mandate, Challenges, World-wide Database and Organizational Charts](#), 2013.

## 3.2 Labour inspectorate

Article 4(2)(c) of Convention No. 187 requires Member States to establish mechanisms for ensuring compliance with national laws and regulations, including systems of inspection. Labour Inspectorates are the public entities assigned with monitoring and enforcing compliance with labour laws.



### Policy options

#### Main governance modalities of labour inspectorate

- Department within the ministry of labour**
- Body with significant autonomy that reports to the ministry of labour**
- Independent entity that reports to the government or the parliament**

#### Scope of mandate of labour inspectorate

- Generalists: responsible for supervising all legal provisions relating to working conditions and the protection of workers, including OSH**
- Specialists: responsible for supervising exclusively OSH**
- Integrated system: fixed number of inspectors in a department are devoted to one topic and the rest to another**

In some countries, there is a single labour inspectorate that is responsible for administering and enforcing labour laws and OSH laws, while in other countries there are various labour inspectorates with specialized functions. Apart from the distinction between social inspection (covering general labour law issues, such as working time, wage payments and the protection of specific groups of workers like pregnant women, youth and apprentices) and OSH inspection, there is often further specialization within the OSH segment (see below). Occasionally, the control of payment of social security also falls within the ambit of labour inspection; however, in most countries a separate social security authority takes care of that.

Different bodies may be responsible for administering OSH laws on particular hazards and risks (for example, the transport and storage of dangerous goods and hazardous substances) or laws on OSH in specific sectors of industry (for example, maritime activities, mining and quarrying, offshore oil and gas production, electricity and nuclear power generation, and road, rail and air transportation).

The main challenges for specialist systems are how to:

- ▶ ensure coordination among different labour inspectors or labour inspectorates, including those supervising general labour laws;
- ▶ follow a systemic approach to addressing compliance problems, as inspectors tend to drive investigations by focusing exclusively on their mandate and may fail to observe the relation between the different components of work (such as the relation between OSH and types of employment relationship, working hours, discrimination, harassment and so on);
- ▶ minimize the burden for employers who have to deal with different individuals and bodies on different labour-related topics;
- ▶ avoid inconsistency in regulatory interpretations and approaches;
- ▶ tackle obstacles to sharing information, evidence and data; and
- ▶ deal with jurisdictional overlap.

The challenges faced by generalist systems include ensuring that inspectors have enough knowledge and competence on all the topics they cover, while the main challenge for integrated systems is likely to be coordination.

The constitutive and functioning modalities of labour inspectorates may be more complex in federal systems, for which each state or province in the federation may adopt its own administrative arrangements. The federal government may also have a regulator or regulators for labour inspection matters in general or for OSH matters specifically in the national jurisdiction, in addition to state regulators. In these cases, cooperative arrangements are necessary to allow cross-jurisdictional labour inspection and OSH issues to be addressed effectively.

Labour inspectorates are typically established and regulated by administrative laws and specific labour inspection statutes, particularly in civil law countries. In common law countries, these may be largely regulated for OSH matters in OSH laws, especially if there is a separate authority for OSH matters. In any case, OSH laws generally embed the OSH-related duties and powers of labour inspectors, which are discussed in section XIII of this Support Kit.



### Country example 15

#### New Zealand

<b>Law</b>	<i>Health and Safety at Work Act 2015, No. 70, sections 189 and 191</i>
<b>Establishment and purpose</b>	<p>Except to the extent that a designation under section 191 is in force, WorkSafe is the regulator for the purposes of this Act.</p> <p>(1) The Prime Minister may designate an agency listed in subsection (3) as a designated agency, having regard to the specialist knowledge of that agency.</p> <p>(3) The agencies are—</p> <ul style="list-style-type: none"> <li>(a) the chief executive of a department or departmental agency (...);</li> <li>(b) a Crown entity (...);</li> <li>(c) the Commissioner of Police;</li> <li>(d) the Chief of Defence Force.</li> </ul>

### Country example 16

#### United Kingdom

<b>Law</b>	<i>Health and Safety at Work etc. Act 1974, section 18</i>
<b>Establishment and purpose</b>	<p>Authorities responsible for enforcement of the relevant statutory provisions.</p> <p>(1) It shall be the duty of the (Safety and Health) Executive to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority or class of authorities is ... made responsible for their enforcement.</p> <p>(1A) The Office for Nuclear Regulation is responsible for the enforcement of the relevant statutory provisions as they apply in relation to GB nuclear sites ...</p> <p>(1B) Subsection (1A) is subject to any provision of health and safety regulations making the Office of Rail Regulation, Office of Rail and Road responsible for the enforcement of any of the relevant statutory provisions to any extent in relation to such sites.</p>

### Country example 17

#### Spain

<b>Law</b>	<i>Labour and Social Security Inspection System Act No. 23/2015, article 1</i>
<b>Establishment and purpose</b>	<p>The Labour and Social Security Inspection system constitutes the set of legal principles, norms, organs, civil servants and material means, including IT, that contribute to achieve its mission (as established in this law).</p> <p>The Labour and Social Security Inspection is a public service that is responsible for monitoring compliance with labour norms and demanding relevant responsibilities, providing advice and, where appropriate, arbitration, mediation and conciliation on these matters, which will be carried out in accordance with the principles of the social and democratic State enshrined in the Spanish Constitution and with Conventions No. 81 and No. 129 of the International Labour Organization.</p> <p>The labour norms referred to in the previous paragraph include those related to prevention of occupational risks, social security and social protection, placement, employment, vocational training and protection for unemployment, social economy, emigration, migratory movements and work of foreigners, equal treatment and opportunities and non-discrimination in employment ...</p>

### 3.3 National tripartite advisory body addressing OSH issues

Article 4(3)(a) of Convention No. 187 requires ILO Member States to set up, where appropriate, a national tripartite advisory body, or bodies, addressing occupational safety and health issues. This body provides a space for the government to conduct consultations and cooperate with workers’ and employers’ organizations and other stakeholders.

The CEACR has recalled that consultations with the social partners are essential for the functioning of the national OSH system; noted the establishment of tripartite bodies for the consideration of labour issues in a number of countries; and highlighted the potential of these institutions as a forum for consultations and periodic review.<sup>3</sup>

A number of countries have established a national tripartite body to discuss OSH matters specifically and exclusively. This can be a national tripartite OSH council, a committee or a commission. It is usually composed of representatives of the government and of employers’ and workers’ organizations and is typically designated an advisory role. National tripartite bodies may be established to deal with labour issues in general, including OSH (especially in countries where financial resources are particularly limited) or to address OSH specifically and exclusively.

Many countries expand the tripartite composition to include representatives of OSH associations and academic institutions, as well as of various public authorities with OSH competencies, in particular the labour inspectorate and the social security institution. Some national laws also call for women to participate in these committees. In many cases, the tripartite national body is set up through the overarching OSH law or where this does not exist by the labour law, while its composition and functioning may be also regulated in implementing regulations.

Although specialized tripartite structures that work on OSH specifically and exclusively may be preferred, existing non-specialized tripartite structures may also add OSH to their mandate if constituents find this to be a better option in their specific national context. OSH matters can then be dealt with by a dedicated subcommittee.



#### Country example 18

##### Peru: National Council for Safety and Health at Work

<b>Law</b>	<i>Safety and Health at Work Act No. 29783 of 2011, articles 10–11</i>
<b>Structure and composition</b>	<p>The National Council for Safety and Health at Work is comprised of the following representatives:</p> <ul style="list-style-type: none"> <li>- a representative of the Ministry of Labour and Employment Promotion, who chairs the Council;</li> <li>- a representative of the Ministry of Health;</li> <li>- a representative of the National Centre for Occupational Health and Environmental Protection in Health;</li> <li>- a representative of ESSALUD;</li> <li>- four representatives of employers’ associations on a proposal of the National Confederation of Private Business.</li> </ul> <p>Four representatives of the unions on a proposal from the General Confederation of Workers of Peru, the Single Confederation of Workers, the Confederation of Workers of Peru and the Autonomous Confederation of Workers of Peru.</p>

<sup>3</sup> ILO, *General Survey*, 2017, para. 146.

<b>Purpose, powers, functions, and duties</b>	<p>The functions of the National Council for Safety and Health at Work are the following:</p> <ul style="list-style-type: none"> <li>- develop and approve the National Policy on Safety and Health at Work and monitor its implementation;</li> <li>- articulate the respective roles and responsibilities, OSH duties of workers' representatives, public authorities, employers, workers and any other bodies involved in the implementation of the national policy on OSH, taking into account the complementary nature of these responsibilities;</li> <li>- propose amendments or propose legislation on OSH, as well as the application of ratified international instruments on the subject;</li> <li>- implement a culture of risk prevention, increasing the awareness, knowledge and commitment to general safety and health at work, especially with regard to government authorities, employers, and employers' and workers' organizations;</li> <li>- articulate and coordinate technical cooperation in the sectors of health and safety at work;</li> <li>- coordinate training, human resources training and scientific research in health and safety at work;</li> <li>- strengthen the National Register for Information and Notification of Accidents and Occupational Diseases, ensuring its maintenance and reporting, and facilitate the exchange of statistics and data on safety and health at work between the competent authorities, employers, workers and their representatives;</li> <li>- ensure the development of health services at work, in accordance with legislation and the possibilities of the system's stakeholders;</li> <li>- promote the expansion and globalization of risk insurance work for all workers;</li> <li>- coordinate development and information dissemination of activities in safety and health at work;</li> <li>- monitor compliance with the regulations on occupational safety, coordinating the actions of oversight and control of the actors in the system; and</li> <li>- monitor compliance with the National Policy on Safety and Health at Work.</li> </ul>
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### Country example 19

#### Thailand: National Committee on Occupational Safety, Health and Environment

<b>Law</b>	<i>Safety, Occupational Hygiene and Workplace Environment Act B.E. 2554, 2011, articles 24–25</i>
<b>Structure and composition</b>	<ul style="list-style-type: none"> <li>- Permanent Secretary of Ministry of Labour (<i>Chairperson</i>)</li> <li>- Director-General of Pollution Control Department</li> <li>- Director-General of Department of Disease Control</li> <li>- Director-General of Department of Skills Development</li> <li>- Director-General of Department of Public Works and Town and Country Planning</li> <li>- Director-General of Department of Industrial Works</li> <li>- Director-General of Department of Local Administration</li> <li>- Director-General of Department of Labour Protection and Welfare</li> <li>- 8 representatives of employer party</li> <li>- 8 representatives of employee party</li> <li>- 5 qualified OSH experts</li> <li>- Executive Director of the OSH Bureau (<i>Secretary</i>)</li> </ul>
<b>Purpose, powers, functions and duties</b>	<ul style="list-style-type: none"> <li>- formulate recommendations on OSH policies, workplans or measures and submit to Minister</li> <li>- provide recommendations to the Minister on the issuance of ministerial regulations, notifications and rules for the execution of this Act</li> <li>- prepare comments for government agencies concerning OSH promotion ...</li> </ul>



**Country example 20**

<b>Togo: Technical Advisory Committee on Safety and Health at Work</b>	
<b>Establishment</b>	<i>Labour Code: Act No. 2006-010 of 2006, article 168;</i> <i>Composition and functioning of the Advisory Committee on Safety and Health at Work decree No. 008/2011/MTESS/CAB/DGTLs, 2011</i>
<b>Structure, composition and leadership</b>	<i>Management committee</i> <ul style="list-style-type: none"> <li>- Director General of Labour and Social Legislation (president)</li> <li>- representative of Ministry of Health (Vice-President)</li> <li>- representative of Environment Ministry</li> <li>- representative of National Social Security Fund</li> <li>- representative of employers' organizations</li> <li>- representative of workers' organizations</li> <li>- <i>Members</i> <ul style="list-style-type: none"> <li>- two representatives of Ministry of Labour</li> <li>- two representatives of Ministry of Health</li> <li>- representative of Ministry of Industry</li> <li>- representative of Ministry of Environment</li> <li>- representative of Ministry of Agriculture, Livestock and Fisheries</li> <li>- representative of Ministry of Public functions</li> <li>- representative of Ministry of Transport</li> <li>- representative of Ministry of Mines</li> <li>- representative of Ministry for Economy and Finance</li> <li>- representative of National Social Security Fund</li> <li>- representative of Ministry of Public Services</li> <li>- two representatives of most representative employers' organizations</li> <li>- two representatives of most representative workers' organizations</li> </ul> </li> </ul>
<b>Purpose, powers, functions and duties</b>	<ul style="list-style-type: none"> <li>- ensure and coordinate prevention activities related to industrial and occupational risks, including measures to combat HIV/AIDS, smoking, stress, the use of alcohol and drugs and violence in the workplace.</li> <li>- study and advise on the rules relating to:                             <ul style="list-style-type: none"> <li>• conditions of work, general and specific health, safety and hygienic measures at the workplace</li> <li>• organization and functioning of safety and health services</li> <li>• conditions under which monitoring of workers' health and the workplace is performed and monitoring and evaluation of activities related thereto</li> <li>• applications for approval of protection devices for equipment, machinery or dangerous parts thereof, to be installed at the workplace</li> <li>• applications for approval of potentially toxic products</li> <li>• list of medical equipment, medicines and bio-consumables and other facilities to be made available to OSH services staff</li> </ul> </li> </ul>

**Country example 21**

<b>Women membership of national labour/OSH committees</b>	
<b>Guinea</b> <i>Labour Law Code No. L/2014/072/CNT, 2014, article 515(3)</i>	When appointing the members, the principle of equality between men and women should be taken into account.
<b>Rwanda</b> <i>Mission, Organization and Functioning of the National Labour Council, Order No. 125/03, 2010, article 4</i>	At least 30 per cent of the members of the national labour council must be women.
<b>Malaysia</b> <i>Occupational Safety and Health Act 1994 No. 514, section 9(1)(d)</i>	Three or more persons, of whom at least one shall be a woman, shall be from organizations or professional bodies whose member activities are related to OSH and who, in the opinion of the Minister, are able to contribute to the work of the Council.

### Useful tools and resources



- Data from other countries is available at ILO, “[LEGOSH](#)”, under theme 8.1, “National OSH Committee, Commission, Council or Similar Body”.

## 3.4 Research and information entity on OSH

Article 4(3)(b) and (e) of Convention No. 187 requires member States to provide as appropriate information, advisory services and conduct research on OSH.

The CEACR recalled that the flow and availability of information remains an important component of a national preventive safety and health culture and encouraged governments, in consultation with employers’ and workers’ organizations, to continue to take measures to ensure that OSH information is available, accessible and communicated in a comprehensible manner, including through the establishment and strengthening of information and advisory services.<sup>4</sup>

The national authority can set up a specialized public research centre and allocate resources to conduct OSH research, information and advisory services. A number of countries have established national OSH research institutes with the main mission to lead research in this area.

### Useful tools and resources



- Extensive information on the scope of work, governance modalities, resources and areas of technical expertise of OSH knowledge agencies, institutions and organizations around the world can be found in the ILO’s [Database on OSH Agencies, Institutions and Organizations INTEROSH](#)
- More resources are available through the ILO project “[Modernizing International Networking in Occupational Safety and Health](#)”.

Research functions may also be integrated in the portfolio of the primary national OSH authority or may be carried out by academic institutions, associations of OSH professionals or networks of organizations.

Public specialized research centres can be set up through the OSH law, as is the case of the United States National Institute for Occupational Safety and Health. They can also be established by a stand-alone law that deals specifically and exclusively with the establishment, governance and functions of such bodies (as is the case for the Republic of Korea and Finland).

Countries that cannot afford an extensive research centre are encouraged to collaborate with academia, with neighbouring countries or more developed countries to benefit from their research findings, which are often transferable to similar situations in other countries.

<sup>4</sup> ILO, General Survey, 2017, para. 352.



**Country example 22**

<b>United States National Institute for Occupational Safety and Health</b>	
<b>Law</b>	<i>Occupational Safety and Health Act of 1970, section 22</i>
<b>Purpose, powers, functions, and duties</b>	<p>The aim of the Institute is to:</p> <ul style="list-style-type: none"> <li>- develop and establish recommended occupational safety and health standards; and</li> <li>- conduct such research and experimental programmes as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and after consideration of the results of such research and experimental programmes make recommendations concerning new or improved occupational safety and health standards.</li> </ul> <p>The Director, in carrying out the functions of the Institute, is authorized to –</p> <ul style="list-style-type: none"> <li>- prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;</li> <li>- in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;</li> <li>- obtain the services of experts and consultants; and</li> <li>- enter into contracts, grants or other arrangements, or modifications thereof.</li> </ul>
<b>Accountability</b>	The Director shall submit to the Secretary of Health and Human Services, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.
<b>Resources</b>	<p>The Director may:</p> <ul style="list-style-type: none"> <li>- receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;</li> <li>- receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift; and</li> <li>- accept and utilize the services of voluntary and non-compensated personnel and reimburse them for travel expenses, including per diem.</li> </ul>

**Country example 23**

<b>Korean Occupational Safety and Health Agency</b>	
<b>Law</b>	<i>Korea Occupational Safety and Health Agency Act</i>
<b>Purpose, powers, functions, and duties</b>	<ul style="list-style-type: none"> <li>- research and develop technology to prevent occupational accidents and diseases;</li> <li>- provide education and publishing information on occupational safety and health; and</li> <li>- provide international cooperation support in the field of occupational safety and health.</li> </ul>
<b>Resources</b>	Endowments/donations given by the Government, the Industrial Accident Compensation Insurance and the Prevention Fund, among other revenues (see also Occupational Safety and Health Act, article 4).



### Country example 24

Finnish Institute of Occupational Health	
Establishment	<i>Act on the Operation and Financing of the Institute of Occupational Health</i>
<b>Structure, composition and leadership</b>	The Finnish Institute of Occupational Health (FIOH) is an independent public body based in Helsinki. The FIOH consists of national centres of excellence. The regional offices of the FIOH are regulated by government decree. The FIOH works under the direction and supervision of the Ministry of Social Affairs and Health.
<b>Purpose, powers, functions, duties</b>	<ul style="list-style-type: none"> <li>- carry out and promote research on the interaction between work and health and, as part of this work, process personal data so that it can study and monitor the health of employees;</li> <li>- conduct studies and measurements concerning the prevention and elimination of health risks and hazards occurring at workplaces or elsewhere in the working environment and provides services in this area;</li> <li>- provide independent health care, medical care and laboratory activities aimed at establishing, treating and preventing occupational, work-based and work-related diseases and for assessing work ability; and</li> <li>- deliver training, publication and information activities.</li> </ul>
<b>Resources</b>	In the state budget, the Government approves the Institute's activities every year and transfers funds to cover four fifths of the budget of the Institute approved by the Ministry of Social Affairs and Health. Within the limits of the state budget, the FIOH can also be given additional government subsidies for carrying out research and service activities in the field of OSH and occupational health care or activities that need special support.



### Useful tools and resources

- Data from other countries is available at ILO, "LEGOSH", under theme 8.1, "National OSH Committee, Commission, Council or Similar Body".

## 3.5 Entities providing OSH services

Article 7 of Convention No. 161 provides that occupational health services can be organized by both private and public entities, which may be:

- public authorities or official services such as health care centres, (occupational) health institutes, hospital, polyclinics and so on; or
- employment injury insurance schemes.



### Country example 25

Finland	
<i>Operations and Financing of the Finnish Institute of Occupational Health Act No. 159 of 1978, section 2</i>	
The Finnish Institute of Occupational Health carries out independent health care, medical and laboratory activities aimed at detecting, treating and preventing occupational, work-based and work-related diseases and for assessing work ability.	

**Mauritania***Labour Code, Law No. 2004-017, article 255*

The National Occupational Health Office is responsible for the administration of medical services at work.

**Zambia***Occupational Health and Safety Act of 2010, No. 36, section 6*

The functions of the Occupational Health and Safety Institute are to "... conduct medical examinations for occupational health and safety purposes catering for all industries including agriculture and construction; provide an occupational laboratory service ...".

For further information, refer to section VIII on occupational health services.

### 3.6 Coordination of employment injury insurance schemes

These schemes provide for benefits in case of occupational injury or disease and may also support prevention.

Usually, national social security law provides details on the rights and duties of workers, employers and governments regarding workers' access to adequate employment injury benefits in case of occupational accidents or disease. Regulations on employment injury benefits contained in social security law should be aligned with international labour standards, namely the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); and the Employment Injury Benefits Recommendation, 1964 (No. 121). In these cases, reference to social security law may be made within the OSH law in order to avoid duplication.

When employment injury benefits are not regulated in social security laws, OSH laws may complete this regulatory gap by establishing a short but fundamental provision to ensure that workers and their dependants are entitled to benefits for work-related sickness, injury or death.

Employment injury insurance (EII) schemes are usually within the mandate of social security institutions governed by the ministry of labour. In some countries, social security has been placed under another ministry (such as the ministry of economy); however, placing social security and OSH under the same public authority is preferred as it facilitates collaboration, coordination of activities and real-time data-sharing through a common information technology network.

The discussion below targets those countries that have not yet implemented an EII scheme to provide access to adequate and effective employment injury benefits for the victims of occupational injuries and diseases.

#### International labour standards

- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
- Employment Injury Benefits Recommendation, 1964 (No. 121)



Article 31 of Convention No. 102 provides that ILO Member States shall ensure the provision of employment injury benefits as one pillar of the social security system. Convention No. 121 and Recommendation No. 121 relate exclusively to that pillar.

### Types of contingencies

Convention No. 102 and Convention No. 121 (Articles 32 and 6, respectively) set out the minimum standards in relation to the contingencies that can arise out of an occupational accident or disease. These comprise in particular:

- a morbid condition, that is any condition requiring medical or allied care;
- incapacity for work resulting from such a condition and involving suspension of earnings, as defined by national legislation;
- total loss of earning capacity or partial loss thereof in excess of a prescribed degree, likely to be permanent, or corresponding loss of faculty;
- the loss of support suffered as the result of the breadwinner's death; and
- sicknesses and diseases (in relation to workplace/employment).

### Types of employment injury benefits

According to Article 9 of Convention No. 121, the following benefits should be made available to address the above contingencies:

- (e) medical care and allied benefits in respect of a morbid condition; and
- (f) cash benefits in respect of a temporary or permanent incapacity, and death (sickness benefit for the period of incapacity, disability pension in case of loss of earning capacity, and survivors' pension in case of death of a breadwinner, respectively).

#### (a) Medical care

According to Article 10(1) of Convention No. 121:

"1. Medical care and allied benefits in respect of a morbid condition shall comprise-

- (a) general practitioner and specialist in-patient and outpatient care, including domiciliary visiting;
- (b) dental care;
- (c) nursing care at home or in hospital or other medical institutions;
- (d) maintenance in hospitals, convalescent homes, sanatoria or other medical institutions;
- (e) dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances kept in repair and renewed as necessary, and eyeglasses;
- (f) the care provided by members of such other professions as may at any time be legally recognized as allied to the medical profession, under the supervision of a medical or dental practitioner; and
- (g) the following treatment at the place of work, wherever possible:
  - (i) emergency treatment of persons sustaining a serious accident; and
  - (ii) follow-up treatment of those whose injury is slight and does not entail discontinuance of work."

Article 10(2) of Convention No. 121 stipulates that the aforementioned benefits should be afforded with a view to maintaining, restoring or improving (when this is possible) the health of the injured person and his ability to work.

#### (b) Cash benefits and mode of payments

Article 36 of Convention No. 102 and Articles 14–21 of Convention No. 121 define the minimum cash benefit levels that should be guaranteed in case of temporary incapacity, permanent disability or death.

### Principles applicable to benefits

- ▶ Determination of loss of earning capacity and/or loss of faculty should be done in such a manner as to avoid hardship.
- ▶ For temporary incapacity, the amount of the benefits is a percentage of the worker's average wage preceding the injury, but Convention No. 121 requires that it should not be lower than 60 per cent.
- ▶ Total permanent disability benefits are paid at the same rate as temporary benefits, and the amount of partial permanent disability benefits are reduced proportionately in line with the degree of disability.
- ▶ Survivors' benefits are calculated as a percentage of the worker's average wage for the months preceding the death. This percentage depends on the structure of the family: according to Convention No. 121, the amount allowed to a widow or widower with two young children (standard beneficiary) should not be less than 50 per cent of the worker's average wage.
- ▶ Periodic payment for temporary and permanent disability and survivors' benefits should be regularly adjusted in line with the cost-of-living increase. Convention No. 121 authorizes lump sum only in certain specific cases (such as funeral grants or low degree of disability).
- ▶ **Recommendation No. 121 provides further details on definitions and procedures and other practical tips for effective implementation.**

### Other requirements for EII schemes, including prevention

Article 26 of Convention No. 121 requires ILO Member States to:

- “(a) take measures to prevent industrial accidents and occupational diseases;
- (b) provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and
- (c) take measures to further the placement of disabled persons in suitable employment.”

### Principles underpinning EII schemes

Employment injury benefits are provided through EII schemes. The effectiveness of these relies on a specific set of principles:

- ▶ “no fault”: a worker who is injured, or in case of death his/ her survivor(s), would qualify for benefits without any necessity to prove the “fault” of the employer;
- ▶ rights-based benefits;
- ▶ collective sharing of liability among employers; and
- ▶ independent and transparent governance for the scheme's administration.

### Modalities of EII schemes

In practice, there are two main modalities of EII schemes: social insurance and employers' liability.

#### Definition

A social insurance scheme is a social protection scheme that guarantees protection through an insurance mechanism, based on: (1) the prior payment of contributions, that is before the occurrence of the insured contingency; (2) risk-sharing or “pooling”; and (3) the notion of a guarantee. The contributions paid by (or for) insured persons are pooled together and the resulting fund is used to cover the expenses incurred exclusively by those persons affected



commercial insurance, risk-pooling in social insurance is based on the principle of solidarity as opposed to individually calculated risk premiums. However, some risk assessment may be made in the premium with regard to the industry and/or specific factory to reflect the specific nature of the risk covered. This type of premium setting has the advantage of providing good incentive at industry/factory levels regarding the setting of accident prevention measures.

Employers' liability schemes place the legal liability on employers and face increased difficulties in providing long-term and indexed periodical payments since individual employers cannot set up mechanisms to pay periodic payments for a long time. Also, this approach may deprive OSH agencies of the necessary resources for implementation, which are often provided by a social insurance scheme if in place.

Source: ILO, [World Social Protection Report 2017–19: Universal Social Protection to Achieve the Sustainable Development Goals](#), 2017.

While the first generation of EII schemes was based on the employers' liability model, experience has shown that those outcomes have been sub-optimal. The system is not seen as complying with the principles enshrined in ILO social security standards as set out above.

There is a trend today in both developed and developing countries to move towards the introduction of social insurance schemes. Many of the major exporting countries in Asia, such as Cambodia, China, India, Indonesia, Pakistan, the Philippines, Thailand and Viet Nam, have established a social insurance scheme or are now considering this option. Although only a portion of workers are covered by these schemes, measures are taken to gradually increase covered workers. In Africa, although many countries still have employers' liability schemes, some countries (such as Ethiopia, Malawi and the United Republic of Tanzania) have adopted a social insurance scheme or are in the process of introducing such schemes. It is indeed regarded as a solution to the chronic ineffectiveness and inadequacy of workers' compensation schemes for injured workers or dependants of deceased workers. EII schemes based on the collective responsibility of employers to support social insurance programmes should be promoted as the optimal approach to providing employment injury benefits.

### Useful tools and resources



See further discussion on modalities of EII schemes in the [ILO World Social Protection Report](#)

In order to achieve affordable, sustainable and reasonable costs, however, EII schemes have to strike a balance between employment injury protection, with best services delivered effectively and efficiently, and cost consciousness on the part of the providers.

### Role of EII schemes in prevention

There is a direct link between the number of occupational accidents and illnesses and the costs of running an EII scheme: the more accidents and diseases there are to compensate, the less financially sound the EII scheme. Therefore, it is in the interest of EII scheme to proactively engage in prevention by allocating a share of its budget to invest in prevention initiatives, led by the EII scheme itself or third parties. Investment in prevention is required by Article 26(a) of Convention No. 121.

Practice has demonstrated that the EII scheme's structure should fit in a holistic approach that links prevention functions (reducing the number of workplace accidents and diseases), rehabilitation (ensuring that individuals affected by employment injury can return to work, if possible) and compensation (where affected workers are unable to return to work). This is in line with the current social security approach, which is not merely curative (only providing compensation) but also preventive and reintegrative.

EII schemes can support preventive actions by various means, including:

- providing financial incentives such as “bonus/malus” and non-financial incentives such as certificates, prizes, competitions and quality marks;
- providing evidence-based data on related risks in given sector of activities or specific enterprises;
- funding research and training on OSH;
- providing medical check-ups for workers;
- assisting undertakings with risk assessment, the measurement of hazardous substances or ergonomic analysis and advice; and
- disseminating information.

The linkage of EII schemes with prevention activities is facilitated wherever the EII scheme and OSH services are under the umbrella of a single organization. Coordination of activities and data-sharing in real time through a common information technology network becomes easier. The EII scheme is a good source of data for mainstreaming prevention activities and providing evidence-based data on related risks in a given sector of activities. EII schemes can also play a significant role in research into and provision of high-quality training on OSH-related issues.

An experience-based rating system of contributions may be implemented by EII schemes, whereby the past performance of employers in respect of occupational injuries and diseases is considered when setting the amount of the contribution in order to provide an incentive to employers for preventing such injuries and diseases.

EII schemes can also support preventive actions by providing medical check-ups for workers; assisting undertakings with risk assessment; providing measurements of hazardous substances or ergonomic analysis; and advice and disseminating information.

### Useful tools and resources



For a detailed discussion of EII schemes, see ILO, *Strengthening the Role of Employment Injury Schemes to Help Prevent Occupational Accidents and Diseases*, 2013.

Research shows that prevention pays. A study by the International Social Security Association (ISSA) and two German employers' organizations undertook revealed a 1.6 return on prevention (that is, for each investment of €1, the return was €1.60).

OSH or social security legislation may clearly establish the prevention role of EII schemes.



## Country example 26

### Bulgaria

*Social Insurance Code, 1999, articles 24(a) and 65*

The resources of the Work Injury and Occupational Sickness Fund shall be appropriated for the following: ... activities for prevention of work injuries and occupational sicknesses ...

The Work Injury and Occupational Sickness Fund shall finance activities for the prevention of work injuries and occupational sicknesses and for improvement of working conditions, such as:

- (a) providing assistance, counseling and cooperation to insurers for establishment and implementation of an efficient system for labour safety and health management;
- (b) participating in the development of national sector programmes (strategies) in the area of labour safety and health;
- (c) organizing training and qualification for workers in labour safety and health;
- (d) performing and commissioning research in the area of labour safety and health;
- (e) checking labour safety conditions in enterprises;
- (f) investigating work injuries and occupational sicknesses;
- (g) organizing campaigns and providing information to the public on labour safety and health; and
- (h) developing and participating in the development of laws and regulations on OSH;
- (i) studying and disseminating information on positive experiences in the area of safe working conditions; and
- (j) performing other activities related to the prevention of work injuries and occupational sicknesses.

### Central African Republic

*Decree No. 09-116 of 27 April 2009 establishing the application modalities of Law No. 06-035 on the Social Security Code, articles 133-135*

The National Social Security Fund may provide grants or advances to some employers to:

- reward any initiative for prevention, hygiene, safety and health at the workplace;
- study, facilitate the achievement of organizations for a better protection of workers;
- create and develop institutions, projects or services whose aim is to promote and improve methods of prevention, rehabilitation and re-education, and health and social services in general.

Prevention activities are financed by a prevention fund whose terms of reference and use are defined by the Board of Directors of the National Social Security Fund. The annual budget of the fund for prevention is equal to at least 10 per cent of the expenses of the occupational risks branch.

### Republic of Korea

*Occupational Safety and Health Act, article 61-3 (Financial Resources of Accident Prevention)*

"The financial resources to be appropriated to any of the following subparagraphs shall be provided from the Industrial Accident Compensation Insurance and Prevention Fund under Article 95 (1) of the Industrial Accident Compensation Insurance Act.

- (1) Expenses necessary for facilities related to accident prevention and the operation thereof;
- (2) Expenses necessary for accident prevention projects, work entrusted to non-profit corporations and the operation and management of the Fund; and
- (3) Business expenses for other projects necessary for accident prevention which are approved by the Minister of Employment and Labour."

## 4. Coordination and cooperation among institutions with OSH competencies



### International labour standards

- Occupational Safety and Health Convention, 1981 (No. 155)
- Labour Inspection Convention, 1947 (No. 81)
- Labour Administration Convention, 1978 (No. 150)

Article 15 of Convention No. 155 stipulates that “Each Member shall, after consultation at the earliest possible stage with the most representative organisations of employers and workers, and with other bodies as appropriate, make arrangements appropriate to national conditions and practice to ensure the necessary co-ordination between various authorities and bodies called upon to give effect to Parts II and III of this Convention” and that “whenever circumstances so require and national conditions and practice permit, these arrangements shall include the establishment of a central body”.

Convention No. 81 stipulates that “labour inspection shall be placed under the supervision and control of a central authority” (Article 4), which will facilitate better coordination, collaboration and reporting requirements. This relates to all geographical locations and technical aspects of labour inspection in the country (Articles 19–21).

Article 5 of Convention No. 81 requires the competent authority to make appropriate arrangements to promote “effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities” and “collaboration between officials of the labour inspectorate and employers and workers or their organisations”.

Article 4 of Convention No. 150 stipulates that “Each Member which ratifies this Convention shall, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly co-ordinated”.

The CEACR recalled the importance of guaranteeing coordination between the various authorities with responsibilities for OSH to permit the implementation of a coherent national policy on OSH.<sup>5</sup> It also indicated that coordination and cooperation between the different authorities involved in the administration of a national OSH system ensures coherence of action at all levels and helps the flow of and access to information and allows the views and concerns of social partners and other stakeholders to be taken into account.<sup>6</sup> The CEACR observed that coordinating bodies have been established in many countries, including Argentina, Australia, Austria, Belgium, Costa Rica, Honduras, Hungary, Ireland, Namibia, the Philippines, Senegal, Thailand, the United Republic of Tanzania and the United States.<sup>7</sup>

OSH legislation shall require competent authorities to coordinate and cooperate on OSH-related matters and establish relevant mechanisms, such as a national tripartite advisory body on occupational safety and health (as discussed above).



### Policy options

#### Approaches to information-sharing and coordination between public authorities include:

- (a) **Create a unified information system that is accessible to all authorities with OSH competencies**
- (b) **Merge inspection structures into a “single inspectorate” (retaining specialized departments but integrated in a single agency under unified management)**
- (c) **Set up a “coordination council” or other forum in which inspection agencies can meet, harmonize their practices and share information**

5 ILO, *General Survey*, 2017, para. 139.

6 ILO, *General Survey*, 2009, para.84.

7 ILO, *General Survey*, 2009, para.88.

## 5. Key OSH governance instruments: National policy, programme and profile

Developing a national profile, policy and programme are key functions of the central national authority in charge of OSH governance. The work of any public institution with OSH responsibilities should be consistent with and guided by the national OSH policy and programme and should fully take into consideration the existing national OSH situation, including the status of the national OSH system.



### International labour standards

- Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197)

### 5.1 National OSH policy

#### Formulation, implementation and periodical review of the national policy on OSH

Pursuant to Article 4 of Convention No. 155, “each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment”.

The CEACR noted that most governments that submitted reports under Article 19 of the ILO Constitution (for the production of the General Survey of 2017 on OSH Conventions) indicated that they have a national policy or that a policy is under development.<sup>8</sup>

#### Aims of a national OSH policy

The main objectives of the national OSH policy are to:

- prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment (Convention No. 155, Article 4(2)); and
- promote basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventive safety and health culture that includes information, consultation and training (Convention No. 187, Article 3(3)).

#### Main spheres of action that shall be taken into account by the national OSH policy

As set out in Article 5 of Convention No. 155, the policy shall take account of the following main spheres of action in so far as they affect occupational safety and health and the working environment:

- (a) design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents, work processes);

<sup>8</sup> ILO, *General Survey*, 2017, para.94.

- (b) relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers;
- (c) training, including necessary further training, qualifications and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health;
- (d) communication and cooperation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level; and
- (e) the protection of workers and their representatives from disciplinary measures.

The CEACR has noted that all countries that reported under Article 19 of the ILO Constitution (for the production of the General Survey of 2009 on OSH Conventions) indicated that effect was given to Articles 5(a) and 5(c) through their regulatory systems.<sup>9</sup>

### Functions and responsibilities that shall be captured by the national OSH policy

Article 6 of Convention No. 155 states that “the formulation of the policy referred to in Article 4 of this Convention shall indicate the respective functions and responsibilities in respect of occupational safety and health and the working environment of public authorities, employers, workers and others, taking account both of the complementary character of such responsibilities and of national conditions and practice”.

The CEACR has clarified that there is no one-size-fits-all model for a national OSH policy, and States have considerable latitude as to the shape that this policy takes, in consultation with the representative organizations of employers and workers.<sup>10</sup>

### Assessment of the OSH situation to inform the development and periodical review of the national OSH policy

Article 7 of Convention No. 155 states that “the situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals, either over-all or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results”. This situational assessment is also referred to as a “national OSH profile”.

The CEACR considers that the national policy process, with full participation of the social partners, remains the crucial engine for improving the national OSH situation and creating safe and healthy working environments. It underlined the indispensable nature of the cyclical national policy process for countries wishing to make progress towards target 8.8 of the Sustainable Development Goals (SDGs) on promoting safe and secure working environments for all workers, and emphasized that further attention should be paid by the tripartite constituents to ensuring not only the formulation, but also the full implementation of such policies, as well as the undertaking of comprehensive reviews to allow periodic adjustment in light of changing national situations and emerging technologies.<sup>11</sup>

#### Useful tools and resources



“ILO Training Package on Development of a National Programme of Occupational Safety and Health: [Module 1: The ILO’s Strategic Approach to Occupational Safety and Health](#)”, 2012.

<sup>9</sup> ILO, *General Survey*, 2009, paras 67 and 70.

<sup>10</sup> ILO, *General Survey*, 2017, para. 95.

<sup>11</sup> ILO, *General Survey*, 2017, para. 105.

Ideally, OSH legislation should clearly embed the duty of national authorities to develop a national OSH policy.



### Country example 27

#### Peru

*Safety and Health at Work Act No. 29783 of 2011, articles 4–6*

The State is required, in consultation with the most representative organizations of employers and workers, to formulate, implement and periodically review a national OSH policy, which is aimed at preventing accidents and injury to the health occurring during work, by minimizing the causes of hazards inherent to the working environment, as far as that is reasonable and feasible. The formulation of the national OSH policy shall clarify the roles and responsibilities in terms of OSH, public authorities, employers, workers and other bodies participating in OSH, taking into account the complementary nature of these responsibilities.

## 5.2 National OSH programme



### Definition

The national OSH programme is essentially a workplan that lists the OSH-related objectives and activities of the various public authorities with OSH competencies for a given time period. It often captures the roles of social partners and other stakeholders. Article 1(c) of Convention No. 187, captures the various elements of a national OSH programme. These elements are:

- the objectives to be achieved;
- the priorities of action to improve OSH and to achieve the above objectives;
- the means of action (for example the activities) to improve OSH and to achieve the above objectives;
- the time frame in which the means of action should be implemented and the objectives met; and
- the means (indicators) to assess progress.

### Requirements regarding the national OSH programme

Article 5 of Convention No. 187 and Paragraphs 13 and 14 of Recommendation No. 197 state that the national OSH programme should:

- be formulated, implemented, monitored, evaluated and periodically reviewed in consultation with social partners;
- be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health (national OSH profile);
- promote the development of a national OSH culture;
- contribute to the protection of workers by eliminating or minimizing work-related hazards and risks;
- include objectives, targets and indicators of progress;
- be supported by other complementary national programmes and plans which will assist in achieving progressively safe work; and
- be widely publicized, endorsed and launched by the highest national authorities.

The CEACR recalled that the development of a national OSH programme is a key operational element for the promotion of a safety and health culture and emphasized the importance of ensuring the implementation of such a programme, its monitoring and subsequent review, in consultation with the social partners, as well as performance evaluation using a methodology based on clear targets and indicators of progress .<sup>12</sup>



### Useful tools and resources

ILO, "[Training Package on Development of a National Programme of Occupational Safety and Health](#)", 2013.

Ideally, OSH legislation should clearly embed the duty of national authorities to develop a national OSH programme. Some countries adopt this instrument by means of law.

The CEACR recognized the importance of high-profile support in contributing to the successful implementation of national OSH programmes and the prioritization of OSH on national agendas and encouraged governments to take measures to ensure that the highest national authorities endorse the national OSH programmes. It noted that a significant number of States reported that they have adopted a national OSH programme or plan.



### Country example 28

#### North Macedonia

*Safety and Health at Work Act No. 1191 of 2007, article 4*

The Government ... shall adopt a programme for safety and health at work. The programme shall set out the strategy for the improvement of safety and health at work, related to the protection of the lives, health and working capability of employees and the prevention of injuries at work, as well as the prevention of occupational and other work-related diseases.

<sup>12</sup> ILO, *General Survey*, 2017, para. 153.

### 5.3 National OSH profile

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#### Definition

A national OSH profile is a document that summarizes the existing OSH situation in a country and the progress made towards achieving a safe and healthy working environment. The profile should be used as a basis for formulating and reviewing the national programme.

The national OSH profile is a powerful assessment tool that identifies the areas in which further development is needed to achieve a sound and effective national OSH system, as well as the level of prioritization of related necessary actions.

Recommendation No. 197, Paragraph 13, states that “Members should prepare and regularly update a national profile which summarizes the existing situation on occupational safety and health and the progress made towards achieving a safe and healthy working environment. The profile should be used as a basis for formulating and reviewing the national programme.”

The CEACR indicated that effective data collection and analysis is vital for the formulation of both short and long-term objectives and the setting and assessment of targets. It highlighted the importance of collection and compilation of national statistics in order to measure progress made on the SDGs.<sup>13</sup>

#### Elements of an OSH profile

Recommendation No. 197, Paragraph 14, provides guidance on what elements should be included in a comprehensive national OSH profile. The profile should include information identifying the elements of the national OSH system and any other related information, such as:

- ▶ the laws and regulations, collective agreements (where appropriate), and any other relevant instruments on occupational safety and health;
- ▶ the authority or body, or the authorities or bodies, responsible for occupational safety and health, designated in accordance with national law and practice;
- ▶ the mechanisms for ensuring compliance with national laws and regulations, including the systems of inspection;
- ▶ the arrangements to promote, at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures;
- ▶ the national tripartite advisory body, or bodies, addressing occupational safety and health issues;
- ▶ the information and advisory services on occupational safety and health;
- ▶ the provision of occupational safety and health training;
- ▶ the occupational health services in accordance with national law and practice;
- ▶ research on occupational safety and health;
- ▶ the mechanism for the collection and analysis of data on occupational injuries and diseases and their causes, taking into account relevant ILO instruments;
- ▶ the provisions for collaboration with relevant insurance or social security schemes covering occupational injuries and diseases;
- ▶ the support mechanisms for a progressive improvement of occupational safety and health conditions in MSMEs and the informal economy;
- ▶ coordination and collaboration mechanisms at national and enterprise levels, including national programme review mechanisms;
- ▶ technical standards, codes of practice and guidelines on occupational safety and health;

<sup>13</sup> ILO, *General Survey*, 2017, paras 159 and 161.

- ▶ educational and awareness-raising arrangements, including promotional initiatives;
- ▶ specialized technical, medical and scientific institutions with linkages to various aspects of occupational safety and health, including research institutes and laboratories concerned with occupational safety and health;
- ▶ personnel engaged in the area of occupational safety and health, such as inspectors, safety and health officers, and occupational physicians and hygienists;
- ▶ occupational injury and disease statistics;
- ▶ occupational safety and health policies and programmes of organizations of employers and workers;
- ▶ regular or ongoing activities related to occupational safety and health, including international collaboration;
- ▶ financial and budgetary resources with regard to occupational safety and health; and
- ▶ data addressing demography, literacy, economy and employment, as available, as well as any other relevant information.

#### Useful tools and resources



ILO, "Training Package on Development of a National Programme of Occupational Safety and Health: [Module 3: National OSH Profile and Analysis of the National OSH Situation](#)", 2013.

## Checklist Section 03



### 1. Checklist for public authorities with OSH competences

Relevant ILS	Are the following elements <sup>1</sup> regulated by legislation? Indicate the relevant law and article, where applicable					Other/observations (such as challenges and recommendations)
	Public authorities	Structure	Functions	Funding	Accountability	
<b>C187, Art. 4(2)(b)</b>	OSH Directorate/ Department within the Ministry of Labour					
<b>C187, Art. 4(2)(b)</b>	OSH Directorate/ Department within the Ministry of Health					
<b>C187, Art. 4(2)(b)</b>	OSH Directorate/ Department/Unit in any other ministry					
<b>C187, Art. 4(2)(b)</b>	Stand-alone institution					
<b>C187, Art. 4(2)(c)</b>	Labour inspectorate					
<b>C187, Art. 4(3)(a)</b>	National tripartite advisory body on OSH					
<b>C187, Art. 4(3)(b)(e)</b>	Research entity on OSH					
<b>C161, Art. 7</b>	Entities providing occupational health services					
<b>C102 C121</b>	Employment injury insurance scheme <sup>2</sup>					

<sup>1</sup> These elements are often regulated in non-OSH laws. If they are not already regulated elsewhere, they could be regulated in the OSH law.

<sup>2</sup> Usually regulated in social security laws; however, assessing this element may be appropriate in the framework of OSH legislation reform.

**2. Checklist for functions of public authorities with OSH competences**

Relevant ILS	Functions	Are these functions assigned by law to a specific public institution? Indicate Yes/No and the name of the corresponding public institution			Observations (such as challenges and recommendations)
		YES	NO	Responsible public authority	
C155, Arts 4–6 C187, Arts 3, 5 R197, Paras 13–14	Developing national OSH profile, policy and programme				
C187, Art. 4.2(a)	Developing OSH laws and regulations and any other relevant legal instruments on OSH. such as codes of practice and technical standards				
C187, Art. 4(2)(c)	Monitoring and securing compliance with the OSH legislation, including through inspection systems				
C187, Art. 4.2(d)	Promoting at the level of the undertaking, cooperation between management, workers and their representatives as an essential element of workplace-related prevention measures				
C187, Art. 4.3(3)(a)	Conducting consultation and cooperating with workers’ and employers’ organizations and other stakeholders				
C187, Art. 4.3(b)	Providing advice and information on OSH to duty holders				
C187, Art. 4.3 (c)	Mainstreaming OSH into education and vocational training				
-	Establishing OSH curricula for OSH professionals				
C187, Art. 4.3 (d)	Developing OSH services				
C187 Art. 4.3(e)	Promoting and supporting research on OSH				
C187, Art. 4.3(f)	Establishing a system for data collection analysis and publication of OSH statistics				
C187, Art. 4.3 (g)	Coordinating with other public authorities with competences in OSH, including relevant insurance or social security schemes				
C187, Art. 4.3 (h)	Setting up support mechanisms for a progressive improvement of OSH conditions in micro-enterprises, in small and medium-sized enterprises and in the informal economy				
C102 C121	Creating compensation mechanisms in case of work-related injury, disease or death including functions				

**3. Checklist for key instruments on OSH governance**

Relevant ILS	Tools for OSH governance	Does the law require the following key tools for OSH governance? <sup>3</sup>			Observations (e.g. challenges and recommendations)
		YES	NO		
C155, Arts 4–6 C187, Art. 3	Developing a national OSH policy				
C187, Art. 5	Developing a national OSH programme				
R197, Paras 13–14	Developing a national OSH profile				

<sup>3</sup> The law may also assign to the competent authority the function to develop these tools.



SECTION

04

## **OSH duties and rights**

Support Kit for Developing Occupational Safety and Health Legislation

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# 04

## OSH duties and rights

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### 1. Introduction

The concept of “labour rights” emerged during the industrial revolution, when workers began to mobilize against widespread harsh working conditions and dangerous working environments. In response to the emergence of the labour movement, the first laws regulating labour and workers’ rights were passed. The ILO was established at the end of the First World War based on the principle that peace can be maintained only if it is based on social justice.

The need to ensure safety and health at work is emphasized in the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations in 1976, which recognizes the right of everyone to work (Article 6); the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular, safe and healthy working conditions (Article 7(ii)(b)); the right to the highest attainable standards of physical and mental health, in particular the improvement of all aspects of environmental and industrial hygiene (Article 12(2)(b)); and the prevention, treatment and control of epidemic, endemic, occupational and other diseases (Article 12(2)(c)).

In addition, the Seoul Declaration on Safety and Health at Work of 2008, which was signed by approximately 50 high-level decision-makers from around the world, set the aspiration that “the right to a safe and healthy working environment should be recognized as a fundamental human right and that globalization must go hand in hand with preventative measures to ensure the safety and health of all at work”. The ILO Centenary Declaration for the Future of Work of 2019 recognizes that safe and healthy working conditions are fundamental to decent work.

This background sheds light on the importance of duly and clearly defining OSH-related rights in OSH laws, as well as all relevant OSH duties that guarantee such rights.

#### International labour standards

- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)



A solid corpus of more than 40 international labour standards and more than 40 codes of practice have articulated employers' and workers' duties and rights relating to OSH. In particular, Article 3(2) of Convention No. 187 emphasizes that "each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment". The national legislative OSH framework should integrate the requirements and guidance set out in ILS, in particular those set out in Convention No. 155 and Recommendation No. 164.

This section aims to support countries in identifying and defining provisions on OSH-related duties and rights that should or could be integrated in OSH laws. It is divided into the following subsections:

- ▶ the general and primary OSH duty of the employer;
- ▶ specific overarching OSH duties of the employer;
- ▶ specific risk- or industry-based OSH duties of employers;
- ▶ OSH duties of persons who design, manufacture, import or supply substances, machinery and equipment for use in workplaces;
- ▶ OSH duties of workers; and
- ▶ OSH rights of workers.

## 2. General and primary OSH duty of the employer

It is a core principle of a prevention-based approach to OSH that the employer has a general and primary duty to ensure the health, safety and welfare at work of all workers at their workplace. This overarching duty of care is often supplemented by additional, more specific duties and principles that establish a "hierarchy of controls" (see below for further discussion) to set out in more detail *how to achieve the overarching duty to maintain a safe and healthy workplace*.

### International labour standards



- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Article 16(1) of Convention No. 155 requires employers "to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health".

The ILO's *Guidelines on Occupational Safety and Health Management Systems: ILO-OSH 2001 (ILO-OSH 2001 Guidelines)* point to the employers' overall responsibility for the protection of workers' safety and health and indicate that "the employer should have overall responsibility for the protection of workers' safety and health, and provide leadership for OSH activities in the organization" (paras 3.3.1–3.3.2).



### Country example 29

#### EU

*Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work*

Article 5.1 imposes on the employer the duty to ensure the safety and health of workers in every aspect related to the work.

**Spain***Prevention of Occupational Risks Act No. 31 of 1995*

Article 14 establishes that workers have the right to effective protection in the area of safety and health at work, which implies a correlative duty of the employer to protect workers from occupational risks. It prescribes that to achieve this duty, employers shall ensure the safety and health of workers at their service in all aspects related to work. For these purposes, within the framework of their responsibilities, employers will prevent occupational risks by integrating the preventive activity in the company and adopting any measures necessary for the protection of the safety and health of workers. It then goes on to specify obligations pertaining to developing an occupational risk prevention plan; risk assessment; information; consultation; participation and training of workers; action in cases of emergency and serious and imminent risk; and monitoring of health.

**The principle of non-transferability of the employer's general and primary duty to ensure OSH<sup>1</sup>**

Some countries have introduced this principle explicitly into their OSH law. Employers may delegate or assign OSH tasks to worker(s). It is important to note, however, that the delegation of these duties to workers does not derogate from the fact that it is the employer who holds the overall duty to ensure safe and healthy working conditions in the workplace.

**Country example 30****EU***Council Directive 89/391/EEC*

Article 5(2) explicitly spells out this principle by establishing that “where ... an employer enlists competent external services or persons, this shall not discharge him from his responsibilities in this area”.

**Australia***Work Health and Safety Act 2011, sections 14–16*

A duty cannot be transferred to another person. A person can have more than one duty by virtue of being in more than one class of duty holder. More than one person can concurrently have the same duty and each duty holder must comply with that duty to the legislated standard even if another duty holder has the same duty. If more than one person has a duty for the same matter, each person with the duty: retains responsibility for the person's duty in relation to the matter; and must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter (or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity).

### 3. Specific OSH duties of the employer

As explained above, the employer's general duty of care is supplemented by specific OSH duties. Most of the duties discussed in this subsection are embedded in international labour standards and therefore should be reflected in a national OSH law if a country has ratified the corresponding OSH Convention. These duties are generally applicable across industries and universally accepted by governments, employers and workers.

<sup>1</sup> General reflection on the scope of application bearing in mind various country practices.

### 3.1 Duty to conduct a risk assessment



#### Definition

**Risk assessment:** The process of evaluating the risks to safety and health arising from hazards at work. It is a core part of prevention-based risk management.

**Hazard:** The inherent potential to cause injury or damage to people's health.

**Risk:** A combination of the likelihood of an occurrence of a hazardous event and the severity of injury or damage to the health of people caused by this event.

Source: ILO-OSH 2001 Guidelines.

Risks must first be identified and evaluated, and then used as the basis for the workplace's preventive plan. The risks are then addressed by preventive measures adhering to the hierarchy of controls (discussed below). This process is known as *risk assessment*.

It must be clarified that there is a distinction between the term "hazard" and "risk", which are in many cases referred to interchangeably.



#### Useful tools and resources

- These tools can be used by countries to elaborate guidance materials
- ILO, "A 5 Step Guide for Employers, Workers and their Representatives on Conducting Workplace Risk Assessments", 2013.
- ILO, "Training package on workplace risk assessment and management for small and medium-sized enterprises", 2013.
- EU-OSHA, [OiRA \(Online Interactive Risk Assessment\)](#), a web platform that enables the creation of sectoral risk assessment tools in any language in an easy and standardized way.

Risk assessment should be conducted in consultation with workers and their representatives. This ensures that (a) all risks have been identified and (b) workers and the employer keep ownership of the assessment and the proposed preventive measures. In order to ensure the participation of workers, OSH law may require that the document containing the risk assessment is signed by both the employer and the workers' representatives, who declare that they have actively participated in the evaluation process. Ideally, risk assessments should also be set out in a written document that is kept by the employer and is readily available to workers and authorities. It should be revised and updated on a regular basis, particularly when new technology, new machinery or major new tools are introduced in the workplace. The risk assessment should identify and assess all risks present at the workplace, including with respect to chemicals, violence and harassment.

It may be necessary to engage OSH professionals or external OSH service providers to assist with the risk assessment where the undertaking performs dangerous work or carries out a variety of activities or where the workforce size is large. It may also be beneficial in circumstances where the undertaking does not have internal OSH capacity (common among MSMEs).



### International labour standards

- [Chemicals Convention, 1990 \(No. 170\)](#)
- [Prevention of Major Industrial Accidents Convention, 1993 \(No. 174\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)
- [Violence and Harassment Convention, 2019 \(No. 190\)](#)

Risk assessment is explicitly required by a number of international labour standards on OSH, including the five Conventions listed above.

Convention No. 170 requires employers to make an assessment of the risks arising from the use of chemicals at work (Article 13(1)). Convention No. 174 requires employers, in respect of each major hazard installation, to establish and maintain a documented system of major hazard control which includes provision for the identification and analysis of hazards and the assessment of risks, including consideration of possible interactions between substances (Article 9(a)). Convention No. 176 (Article 6) and Convention No. 184 (Article 7(a)) require employers to assess the risks in relation to the safety and health of workers in the mining and agriculture sectors, respectively.

Article 9(c) of Convention No. 190 stipulates that “Each Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them.”

Risk assessment is also embodied in the ILO–OSH Guidelines, which state that organizations should identify, anticipate and assess hazards and risks to safety and health arising from the existing or proposed work environment and work organization (para. 3.7.2). This should be done on an ongoing basis (para. 3.10.1.1) and always prior to any modification or introduction of new work methods, materials, processes or machinery (para. 3.10.2.2).



### Country example 31

#### EU

*Council Directive 89/391/EEC*

Article 9 (1(a)) stipulates that “The employer shall be in possession of an assessment of the risks to safety and health at work, including those facing groups of workers exposed to particular risks.”

#### Denmark

*Working Environment Act No. 1072 of 2010*

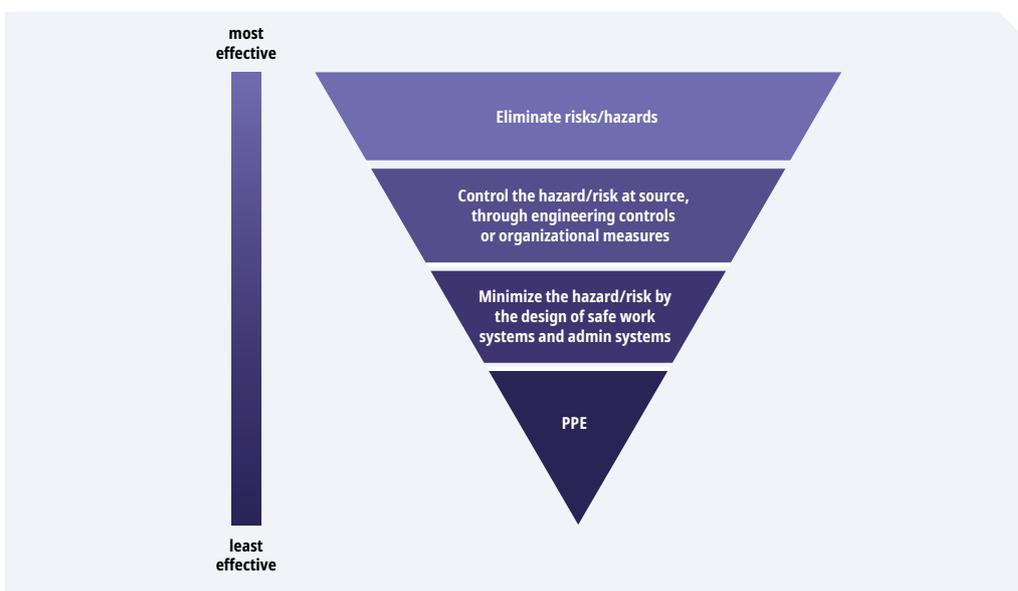
Section 15a states that:

- (1) “The employer shall ensure the preparation of a written workplace assessment of the health and safety conditions at the workplace, taking due regard to the nature of the work, the work methods and work processes which are applied, as well as the size and organization of the enterprise. The workplace assessment shall remain at the enterprise and be available to the management and employees at the enterprise, as well as the Working Environment Authority, which inspects the workplace assessment. A workplace assessment shall be revised when there are changes in work, work methods, work processes, etc., and these changes are significant for health and safety at work. The workplace assessment shall be revised at least every three years.
- (2) A workplace assessment shall include an opinion on the health and safety issues at the workplace, and how these are to be resolved in compliance with the principles of prevention stated in the health and safety legislation. The assessment shall include the following elements:
  - (a) Identification and mapping of the health and safety conditions at the enterprise.
  - (b) Description and assessment of the health and safety issues at the enterprise.
  - (c) Priorities and an action plan to resolve the health and safety issues at the enterprise.
  - (d) Guidelines for following up the action plan.
- (3) The employer shall involve the health and safety organization or the employees in planning, organizing, implementation and following up the workplace assessment.”

### Hierarchy of controls

The *hierarchy of controls* supports the employer in determining the most appropriate and effective measures to tackle the identified risks or hazards at the workplace and the order in which these measures should be taken.

Figure 8. Hierarchy of controls.



Source: ILO-OSH 2001 Guidelines.

In the hierarchy of controls' scheme, the highest level is the most efficient in managing risks, while the lower levels are applicable only when no higher-level measures are possible or when the effort and resources to implement higher-level measures would be disproportionate in relation to the expected result. However, in many cases, measures from higher levels may be supplemented by measures from lower levels.

The hierarchy of control is a generally accepted formula that is universally applicable regardless of the type of business or the economic sector. Given its importance, many countries include it in their OSH legislation.

Some international labour standards also explicitly require employers to follow the hierarchy of controls, although without using that specific term.

For example, Article 6 of Convention No. 176 requires employers to deal with risks in the following order of priority:

- (a) eliminate the risk;
- (b) control the risk at source;
- (c) minimize the risk by means that include the design of safe work systems; and
- (d) in so far as the risk remains, provide for the use of personal protective equipment (PPE).

The *ILO-OSH 2001 Guidelines* also indicate that preventive and protective measures should be implemented in the above order of priority (para. 3.10.1.1).



### Country example 32

#### EU

*Council Directive 89/391/EEC*

*Article 6*

- (1) Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means. ...
- (2) The employer shall implement the measures ... on the basis of the following general principles of prevention:
  - (a) avoiding risks;
  - (b) evaluating the risks which cannot be avoided;
  - (c) combating the risks at source;
  - (d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health.
  - (e) adapting to technical progress;
  - (f) replacing the dangerous by the non-dangerous or the less dangerous;
  - (g) developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment;
  - (h) giving collective protective measures priority over individual protective measures;
  - (i) giving appropriate instructions to the workers.

**Australia**

*Work Health and Safety Regulations 2011, article 36*

- (1) “ This regulation applies if it is not reasonably practicable for a duty holder to eliminate risks to health and safety.
- (2) A duty holder, in minimizing risks to health and safety, must implement risk control measures in accordance with this regulation.
- (3) The duty holder must minimize risks, so far as is reasonably practicable, by doing 1 or more of the following:
  - (a) substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk;
  - (b) isolating the hazard from any person exposed to it;
  - (c) implementing engineering controls.
- (4) If a risk then remains, the duty holder must minimize the remaining risk, so far as is reasonably practicable, by implementing administrative controls.
- (5) If a risk then remains, the duty holder must minimize the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment.”

### 3.2 Duty to formulate a workplace OSH policy and plan

Workplace OSH plans and policies are core elements of a prevention-based OSH management system. Generally, OSH policies set out the workplace’s OSH-related principles and objectives and the OSH plan assigns responsibilities, internal arrangements, measures and time frames for implementing health and safety strategies in the workplace. The workplace OSH plan should be based on and coherent with the previously conducted risk assessment. Workplace OSH policies and plans should be implemented, assessed and revised following the P-D-C-A cycle (see subsection 3.13 below) and set out in writing. This will facilitate their implementation, evaluation and revision. The workplace policy should address all risks present at the workplace, including psychosocial risks, violence and harassment. Employers should make sure that OSH plans and policies are disseminated effectively and workers are aware of them so that they can act accordingly.



#### International labour standards

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Violence and Harassment Convention, 2019 \(No. 190\)](#)

Paragraph 14 of Recommendation No. 164 recommends that “employers should, where the nature of the operations in their undertakings warrants it, be required to set out in writing their policy and arrangements in the field of OSH, as well as the various responsibilities exercised under these arrangements, and to bring the information to the notice of every worker, in a language or medium the worker readily understands”.

Article 9 of Convention No. 190 requires each Member to “adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to: (a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment; (b) take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health ...”.

The *ILO-OSH 2001 Guidelines provide further guidance on how to shape a workplace OSH policy (section 3.1).*

Such a policy should be:

- (a) specific to the organization and appropriate to its size and the nature of its activities;
- (b) concise, clearly written, dated and made effective by the signature or endorsement of the employer or the most senior accountable person in the organization;
- (c) communicated and readily accessible to all persons at their place of work;
- (d) reviewed for continuing suitability; and
- (e) made available to relevant external interested parties, as appropriate.

It should include, as a minimum, the following key principles and objectives to which the organization is committed:

- (a) protecting the safety and health of all members of the organization by preventing work-related injuries, ill health, diseases and incidents;
- (b) complying with relevant OSH national laws and regulations, voluntary programmes, collective agreements on OSH and other requirements to which the organization subscribes;
- (c) ensuring that workers and their representatives are consulted and encouraged to participate actively in all elements of the OSH management system; and
- (d) continually improving the performance of the OSH management system.



### Country example 33

#### United Kingdom

*Health and Safety at Work etc. Act, 1974, section 2(3)*

“Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all of his employees.”

#### The Netherlands

*Working Conditions Act of 1999, articles 3 and 5*

The employer “shall conduct a policy aimed at achieving the best possible working conditions”, taking account of specified factors. The policy must be regularly reviewed and updated. Further, when operating a working conditions policy, the employer must produce a written inventory and assessment of the risks to which employees are exposed as a result of their work. That document must describe the measures for limiting hazards and risks, and the risks affecting particular groups of employees, as well as be updated to reflect experience, changed conditions or systems of work, and new approaches to risk management.

#### Spain

*Prevention Services Royal Decree 39 of 1997, article 2*

The risk prevention plan is the tool that integrates the preventive activity of the company in its overall management system and establishes the company’s policy on the prevention of occupational risks. The plan must be approved by the administration of the company and must be known by all employees. It must be reflected in a document that must be made available to the labour authorities, health authorities and workers’ representatives. This document must include the following elements, taking into account the size and characteristics of the company:

- The identification of the company, its production activity, the number and characteristics of the workplace and the number of workers and their characteristics relevant to the prevention of occupational hazards.

- The organizational structure of the company, identifying the roles and responsibilities assumed and the respective communication channels between them with regard to the prevention of occupational hazards.
- The organization of production in terms of identifying the various technical processes, organizational procedures and practices in the enterprise in relation to the prevention of occupational hazards.
- The organization of risk prevention in the company, including an indication of the preventive modality chosen and representative bodies.
- The risk prevention policy, objectives and targets to be achieved by the enterprise and the human, technical, material and economic resources that will be used for that purpose.

### 3.3 Duty to provide OSH information to workers

Providing information about safety and health matters to workers is essential in order to ensure that they have an awareness and understanding of the risks they are exposed to and the measures put in place to protect them. Information should extend to all risks that may be present at the workplace, including violence and harassment, asbestos and chemicals, where applicable.



#### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Asbestos Convention, 1986 \(No. 162\)](#)
- [Chemicals Convention, 1990 \(No. 170\)](#)
- [Violence and Harassment Convention, 2019 \(No. 190\)](#)

Article 19(c) of Convention No. 155 states that there shall be arrangements at the level of the undertaking, under which representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure OSH and may consult their representative organizations about such information provided that they do not disclose commercial secrets.

Article 22(3) of Convention No. 162 stipulates that “The employer shall ensure that all workers exposed or likely to be exposed to asbestos are informed about the health hazards related to their work, instructed in preventive measures and correct work practices and receive continuing training in these fields”.

Article 15 of Convention No. 170 indicates that “Employers shall (a) inform the workers of the hazards associated with exposure to chemicals used at the workplace; (b) instruct the workers how to obtain and use the information provided on labels and chemical safety data sheets ...”.

Article 9(d) of Convention No. 190 states that “Each Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to: provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article”.



### Country example 34

#### Ireland

*Safety, Health and Welfare at Work Act 2005, No. 10, section 9*

Every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and includes the following information:

- (i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment,
- (ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work, and
- (iii) the names of designated persons and safety representatives selected, if any.

Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to above.

#### Finland

*Occupational Safety and Health Act No. 738/2002*

*Section 14(1)*

Employers must give their employees necessary information on the hazards and risk factors of the workplace and ensure, taking the employees' occupational skills and work experience into consideration, that:

- (1) the employees receive an adequate orientation to the work, working conditions at the workplace, working and production methods, work equipment used in the work and the correct method of using it, as well as to safe working practices, especially before the beginning of a new job or task or a change in the work tasks, and before the introduction of new work equipment and new working or production methods;
- (2) the employees are given instruction and guidance in order to eliminate the hazards and risks of the work and to avoid any hazard or risk from the work jeopardizing safety and health;
- (3) the employees are given instruction and guidance for adjustment, cleaning, maintenance and repair work as well as for disturbances and exceptional situations; and
- (4) the instruction and guidance given to the employees is complemented, when necessary.

*Section 17(2)*

The employer shall in good time give the employees necessary information on any factors that affect safety and health in the workplace and other circumstances that have an effect on the working conditions as well as on any assessments and other analyses and plans concerning them. The employer shall also ensure that these matters are duly and in good time discussed between the employer and the employees or their representatives.

### 3.4 Duty to consult workers and enable them to participate in OSH management

OSH laws should require employers to consult with their workers (or workers' representatives) in relation to a broad range of matters. These include, among other matters, new safety and health measures or alterations of work processes, work content or organization of work that may have safety or health implications for workers.

To ensure effective, two-way communication, it is essential that employers:

- provide sufficient information to workers on the object of the consultation (see subsection 3.3 above);

- allow enough time for consideration; and
- establish mechanisms for consultation (see section VI of the Support Kit, subsection 6).

### International labour standards



- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

Article 19(e) of Convention No. 155 requires that workers or their representatives are enabled to enquire into, and are consulted by the employer on, all aspects of OSH associated with their work. For this purpose, technical advisers may, by mutual agreement, be brought in from outside the undertaking.

In this regard, Paragraph 12(2) of Recommendation No. 164 recommends that “Workers’ safety delegates, workers’ safety and health committees, and joint safety and health committees or, as appropriate, other workers’ representatives should:

- (a) be given adequate information on safety and health matters, enabled to examine factors affecting safety and health, and encouraged to propose measures on the subject;
- (b) be consulted when major new safety and health measures are envisaged and before they are carried out, and seek to obtain the support of the workers for such measures;
- (c) be consulted in planning alterations of work processes, work content or organization of work, which may have safety or health implications for the workers;
- (d) be given protection from dismissal and other measures prejudicial to them while exercising their functions in the field of occupational safety and health as workers’ representatives or as members of safety and health committees;
- (e) be able to contribute to the decision-making process at the level of the undertaking regarding matters of safety and health;
- (f) have access to all parts of the workplace and be able to communicate with the workers on safety and health matters during working hours at the workplace;
- (g) be free to contact labour inspectors;
- (h) be able to contribute to negotiations in the undertaking on occupational safety and health matters;
- (i) have reasonable time during paid working hours to exercise their safety and health functions and to receive training related to these functions;
- (j) have recourse to specialists to advise on particular safety and health problems.”

Furthermore, the *ILO-OSH 2001 Guidelines* (para. 3.6.1) require arrangements and procedures to be established and maintained for:

- (a) receiving, documenting and responding appropriately to internal and external communications related to OSH;
- (b) ensuring the internal communication of OSH information between relevant levels and functions of the organization; and
- (c) ensuring that the concerns, ideas and inputs of workers and their representatives on OSH matters are received, considered and responded to.

The CEACR has also emphasized that consultation and continuous dialogue between employers and workers and their representatives on all aspects related to OSH are an essential element of prevention and that the establishment of workplace cooperation and collaboration arrangements for OSH should be widely incorporated into national legislation.<sup>2</sup>

<sup>2</sup> ILO, Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, ILC.98/III(1B), 2009. para. 202.



### Country example 35

#### United Kingdom

*The Health and Safety (Consultation with Employees) Regulations 1996, section 3*

“Where there are employees who are not represented by safety representatives under the 1977 Regulations, the employer shall consult those employees in good time on matters relating to their health and safety at work and, in particular, with regard to:

- (a) the introduction of any measure at the workplace which may substantially affect the health and safety of those employees;
- (b) his arrangements for appointing or, as the case may be, nominating (competent) persons...;
- (c) any health and safety information he is required to provide to those employees by or under the relevant statutory provisions;
- (d) the planning and organization of any health and safety training he is required to provide to those employees by or under the relevant statutory provisions; and
- (e) the health and safety consequences for those employees of the introduction (including the planning thereof) of new technologies into the workplace.”

#### Australia

*Work Health and Safety Act 2011, sections 47–49*

“The person conducting a business or undertaking must, so far as is reasonably practicable, consult ... with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety.

(...)

- (1) Consultation under this Division requires:
  - (a) that relevant information about the matter is shared with workers; and
  - (b) that workers be given a reasonable opportunity:
    - (i) to express their views and to raise work health or safety issues in relation to the matter; and
    - (ii) to contribute to the decision-making process relating to the matter; and
  - (c) that the views of workers are taken into account by the person conducting the business or undertaking; and
  - (d) that the workers consulted are advised of the outcome of the consultation in a timely manner.
  - (e) If the workers are represented by a health and safety representative, the consultation must involve that representative.

Consultation under this Division is required in relation to the following health and safety matters:

- (a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;
- (b) when making decisions about ways to eliminate or minimize those risks;
- (c) when making decisions about the adequacy of facilities for the welfare of workers;
- (d) when proposing changes that may affect the health or safety of workers;
- (e) when making decisions about the procedures for:
  - (i) consulting with workers; or
  - (ii) resolving work health or safety issues at the workplace; or
  - (iii) monitoring the health of workers; or
  - (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
  - (v) providing information and training for workers; or
- (f) when carrying out any other activity prescribed by the regulations for the purposes of this section.”

The *ILO-OSH 2001 Guidelines further* indicate that worker participation is an essential element of the OSH management system in the organization (paras 3.2.2–3.2.3), suggesting that the employer should:

- ▶ ensure that workers and their safety and health representatives are consulted, informed and trained on all aspects of OSH, including emergency arrangements, associated with their work; and
- ▶ make arrangements for workers and their safety and health representatives to have the time and resources to participate actively in the processes of organizing, planning and implementation, evaluation and action for improvement of the OSH management system.

### 3.5 Duty to provide OSH training to workers

Providing OSH training to workers is necessary to ensure that they have the ability to safely handle working tools, machinery and substances and adequately use PPE, among other critical safety and health concerns. OSH training should be provided to all workers and additional specific training provided to managers, supervisors, workers' representatives and OSH professionals. Training should include all risks that are present at the workplace.



#### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Asbestos Convention, 1986 \(No. 162\)](#)
- [Chemicals Convention, 1990 \(No. 170\)](#)
- [Violence and Harassment Convention, 2019 \(No. 190\)](#)

Under Article 19(d) of Convention No. 155, there must be arrangements at the level of the undertaking under which workers and their representatives in the undertaking are given appropriate training in OSH. Furthermore, Article 21 stipulates that “occupational safety and health measures shall not involve any expenditure for the workers”.

Paragraph 12(2)(i) of Recommendation No. 164 recommends that workers' representatives have reasonable time during paid working hours to exercise their safety and health functions and to receive training related to those functions.

The *ILO-OSH 2001 Guidelines (section 3.4)* indicate that OSH training should:

- ▶ be provided at no cost to workers (as required by Article 21 of Convention No. 155);
- ▶ be delivered if possible, during working hours;
- ▶ cover all members of the organization;
- ▶ be conducted by competent persons;
- ▶ provide effective and timely initial and refresher training at appropriate intervals;
- ▶ include participants' evaluation of their comprehension and retention of the training;
- ▶ be reviewed periodically in consultation with the safety and health committee, where it exists, and the training programmes, and be modified as necessary to ensure its relevance and effectiveness; and
- ▶ be documented, as appropriate and according to the size and nature of activity of the organization.

Article 22(3) of Convention No. 162 stipulates that “The employer shall ensure that all workers exposed or likely to be exposed to asbestos are informed about the health hazards related to their work, instructed in preventive measures and correct work practices and receive continuing training in these fields”.

Article 15 of Convention No. 170 indicates that “Employers shall (a) inform the workers of the hazards associated with exposure to chemicals used at the workplace; (b) instruct the workers how to obtain and use the information provided on labels and chemical safety data sheets ...”.

Article 9(d) of Convention No. 190 stipulates that “Each Member shall adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable, to provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned in relation to the policy referred to in subparagraph (a) of this Article.”



### Country example 36

#### EU

##### **Council Directive 89/391/EEC**

###### *Article 12*

Employers must ensure that workers receive adequate safety and health training, in particular in the form of information and instructions specific to their workstations or jobs at relevant times (on recruitment or transfer or when new equipment or technology is introduced), which should be repeated periodically and should take place during working hours.

#### Australia

###### *Work Health and Safety Act 2011, section 72*

- (1) “The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is:
- (a) approved by the regulator; and
  - (b) a course that the health and safety representative is entitled under the regulations to attend; and
  - (c) subject to subsection (5), chosen by the health and safety representative, in consultation with the person conducting the business or undertaking.
- (2) The person conducting the business or undertaking must:
- (a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training; and
  - (b) pay the course fees and any other reasonable costs associated with the health and safety representative’s attendance at the course of training.”

#### Peru

###### *Safety and Health at Work Act, No. 29783, 2011, article 24*

The employer shall ensure that workers and their representatives are consulted, informed and trained in all occupational safety and health matters related to their work, including procedures for emergency situations.

### 3.6 Duty to provide, maintain and ensure the proper use of PPE at no cost to workers

PPE is the least preferred and least effective of the measures used to control risk according to the hierarchy of controls discussed above.



#### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Safety and Health in Construction Convention, 1988 \(No. 167\)](#)
- [Asbestos Convention, 1986 \(No. 162\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)

#### Duty to provide adequate PPE to workers

Under Article 16(3) of Convention No. 155, employers must be required to provide, where necessary, **adequate** protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.

Similarly, Article 9(c) of Convention No. 176 requires employers to provide and maintain at no cost to the worker suitable protective equipment, clothing as necessary and other facilities, where adequate protection against risk of accident or injury to health including exposure to adverse conditions cannot be ensured by other means, and workers are exposed to physical, chemical or biological hazards.

The CEACR recalled that, while priority is given to eliminating and minimizing risks, the adoption of effective protective measures remains an essential level of protection of workers for the prevention of occupational accidents and diseases. Having noted the large number of countries reporting legislative requirements relating to the provision of PPE and clothing at no cost to the worker, the CEACR called on governments to ensure that these requirements are implemented in practice in relation to all workers, including those in non-standards forms of employment.<sup>3</sup>

The CEACR also indicated that it is up to member States to determine what amounts to *adequate protective clothing and protective equipment* and that collective bargaining might play a role in such a determination.<sup>4</sup> In any case, it appears appropriate to take into consideration the nature of risks that the work involves when making that decision. For instance, safety helmets on a construction site should be made of an adequate material to protect workers' heads from the impact of stones and should be adjustable to the heads of the different workers that will use them.

#### Duty to provide PPE at no cost to workers

PPE should not involve any expenditure for workers, according to Article 21 of Convention No. 155.

This is critical since leaving it to workers to pay for PPE may prevent them from buying and consequently using it, especially in the case of low-paid workers who may need to use expensive PPE.

<sup>3</sup> ILO, Working Together to Promote a Safe and Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning The Promotional Framework, Construction, Mines and Agriculture, ILC.106/III(1B), 2017, para.385

<sup>4</sup> ILO, *General Survey*, 2009, para.217.

## Duty to ensure the proper use and maintenance of PPE

Legislation should also regulate the obligation of employers to provide information and instruction to workers on the proper use of PPE, as well as the obligation of employers to maintain it. The latter may include engaging a specialized cleaning and maintenance service, if required. There is a serious risk of contamination for workers and their families if they are required to take PPE home to launder, perform maintenance or do repair work, particularly in the case of workers exposed to dangerous substances in the workplace such as asbestos.

Paragraph 16(c) of Recommendation No. 164 indicates that the arrangements that the employer shall put in place in the undertaking to ensure safety and health of workers should include the correct use of safety devices and protective equipment.

Article 18 of Convention No 162 on Asbestos features a strict regime regarding the use and maintenance of personal clothing and protective equipment:

- (1) "Where workers' personal clothing may become contaminated with asbestos dust, the employer, in accordance with national laws or regulations and in consultation with the workers' representatives, shall provide appropriate work clothing, which shall not be worn outside the workplace.
- (2) The handling and cleaning of used work clothing and special protective clothing shall be carried out under controlled conditions, as required by the competent authority, to prevent the release of asbestos dust.
- (3) National laws or regulations shall prohibit the taking home of work clothing and special protective clothing and of PPE.
- (4) The employer shall be responsible for the cleaning, maintenance and storage of work clothing, special protective clothing and PPE.
- (5) The employer shall provide facilities for workers exposed to asbestos to wash, take a bath or shower at the workplace, as appropriate."

Most of the above-mentioned duties of employers in relation to PPE are also explicitly set out in Convention No. 167.

Countries often regulate all these duties together in the same provision. Lawmakers may also formulate additional provisions that set out specific requirements for the design and production of the PPE, depending on the nature of the hazards they are designed to protect against.



### Country example 37

#### United Kingdom

*The Personal Protective Equipment at Work Regulations 1992*

*Regulation 4 (1)*

Every employer shall ensure that suitable personal protective equipment is provided to his employees who may be exposed to a risk to their health or safety while at work except where and to the extent that such risk has been adequately controlled by other means which are equally or more effective.

*Regulation 4 (3)*

Without prejudice to above, personal protective equipment shall not be suitable unless—

- (a) it is appropriate for the risk or risks involved and the conditions at the place where exposure to the risk may occur;
- (b) it takes account of ergonomic requirements and the state of health of the person or persons who may wear it;
- (c) it is capable of fitting the wearer correctly, if necessary, after adjustments within the range for which it is designed;
- (d) so far as is practicable, it is effective to prevent or adequately control the risk or risks involved without increasing overall risk;

- (e) it complies with any enactment (whether in an Act or instrument) which implements in Great Britain any provision on design or manufacture with respect to health or safety in any relevant Community directive listed in Schedule 1 which is applicable to that item of personal protective equipment.”

### Australia

*Work Health and Safety Regulations 2011, section 44*

- (2) “The person conducting a business or undertaking who directs the carrying out of work must provide the personal protective equipment to workers at the workplace, unless the personal protective equipment has been provided by another person conducting a business or undertaking.
- (...)
- (3) The person conducting the business or undertaking who directs the carrying out of work must ensure that personal protective equipment provided under subregulation (2) is:
- (a) selected to minimize risk to health and safety, including by ensuring that the equipment is:
    - (ii) suitable having regard to the nature of the work and any hazard associated with the work; and
    - (iii) a suitable size and fit and reasonably comfortable for the worker who is to use or wear it; and
  - (d) maintained, repaired or replaced so that it continues to minimize risk to the worker who uses it, including by ensuring that the equipment is:
    - (i) clean and hygienic; and
    - (ii) in good working order; and
  - (c) used or worn by the worker, so far as is reasonably practicable.
- (4) The person conducting a business or undertaking who directs the carrying out of work must provide the worker with information, training and instruction in the:
- (a) proper use and wearing of personal protective equipment; and
  - (b) the storage and maintenance of personal protective equipment.”

### Useful tools and resources



- IAEA, [Criteria for Use in Preparedness and Response for a Nuclear or Radiological Emergency: General Safety Guide, 2011](#).
- ILO, [Fire Risk Management](#), 2012.

## 3.7 Duty to provide emergency plans and first aid

Workers should be able to evacuate the workplace safely in case of an emergency. To this end, the employer should develop an emergency plan that sets out emergency measures, including evacuation exits and assembly points, and identifies persons in charge of responding to the emergency situation and facilitating the evacuation.

First aid preparedness at workplaces is crucial. Ideally, every workplace should have persons trained in providing first aid; a first aid kit and facilities; and arrangements for evacuation in the event of an emergency.



### International labour standards

- [Occupational Safety and Health Convention, 1981\(No. 155\)](#)
- [Occupational Health Services Convention, 1985 \(No. 161\)](#)

Article 18 of Convention No. 155 establishes that employers shall be required to provide, where necessary, measures to deal with emergencies and accidents, including adequate first-aid arrangements. Article 5(j) of Convention No. 161 indicates that, without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, occupational health services shall be in charge of organizing of first aid and emergency treatment.

The *ILO-OSH 2001 Guidelines* provide further guidance on how to ensure emergency prevention, preparedness and response arrangements (section 3.10.3). Such arrangements should be established and maintained.

These arrangements should identify the potential for accidents and emergency situations and address the prevention of OSH risks associated with them. The arrangements should be made according to the size and nature of activity of the organization. They should:

- (a) ensure that the necessary information, internal communication and coordination are provided to protect all people in the event of an emergency at the worksite;
- (b) provide information to, and communication with, the relevant competent authorities, and the neighbourhood and emergency response services;
- (c) address first-aid and medical assistance, firefighting and evacuation of all people at the worksite; and
- (d) provide relevant information and training to all members of the organization, at all levels, including regular exercises in emergency prevention, preparedness and response procedures.

Emergency prevention, preparedness and response arrangements should be established in cooperation with external emergency services and other bodies where applicable.



### Country example 38

#### Portugal

*Legal Regime of the Promotion of Safety and Health at Work Act No. 102/2009*

The employer is required to establish appropriate measures (arts 15 (9), 20 (3), 73B (1)(d) and 75).

An employer must establish appropriate measures for:

- first aid, firefighting and evacuation measures;
- the identification of workers responsible for their implementation; and
- ensuring workplaces have the necessary contacts with relevant emergency services.

Examples of countries that have specific emergency and first aid specific regulations include:

#### Latvia

*Regulations No. 713 on the Procedure for the Provision of First Aid Training and Minimum Medical Materials for First Aid Kits*

#### United Kingdom

*The Health and Safety (First-Aid) Regulations 1981, No. 917*

### 3.8 Duty to provide welfare facilities at work

Welfare facilities at the workplace are necessary to ensure the personal hygiene of workers and provide them with some degree of well-being at work. These are specifically required by numerous international labour standards.



#### International labour standards

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Welfare Facilities Recommendation, 1956 \(No. 102\)](#)
- [Workers' Housing Recommendation, 1961 \(No. 115\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)
- [Safety and Health in Construction Convention, 1988 \(No. 167\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)
- [Work in Fishing Convention, 2007 \(No. 188\)](#)
- [Plantations Convention, 1958 \(No. 110\)](#)
- [Hygiene \(Commerce and Offices\) Convention, 1964 \(No. 120\)](#)

**Paragraph 3(o) of Recommendation No. 164 and Recommendations No. 102 and No. 115** suggest the provision of:

- sanitary installations;
- washing facilities;
- facilities for changing and storing clothes;
- supply of drinking water ;
- rest facilities;
- feeding facilities;
- transportation facilities wherever necessary, either through the services of public transport or otherwise, to meet the needs of shiftworkers at times of the day and night when ordinary public transport facilities are inadequate, impracticable or non-existent;
- housing facilities (it is generally not desirable that employers should provide housing for their workers directly, with the exception of cases in which circumstances necessitate that employers provide housing for their workers, as, for instance, when an undertaking is located at a long distance from normal centres of population, or where the nature of the employment requires that the worker should be available at short notice; and
- any other welfare facilities connected with OSH.

Adequate welfare facilities at workplaces are also required by sectoral Conventions on construction (Article 32 of Convention No. 167); mining (Article 5(4)(e) of Convention No. 176); agriculture (Article 19 of Convention No. 184; fishing (Articles 26(f), 27 of Convention No. 188); plantations (Article 86 of Convention No. 110); and commerce and offices (Articles 12, 13, 15 of Convention No. 120).

Provisions for welfare facilities may be included in the general OSH law or in implementing regulations, as well as in sectoral OSH legislation that captures sectoral specificities.



### Country example 39

#### Burkina Faso

*General hygienic and safety measures at te workplace, Decree No. 2011 928/PRES/PM/MFPTSS/MS/MATDS (Arts 37–49)*

The employer must provide workers with the means to ensure their personal hygiene. To this end, a number of sanitary installations, according to the nature and the type of the activity, must be created and maintained, including lavatories, showers, sinks, changing rooms, individual lockers and laundry room.

#### Malawi

*Occupational Safety, Health and Welfare Act, 1997*  
Section 27

“(1) Every occupier shall provide sufficient and suitable sanitary conveniences for persons employed in the workplace, which shall be maintained and kept clean, and effective provision shall be made for lighting the conveniences and, where persons of both sexes are or are intended to be employed (except in the case of workplaces where the only persons employed are members of the same family dwelling there), such conveniences shall afford proper separate accommodation with a distinct approach for persons of each sex.

Section 30

(1) Every occupier shall provide, for the use of employees at a workplace, adequate and suitable accommodation for hanging or stowing personal clothing not worn during working hours, and where protective clothing is provided to employees in accordance with section 58, a suitable place or places shall be provided for the storage of such protective clothing.”



### Useful tools and resources

A wide array of examples is available at ILO, “[LEGOSH](#)”, under theme 4.8, “Duty to provide first-aid and welfare facilities”; and ILO, [WASH@Work: A Self-Training Handbook](#), 2016.

## 3.9 Duty to take remedial action before requiring workers to return to work where workers have informed the employer that there is an imminent and serious danger to life or health



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Under Article 19(f) of Convention No. 155, there shall be arrangements at the level of the undertaking under which workers can report to their immediate supervisors any situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.



### Country example 40

#### Spain

*Prevention of Occupational Risks Act No. 31 of 1995, article 21.1*

Where workers are or may be exposed to a serious and imminent danger because of their work, the employer shall:

- (a) inform all workers concerned as soon as possible about the presence of such a danger and measures taken or which, where appropriate, must be taken in respect of protection;
- (b) take measures and give the necessary instructions to workers in the event of serious, imminent and unavoidable danger, to stop work and, if necessary, immediately to leave the workplace (workers cannot be required to resume work while the danger persists).

## 3.10 Duty to ensure workers' health surveillance



### International labour standards

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Hours of Work and Rest Periods \(Road Transport\) Recommendation, 1979 \(No. 161\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)
- [Prevention of Major Industrial Accidents Convention, 1993 \(No. 174\)](#)
- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Asbestos Convention, 1986 \(No. 162\)](#)

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### Definition

Workers' health surveillance is a generic term that covers procedures and investigations to assess workers' health in order to detect and identify any abnormality. The results of surveillance should be used to protect and promote the health of the individual, collective health at the workplace and the health of the exposed working population. Health assessment procedures may include, but are not limited to, medical examinations, biological monitoring, radiological examinations, questionnaires or a review of health records.

Source: *ILO-OSH 2001 Guidelines*.

Employers should ensure that the health of workers and the factors in the working environment that may affect their health are monitored in an effective and well organized manner, and that ongoing surveillance is integrated within the overall preventive plan or OSH management system of the workplace. Occupational health surveillance is a function of occupational health services and can be carried out only by occupational health professionals (see section VII of the Support Kit).

Article 5 of Convention No. 161 explicitly refers to the *workers' health surveillance* function of occupational health services.

Paragraphs 6.9 and 6.10 of the ILO's *Technical and Ethical Guidelines for Workers' Health Surveillance* indicate that the employer should make the necessary arrangements to provide workers with access to health surveillance that is appropriate to the risks they face at work. Such arrangements should be part of the occupational safety and health management system of the workplace. The employer should structure the administrative and organizational arrangements for workers' health surveillance in such a way that they operate in a smooth and effective manner.



### Country example 41

#### Finland

*Occupational Health Care Act No. 1383/2001*

##### *Section 4*

The employer shall arrange occupational health care at the employer's expense:

- to prevent and control health risks and problems related to work and working conditions; and
- to protect and promote the safety, working capacity and health of the employer's employees. Occupational health care shall be organized and implemented to the extent required by the work, working arrangements, personnel and workplace conditions, and any changes in these, as provided in this Act.

##### *Section 12*

Health care must include:

- investigating and assessing the healthiness and safety of the relevant work and working conditions through repeated workplace visits and using other occupational health care methods, and making appropriate changes in the light of the hazards and risks;
- investigating, assessing and monitoring work-related health risks and problems, employees' health, working capacity and functional capacity, and any work-related medical examinations;
- suggesting action to improve OSH and monitoring the resulting improvements;
- providing OSH information, advice and guidance (and investigating an employee's workload, if asked for good reason by the employee);
- monitoring and supporting the ability of a disabled employee to cope at work, providing rehabilitation advice and directing suitable medical action;
- cooperating with other interested occupational health experts and entities;
- participating in organizing first aid;
- assisting in planning and organizing occupational health care measures; and
- assessing and monitoring the quality and impact of occupational health care activities.

This subsection focuses on the duty to provide medical examinations and the following key issues:

- the principle that such examinations must be provided at no cost for workers and as far as possible during working hours;
- timing and frequency;
- the ethical aspects of health surveillance: privacy of data and non-discrimination; and
- action to be taken in the event that a worker has become unfit for particular work or a particular occupation.

### 1. Medical examinations must be as far as possible during working hours and at no cost to workers

Medical examinations should be provided to workers at no cost and as far as possible during working hours. This ensures that all workers undergo medical examinations and that there is no discrimination among workers with varying levels of income.



#### International labour standards

- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Radiation Protection Convention, 1960 \(No. 115\)](#)
- [Working Environment \(Air Pollution, Noise and Vibration\) Convention, 1977 \(No. 148\)](#)

Article 12 of Convention No. 161 states that the surveillance of workers' health in relation to work shall involve no loss of earnings for them, shall be free of charge and shall take place as far as possible during working hours.

Some international labour standards also require medical examinations when workers are exposed to specific risks, including air pollution, noise and vibration (Art. 11 of Convention No. 148), radiation (Arts 12 and 13 of Convention No. 115).



**Country example 42**

**Medical examinations required to be conducted during working hours**

Examples of countries that require medical examinations to be conducted during working hours include Angola, Armenia, Azerbaijan, Burkina Faso, Chile, Côte d'Ivoire, Georgia, Guyana, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Mauritius, Namibia, Paraguay, the Russian Federation, Rwanda, Seychelles, Spain, Turkmenistan and Ukraine.

Source: ILO, "LEGOSH".

**2. Timing and frequency**



**International labour standards**

- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Regular medical examinations are essential to detect development of diseases and ill health at an early stage. This allows timely treatment and quicker recovery and prevents these health conditions from progressing and worsening.

Pre-employment medical examinations can identify pre-existing health conditions and prevent workers from being exposed to hazards that will negatively impact their health. Medical examinations at the end of a contractual engagement can reveal the existence of hazards and the occupational origin of a health pathology that workers have developed over the course of their employment.

Paragraph 11 of Recommendation No. 171 recommends that health assessments be conducted (a) **before assignment to specific tasks** that may involve a danger to their health or that of others; (b) **at periodic intervals during employment** that involves exposure to a particular hazard to health; (c) **after a prolonged absence on health grounds** for the purpose of determining its possible occupational causes, recommending appropriate action to protect the workers and determining the worker's suitability for the job and needs for reassignment and rehabilitation; and (iv) **after termination of assignments** involving hazards that might cause or contribute to future health impairment.

**Figure 9.** Medical examinations throughout the professional life of a worker





### Country example 43

#### Peru

*Safety and Health at Work Act, No. 29783, 2011, article 49(d)*

An employer must, at the employer's expense, provide a medical examination to workers every two years. Medical examinations at the end of a working relationship are optional and can be made upon request by the employer or by the worker. In any of these cases, the costs must be met by the employer. When workers are carrying out high-risk activities, the employer must organize pre-employment, periodic and post-employment (at the end of the employment relationship) medical examinations.

#### Singapore

*Workplace Safety and Health (Medical Examinations) Regulations 2011, No. 516, regulations 2, 3 and 5(1)*

An employer of a person employed in any hazardous occupation must ensure that the person is periodically examined by a designated workplace doctor. A principal who has directed that a person work in a hazardous occupation has the same obligation.

### 3. Ethical aspects of health surveillance: privacy of data and non-discrimination

Pre-employment medical examinations may only be mandatory when the type of hazards present at the workplace justify the need for medical tests. The nature of the tests should be appropriate for the type of hazards present at the workplace. Some kinds of health assessments, tests and investigations that are not justified from an occupational health point of view (for example, they are not linked to occupational hazards present at the workplace) may result in discrimination. For instance, requiring workers to undergo a test for HIV is inappropriate and therefore should not be mandatory. Health-related information must be collected, processed and used in a well-controlled system based on sound ethical and technical practice that will protect the privacy of workers.



#### International labour standards

- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Paragraph 11(2) of Recommendation No. 171 prompts legislative protection of the privacy of workers, including by ensuring that health surveillance is not used for discriminatory purposes or in any other manner contrary to the workers' interests.

Paragraph 16 states that, on completing a prescribed medical examination for the purpose of determining fitness for work involving exposure to a particular hazard, the physician who has carried out the examination should communicate his conclusions in writing to both the worker and the employer. Such conclusions should contain no information of a medical nature and should instead indicate fitness for the proposed assignment or specify the kinds of jobs and the conditions of work which are medically contra-indicated.

Paragraph 14 states that occupational health services should record data on workers' health in personal confidential health files and that staff from occupational health services have access to these personal health files only to the extent that the information contained in the files is relevant to the performance of their duties. Where the files contain personal information covered by medical confidentiality, such access should be restricted to medical personnel. Personal data relating to health assessments may be communicated to others only with the informed consent of the worker concerned. Paragraph 22(2) of Recommendation No. 171

states that it should be ensured that each worker has the right to have corrected data which is erroneous or might lead to error.

The ILO's *Technical and Ethical Guidelines for Workers' Health Surveillance* outline further necessary guarantees that any workers' health surveillance programme must provide, including:

- ▶ medical examinations and tests should not be carried out as a perfunctory routine. Due consideration should be given to their value and relevance. (para. 3.8);
- ▶ there should be no single form of pre-employment medical examination. Such examinations should be adapted to the type of work, vocational fitness criteria and workplace hazards (para. 3.11);
- ▶ professional independence and impartiality of the relevant health professionals (paras 2.5 and 6.27);
- ▶ biological testing to detect any signs of organic disorders or potentially harmful exposures should be subject to the workers' informed consent and must be performed according to the highest professional standards and the lowest possible risk (para. 3.16);
- ▶ genetic screening in relation to work is generally regarded as a disproportionate infringement of individual rights (para. 3.20) and therefore should not be used;
- ▶ occupational health professionals should not be required by the employer to verify the reasons for absence from work (para. 3.22); and
- ▶ a procedure of appeal should be established to address cases where there is a difference of opinion between the occupational health physician and the worker concerning fitness for a specific occupation (para. 6.8).



#### Country example 44

##### Spain

*Prevention of Occupational Risks Act No. 31, 1995, article 22(4)*

Data relative to health surveillance of workers shall not be used in a way that may discriminate the worker. The data can be accessed only by medical staff and authorities and shall not be transferred to other parties without the consent of the worker. The employer and persons in charge of OSH management shall be informed of the outcomes of health check-ups only in relation to the ability of workers to carry out their work so as any needed preventive measures may be taken.

##### United Kingdom

*Management of Health and Safety at Work Regulations, 1999, regulation 6*

Employers shall ensure that their employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by an assessment.

#### 4. Action when a job has been found medically contra-indicated for a worker

Paragraph 6.14 of the ILO's *Technical and Ethical Guidelines for Workers' Health Surveillance* indicate that "If a particular job is found medically contra-indicated for a worker, the employer must make every effort to find alternative employment or another appropriate solution, such as retraining or facilitating access to social benefits, rehabilitation or a pension scheme".

Other solutions include, if possible, to reassign the worker to another position suitable for the worker's condition or to adapt the workers' position to his/her condition. Occupational health services are entrusted with advising on the adaptation of work to the capabilities of workers in the light of their state of physical and mental health (Occupational Health Services Convention, 1985 (No. 161), Article 1(a)(ii)). Adapting work to the individual is a well-recognized principle in

OSH management, which should ideally be applied as a preventive measure, and it is also an appropriate action when the worker's job has become contra-indicated for that worker.



### Country example 45

#### European Union

*Council Directive 89/391/EEC, article 6(2)(d)*

The employer shall implement the (OSH) measures ... on the basis of the following general principles of prevention: ... adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing their effect on health.

#### Rwanda

*Labour Law N° 13, 2009, article 99*

Where, due to suspension of contract following a disease or accident, a group of three medical doctors recognized by Government declare the worker unfit to resume the service he/she occupied, the employer is requested to shift the worker to another job adapted to his/her capacity and at the same level as the previously occupied post, where possible, and transfer if need be by mutation or transformation of the working post. Where there is no redeployment of a worker one month after the date on which doctors have declared him/her fit or unfit to resume service, the employer shall pay him/her the same salary as the one paid for the post he/she previously occupied.

### 3.11 Duty to record, notify and investigative occupational accidents, commuting accidents, occupational diseases and dangerous occurrences

At the national level, data on occupational accidents and diseases provided by employers enables the competent authorities to map the national situation on OSH, which in turn informs the development of a national policy and programme. At the workplace level, data on occupational accidents and diseases can reveal gaps in the OSH management system which, if addressed adequately by the primary actor, can lead to healthier and safer workplaces. For further discussion, see section IX, subsection 2, of this Support Kit, which addresses the legal aspects of recording and notification



#### International labour standards

- [Protocol of 2002 to the Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Labour Inspection Convention, 1947 \(No. 81\)](#)

### Recording

Article 3 of the Protocol of 2002 to Convention No. 155 places an obligation on employers to:

- record occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases;
- provide appropriate information to workers and their representatives concerning the recording system;
- ensure appropriate maintenance of these records (as long as required by law) and their use for the establishment of preventive measures;
- refrain from instituting retaliatory or disciplinary measures against a worker for reporting an occupational accident, occupational disease, dangerous occurrence, commuting accident or suspected case of occupational disease;

- ▶ respect the confidentiality of personal and medical data; and
- ▶ ensure that the records respect the content and are kept as long as required by the competent authorities.

Paragraph 5.2.2 of the code of practice on recording and notification of accidents and diseases suggests that the law may require the employer to:

- ▶ identify a competent person at the level of the enterprise to prepare and keep records; and
- ▶ cooperate in recording procedures where two or more employers engage in activities simultaneously at one worksite.

### Notification

Article 4 of the Protocol of 2002 to Convention No. 155 places an obligation on employers to:

- ▶ notify the competent authorities or other designated bodies of occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases;
- ▶ provide appropriate information to workers and their representatives concerning the notified cases; and
- ▶ ensure that the notification respects the content and time limits set by the competent authorities.

Article 14 of Convention No. 81 stipulates that “the labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations”.

Paragraph 6.2.2 of the code of practice on recording and notification of accidents and diseases suggests that the law may require the employer to:

- ▶ identify a competent person to prepare the appropriate notification for submission by the employer;
- ▶ determine responsibility for notification, where two or more employers engage in activities simultaneously at one worksite.

### Investigation

Section 10.2 of the code of practice on recording and notification of accidents and diseases suggests that the law may require the employer to:

- ▶ investigate all reported occupational accidents, occupational diseases, dangerous occurrences and incidents;
- ▶ identify a competent person within the enterprise to carry out thorough investigations of occupational accidents, occupational diseases and dangerous occurrences;
- ▶ call upon the assistance of a person with appropriate expertise if necessary from outside the enterprise;
- ▶ arrange for the site of an occupational accident or a dangerous occurrence to be left undisturbed before the start of the investigation;
- ▶ ensure that the investigations of occupational accidents, occupational diseases and dangerous occurrences should, as far as possible: (a) establish what happened; (b) determine the causes of what happened; and (c) identify measures necessary to prevent a recurrence;
- ▶ ensure that arrangements are in place at the enterprise for an immediate investigation of reported occupational accidents, occupational diseases, dangerous occurrences and incidents; and
- ▶ make the results of investigations available to workers and their representatives with a view to preventing similar occurrences.



**Country example 46**

**Mozambique**

*Labour Law No. 23, 2007, articles 226 and 227*

Employers have an obligation to ... investigate the causes thereof (occupational accidents and diseases) and ways to suppress them. The employee or another person shall report the occurrence of any work accident or occupational illness, as well as the consequences thereof, to the employer.

Portugal

Legal Regime of the Promotion of Safety and Health at Work Act No. 102/2009, article 73B

Employers shall analyse the causes of work-related accidents or occupational diseases and keep a record of any non-fatal injuries to workers, work-related fatalities, dangerous occurrences and occupational diseases.

**3.12 Duty to ensure OSH competence and expertise at the workplace**

OSH is a complex, multidisciplinary field and employers may require additional expertise to meet their obligations. Consequently, OSH legislation may require employers to secure competence and expertise in OSH at the workplace in certain circumstances.

**Modalities**

The degree of OSH competence that should be secured at the workplace will depend on the characteristics of the enterprise, such as the size and demographic of the workforce, the number of workplaces and the branch of economic activity in which it operates. The main modality options for ensuring adequate OSH expertise are set out below.



**Useful tools and resources**

**Modalities for securing OSH expertise at the workplace**

- (a) The employer personally performs OSH-related activities;
- (b) The employer designates worker(s) to deal with OSH-related activities;
- (c) The employer hires OSH professional(s) or practitioner(s);
- (d) The employer establishes an internal OSH service;
- (e) The employer creates a joint OSH service in conjunction with other employers; and
- (f) The employer contracts (an) external OSH service(s).

**(a) The employer personally performs OSH-related activities**

This modality is only possible when the employer has the necessary competence and knowledge of OSH and is most often employed when the undertaking is relatively small and/or does not operate in high-risk operational areas. National legislation may define the circumstances in which an employer can personally perform OSH-related activities, for example the workforce size, the nature of the work performed (that is whether it is authorized in workplaces performing high-risk work) and the basic OSH-related knowledge that an employer must possess.

**(b) The employer designates worker(s) to deal with OSH-related activities**

The employer may designate employees to manage OSH at the workplace. The designated worker may be an ordinary employee whose primary occupation is not OSH-related and they may need to undertake some training in OSH in order to fulfil their functions. Again, national legislation may define the circumstances in which this modality is suitable. It is likely that the circumstances will be the same or similar to those described in option (a) above.

**(c) The employer hires OSH professional(s) or practitioner(s)**

Companies that reach a certain size or operate in a high-risk sector may be required by law to engage OSH professionals, that is workers who have completed specialized studies in the field of OSH and have relevant practical experience. National law may determine the requirements for a person to become an “OSH professional”, that is national law may make this a regulated profession. Further discussion can be found in section VIII of this Support Kit.

**(d) The employer establishes an internal OSH service**

Similarly to option (c), the employer may be required by law to create a department, unit or service within the undertaking to manage OSH, known as an “internal OSH service”. National law may specifically define in which circumstances this is needed.

**(e) The employer creates a joint OSH service in conjunction with other employers**

Instead of establishing an internal OSH service as under option (d), the employer may find it useful to create or join an inter-enterprise OSH service that supports several undertakings at the same time. The inter-enterprise OSH service is owned and managed collectively by the group of undertakings. This modality may be cost-efficient and especially useful for MSMEs or companies operating in the same branch of economic activity or in proximity to each other.

**(f) The employer contracts (an) external OSH service(s)**

The employer may decide – or may in certain circumstances be legally required – to outsource OSH-related activities to external OSH service providers, that is independent companies whose main business consists of providing services to manage OSH at the workplaces of their clients. External OSH service providers should be contracted according to the needs of the enterprise where it operates. Their functions should be adequate and appropriate to the occupational risks of the enterprise they serve, with particular attention given to the problems specific to the branch of economic activity concerned.

Options (a) to (c) are usually implemented in MSMEs, while options (d) to (f) are generally applicable to larger companies.

**MSMEs**

MSMEs generally have fewer resources and less capacity to manage OSH compared to big companies and consequently they often struggle, even in developed countries, to effectively manage their OSH-related obligations. Evidence suggests that occupational injuries are more likely to occur in MSMEs. For example, in Europe 82 per cent of all occupational injuries and 90 per cent of all fatal accidents occur in MSMEs<sup>5</sup>). Therefore, it is crucial that governments create an effective regulatory balance between providing MSMEs with the flexibility they need to ensure there is sufficient and appropriate OSH expertise within their workplaces, and ensuring that the government has established public services that can provide them with adequate support.

Some countries clearly prescribe the modalities that must be used in certain circumstances, whereas other countries employ a more flexible approach.

<sup>5</sup> Small and medium-sized enterprises and decent and productive employment creation, ILO 2015 para. 51



**Country example 47**

**Workforce size and modality for ensuring competency on OSH at the workplace**

Country	Workforce size	Modality for ensuring competency on OSH at the workplace
<b>Croatia:</b> Ordinance on Performance of Occupational Safety and Health (arts 6, 7, 8)	0–49 workers	At least one first-degree OSH expert must be engaged. If more than 70 per cent of the workforce is performing work in special working conditions, a second-degree OSH expert must also be engaged.
	50–249 workers	At least one second-degree OSH expert shall be appointed. However, where at least 80 per cent of the employees are performing exclusively work of low risk, a first-degree OSH practitioner may be appointed.
	250–499 workers	At least one second-degree and one first-degree OSH practitioner shall be appointed.
	>500 workers	For every 500 employees, an additional second-degree OSH practitioner must be appointed
<b>Italy:</b> Legislative Decree No. 81, 2008 on health and Safety at the Workplace (arts 31, 34)	<5 workers	The employer is responsible for the duties of the service of prevention and protection from risks, first aid, fire prevention and evacuation. In this case, the employer can also use an external service.
	Industrial workplaces with >200 workers	OSH services must be internal.
	Extractive industries with >50 workers	OSH services must be internal.
	Public or private structures of treatment and hospitalization with >50 workers	OSH services must be internal.
<b>Mauritius:</b> Occupational Safety and Health Act 2005 No. 28 of 2005 (section 30)	100–500	Employers must engage a safety and health officer for the purpose of assisting him and any employee and exercising general supervision regarding compliance with the provisions of this Act and generally to promote the safe conduct of work.
	500–2000	An employer must engage at least one safety and health officer on full-time employment to perform solely the duties of safety and health officer.
	2000+	For every additional 2,000 employees, an employer must engage an additional safety and health officer.
<b>Portugal:</b> Legal Regime of the Promotion of Safety and Health at Work Act No. 102/2009 (arts 81, 101(2), 105(1)(2))	Per 10/20 workers	Occupational doctors must be provided for at least one hour per month in industrial premises, and for each group of 20 workers in other premises.
	0–50 workers	One safety technician must be hired.  In workplaces with less than 9 workers, and not conducting a high-risk activity, OSH may be managed by the employer if he/she has an adequate training and is usually present in the establishment.
	>50 workers	Two safety technicians officers (one of which must be a senior safety technician) per 1,500 workers for industrial premises, and per 3,000 workers for other premises.

<b>Spain:</b> Prevention Services Royal Decree No. 39, 1997 (arts 10–16)	1–10 workers	The employer may perform OSH-related activities personally if (a) the enterprise does not perform dangerous work, (b) the employer him/herself regularly works at the workplace and (c) has the necessary qualifications and training to perform OSH-related duties.
	<25 workers	The employer may perform OSH-related activities personally if the same conditions apply as above and only if there is a single workplace.
	11–250	The employer must (a) engage an OSH professional or (b) establish an internal service or (c) contract an external OSH service.
	250–500	The employer must establish an internal OSH service if performing dangerous work. Otherwise, the employer must (a) hire OSH professionals or (b) contract an external OSH service.
	> 500	The employer must establish an internal OSH service (and may in addition contract an external OSH service).
<b>Togo:</b> Decree No. 004/2011/ MTESS/MS establishing OSH services pursuant to Articles 175 et 178 of the Labour Code (arts 13–17)	200–400 workers	The permanent service of a state nurse, specialist in OSH.
	>400 workers	The permanent service of two state nurses, specialists in OSH.
	Per every 250 workers above 400 workers	The permanent service of an additional state nurse, specialist in OSH.
	500–1,000 workers	The permanent service of an independent physician, holder of a medical doctor state diploma, specialist in OSH.
	>1,000 workers	The permanent service of two independent physicians, holders of a medical doctor state diploma/specialists in OSH.
	Per every 500 workers above 1,000	The permanent service of an additional independent physician, holder of a medical doctor state diploma/specialist in OSH.
	Other	<p>Undertakings with less than 500 workers that do not dispose of an independent safety and health service may establish a joint safety and health service, based on their geographical location or activities. In that case, the total number of workers covered by the joint safety and health service cannot exceed 1,500.</p> <p>Undertakings that provide housing for working families are required to provide at least one additional nurse for every additional 200 people.</p> <p>Depending on the risks that arise from the activity, the labour inspector, in consultation with the physician labour inspector, may modify the structure of the safety and health services. It is also possible to require the establishment of an independent safety and health service at workplaces with less than 500 workers.</p>

### 3.13 Duty to implement an OSH management system

Considerable attention has been given at the international level to hazard and risk management through OSH management systems. The *ILO—OSH Guidelines were developed in 2001* to support stakeholders in understanding and effectively applying the management systems approach at the national and enterprise levels.



## Definition

### Definition of an OSH management system

An management system is a set of interrelated or interacting elements designed to establish OSH policy and objectives and to achieve those objectives.

Source: [ILO, Guidelines on Safety and Health Management Systems: ILO-OSH 2001, 2001, p.19.](#)

Broadly, an OSH management system is a planned, documented and verifiable method of managing hazards and associated risks. It can be simple or complex; it can be highly documented or sparingly described; and it can be home-grown or based on an available model.

- (3) What makes it a system is the deliberate linking and sequencing of processes to achieve specific objectives and create a repeatable and identifiable way of managing OSH. Corrective actions and system improvements flow from the cycle (the Plan-Do-Check-Act cycle) of monitoring, audit and review of the system's implementation, which are central to a systematic approach.

What makes it a management system is the allocation of accountabilities, responsibilities and resources from senior management through to all employees in order to enable decisions to be made on OSH matters. It is one aspect of the overall management system used in the organization.

Based on Bryan Bottomley, [Occupational Health and Safety Management Systems: Strategic Issues Report](#) (National Occupational Health and Safety Commission of Australia, 1999).

OSH management systems provide a framework for employers to identify and manage hazards at work more effectively, thereby meeting their obligation to ensure safe and healthy working conditions. Such an approach also supports continual improvement and best OSH practice. The key objective of an OSH management system at the enterprise level is to map the actions that employers need to take in order to comply with their duty to ensure safety and health at work.

The management systems approach is based on the Plan-Do-Check-Act (P-D-C-A) or Deming cycle. The P-D-C-A cycle is applied in many decision-making processes in business and allows for a continual improvement in management. In the context of OSH and following the *ILO-OSH 2001 Guidelines*, the various steps of the P-D-C-A or Deming cycle involve the actions set out below.

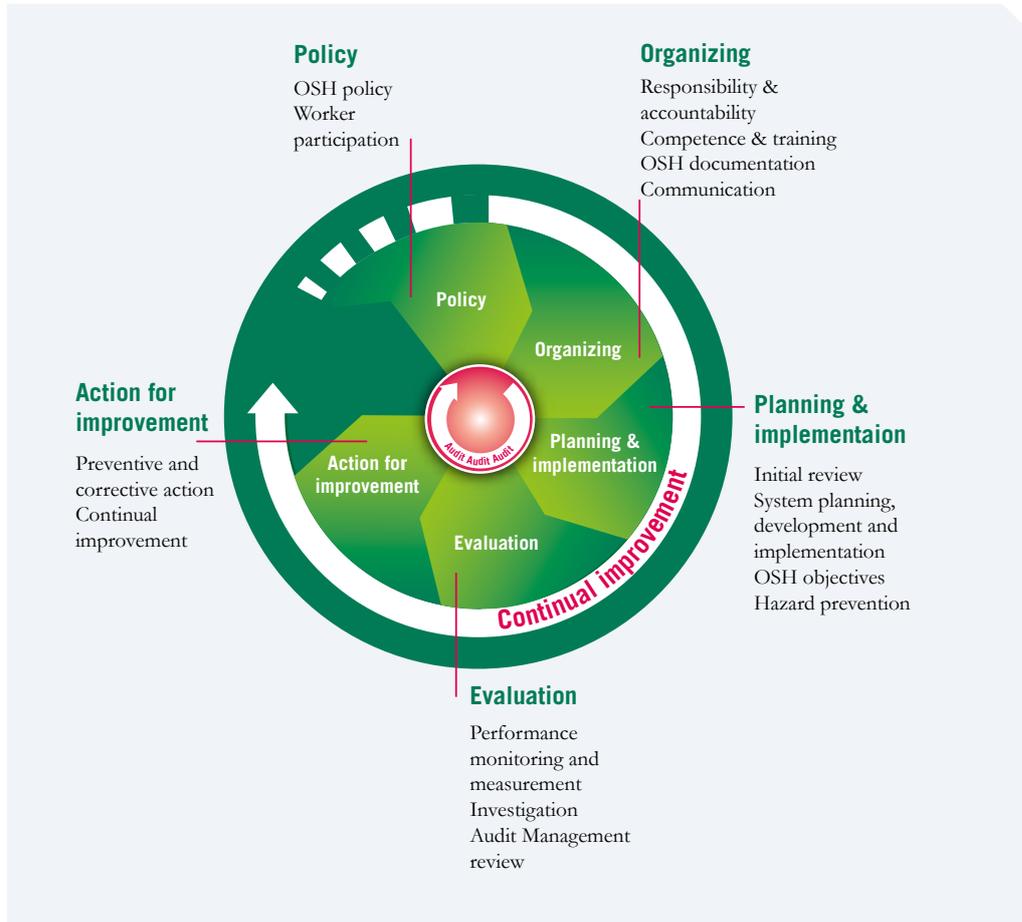


## Definition

### The P-D-C-A cycle used in an OSH management system setting

- **Plan** includes developing an enterprise OSH policy, identifying hazards and assessing risks at the workplace, planning preventive and protective measures, allocating the necessary resources and ensuring the availability of the necessary skills to implement the OSH policy and prevention plan.
- **Do** is the actual implementation of the OSH policy and prevention plan.
- **Check** consists of conducting an audit or evaluation of the effectiveness of the OSH policy and plan, including the preventive and protective measures that have been implemented.
- **Act** closes the cycle by taking stock of lessons learned from the previous phase, identifying improvements and applying them to the OSH management model that is being used.

**Figure 10.** ILO guidelines on OSH management systems: The continual improvement cycle



Source: ILO, *OSH Management System: A Tool for Continual Improvement*, 2011.



### International labour standards

- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)

Recommendation No. 197 accompanies Convention No. 187 and recommends that Member States promote a management systems approach to OSH, such as the approach set out in paragraph 6 of the *ILO-OSH 2001 Guidelines*.

Paragraph 3 of the *ILO-OSH 2001 Guidelines* states that the employer should show strong leadership and commitment to OSH activities in the organization, and make appropriate arrangements for the establishment of an OSH management system. The system should contain the main elements of policy, organizing, planning and implementation, evaluation and action for improvement.



**Country example 48**  
**Policy choices for establishing OSH management systems**

Policy choices	Country examples
<p><b>a.</b> Countries may legally require that a formal OSH management system be established at all or some workplaces</p>	<p><b>Argentina:</b> Resolution No. 523/2007 of 13 April approves the ILO–OSH 2001 Guidelines; Resolution 1629/2007 approves the regulations for the recognition (certification) of implementation of OSH management systems (under Resolution 523/2007).</p> <p><b>Bahrain:</b> Ministerial order No. 8 of 2013 regulates OSH in establishments.</p> <p><b>Colombia:</b> Decree No. 1443, 2014 establishes provisions on the implementation of OSH management systems.</p> <p><b>Cuba:</b> Resolution No. 39/2007 regulates the general foundation of safety and health at work.</p> <p><b>Denmark:</b> Executive Order No. 1193 of 09 October 2013 on Recognized Occupational Health Certificate is obtained through certification of companies' work environment management system; Executive Order No. 1198 of 23 October 2015 on Management of Safety and Health etc. in connection with Offshore Oil and Gas Operations etc was issued by the Danish Working Environment Authority (Part 7).</p> <p><b>El Salvador:</b> Legislative Decree No. 254 establishes the General Law on Risk prevention at Workplaces.</p> <p><b>Indonesia:</b> Act No. 13 of 2003 concerning Manpower; Government Regulation No. 50 of 2012 concerning the Occupational Safety and Health Management System Application.</p> <p><b>Peru:</b> Law No. 29783 on Safety and Health at Work.</p> <p><b>Singapore:</b> Workplace Safety and Health Act (Chapter 354 A); Workplace Safety and Health (Safety and Health management System and Auditing Regulations 2009).</p> <p><b>Sweden:</b> Provisions of the Swedish Work Environment, Authority on Systematic Work Environment Management, adopted on 15 February 2001.</p> <p><b>Thailand:</b> Ministerial Regulation of the Ministry of Labour on the prescribing of standards for administration and management of occupational safety, health and environment (No.2), B.E. 2553 (A.D. 2010).</p>
<p><b>b.</b> Countries may establish voluntary OSH management system guidelines based on ILO–OSH 2001</p>	<p><b>Russian Federation:</b> the ILO–OSH 2001 Guidelines have been translated and adopted as a voluntary standard: GOST 12.0.230-2007 Standard on Occupational safety and health management systems.</p>
<p><b>c.</b> Countries may legally require the implementation of the main elements of an OSH management system without requiring the establishment of a particular OSH management system format</p>	<p>In many European countries, the law requires undertakings to implement the main elements of an OSH management system. These include developing an OSH policy or plan for the undertaking, hiring an OSH practitioner or contracting/establishing an OSH service in companies over a certain workforce size threshold, conducting risk assessments, implementing safe working procedures including preventive and protective measures, providing information and training on OSH, consulting with workers and reviewing the results of OSH measures periodically. Some specific examples are provided below:</p> <ul style="list-style-type: none"> <li>- In <b>Spain</b>, chapter II of the Prevention Services Royal Decree No. 39, 1997 requires the employer to conduct a written risk assessment and elaborate a prevention plan with its implementation phases, as well as to document and periodically review these.</li> <li>- In the <b>United Kingdom</b>, the Management of Health and Safety at Work Regulations 1999 require the various elements typically found in an OSH management system, such as risk assessment and its periodical review and arrangements, to ensure effective planning, organization, control, monitoring and review of the preventive and protective measures.</li> </ul>

### 3.14 Duty to collaborate on OSH management in shared workplaces



#### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Safety and Health in Construction Convention, 1988 \(No. 167\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)

This basic OSH principle is enshrined in Article 17 of Convention No. 155, which establishes that: “whenever two or more undertakings engage in activities simultaneously at one workplace they shall collaborate in applying the requirements of this Convention”.

Paragraph 11 of Recommendation No. 164 provides that “whenever two or more undertakings engage in activities simultaneously at one workplace, they should collaborate in applying the provisions regarding occupational safety and health and the working environment, without prejudice to the responsibility of each undertaking for the health and safety of its employees. In appropriate cases, the competent authority or authorities should prescribe general procedures for this collaboration”.

This obligation is reflected in other international labour standards, including:

- Article 8(1) of Convention No. 167 in relation to the construction industry (coordination through the principal contractor or other person or body with actual control over or primary responsibility for overall construction site activities);
- Article 12 of Convention No. 176 in relation to the mining industry (employer in charge of the mine has the obligation to coordinate); and
- Article 6(2) of Convention No. 184 in relation to the agriculture industry (collaboration involving two or more employers or an employer and self-employed).

The CEACR has observed that in practice, this area is specifically regulated in many countries and that some countries explicitly provide for the allocation of joint responsibility between the different employers within one undertaking, thus holding all employers engaging in activities in a workplace liable for any situation that violates OSH legislation.<sup>6</sup>



#### Country example 49

##### European Union

##### Council Directive 89/391/EEC

##### Article 6(4)

Where several undertakings share a work place, the employers shall cooperate in implementing the safety, health and occupational hygiene provisions and, taking into account the nature of the activities, shall coordinate their actions in matters of the protection and prevention of occupational risks, and shall inform one another and their respective workers and/or workers’ representatives of these risks.

<sup>6</sup> ILO, General Survey, 2009, para.175.

## 4. Specific risk- or industry-based OSH duties of employers

The duties set out above are general and should apply to the employer or primary actor in all branches of economic activity and across all industries. However, given the varying complexity of the various branches of economic activities and the different nature of the wide spectrum of hazards, specialized sector-based and risk-based laws and regulations are necessary to address any particularities that may arise. High-risk economic sectors include (but are not limited to) mining; construction; agriculture; ports; shipbuilding, ship repair and shipbreaking; and oil and gas production. Hazards can be classified in the following broad categories: safety, physical, biological, chemical, ergonomic and psychosocial risks.

Countries wishing to comply with ILS on OSH should be developing a **comprehensive legislative framework on OSH** that includes legal instruments to address specific hazards and high-risk industries. However, it is beyond of the scope of this Support Kit to provide guidance on how to craft risk-based and sector-based laws and regulations.



International labour standards				
List of international labour standards on OSH				
	General	Hazard-based		Industry/sector-based
Conventions and Protocols	C155-OSH P2002-Protocol to C155 C161-Occupational Health Services C187-Promotional Framework for OSH	C115-Radiation Protection	C139-Occupational Cancer C148-Working Environment (Air pollution, Noise and Vibration) C162-Asbestos C170-Chemicals C174-Prevention of Major Industrial Accidents C190 -Violence and Harassment Convention,	C120-Hygiene (Commerce and Offices) C167-Safety and Health in Construction C176-Safety and Health in Mines C184-Safety and Health in Agriculture
Recommendations	R97-Protection of Workers' Health R102-Welfare Facilities R164-OSH R171-Occupational Health Services R194-List of Occupational Diseases R197 Promotional Framework for OSH	R114-Radiation Protection	R147-Occupational Cancer R156-Working Environment (Air pollution, Noise and Vibration) R172-Asbestos R177-Chemicals R181-Prevention of Major Industrial Accidents R206 - Violence and Harassment Recommendation	R120-Hygiene (Commerce and Offices) R175-Safety and Health in Construction R183-Safety and Health in Mines R192-Safety and Health in Agriculture

*Note: There are more than 40 international labour standards addressing OSH. To list them in a user-friendly format, the table groups them as (a) general instruments, (b) hazard-based instruments and (c) industry-based instruments.*

Convention No. 155, which is an overarching general Convention, requires employers to take appropriate measures so as to ensure that the **chemical, physical and biological substances and agents** under their control are without risk to workers' health. Furthermore, Recommendation No. 164 requires that measures are taken, as appropriate for different branches of economic activity and different types of work. The hazard-based international labour standards on OSH set out requirements for **chemical and physical agents**, while industry-based international labour standards on OSH set out specific requirements for construction, mining, agriculture, and commerce and offices. The most recent international labour standard is on **violence and harassment** in the world of work.

## List of ILO codes of practice on OSH

There are more than 40 ILO codes of practice on OSH. These set out practical guidelines for public authorities, employers, workers, enterprises, and bodies (such as enterprise safety committees). They can also be helpful to policy and law makers in shaping national laws, regulations or guidelines.

To provide a list of the most recent codes of practice in an easy-to-read format, the table below groups the codes of practice adopted from the 1990's as (a) general, (b) industry/sector-based and (c) hazard-based. This list is not exhaustive.



International labour standards	
<b>General</b> <ul style="list-style-type: none"> <li>- Managing disability in the workplace, 2002</li> <li>- ILO-OSH 2001 Guidelines</li> <li>- Prevention of major industrial accidents, 1991</li> <li>- Protection of workers' personal data, 1997</li> <li>- Recording and notification of occupational accidents and diseases, 1996</li> <li>- Safety, health and working conditions in the transfer of technology to developing countries, 1988</li> </ul>	
Hazard-based	Industry/sector-based
<b>Biologic hazards</b> <ul style="list-style-type: none"> <li>- HIV/AIDS and the world of work, 2001</li> </ul>	<b>Agriculture and forestry</b> <ul style="list-style-type: none"> <li>- Safety and health in agriculture, 2011</li> <li>- Safety and health in forestry work, 1998</li> </ul>
<b>Chemical hazards</b> <ul style="list-style-type: none"> <li>- Safety in the use of synthetic vitreous fibre insulation wools (glass wool, rock wool, slag wool), 2001</li> <li>- Safety in the use of chemicals at work, 1993</li> <li>- Safety in the use of asbestos, 1984</li> </ul>	<b>Construction</b> <ul style="list-style-type: none"> <li>- Safety and health in construction, 1992</li> </ul>
<b>Physical hazards</b> <ul style="list-style-type: none"> <li>- Safety and health in the use of machinery, 2013</li> <li>- Ambient factors in the workplace, 2001</li> </ul>	<b>Mining</b> <ul style="list-style-type: none"> <li>- Safety and health in opencast mines, 2018</li> <li>- Safety and health in underground coalmines, 200</li> </ul>
<b>Psychosocial hazards</b> <ul style="list-style-type: none"> <li>- Management of alcohol- and drug-related issues in the workplace, 1996</li> </ul>	<b>Manufacturing</b> <ul style="list-style-type: none"> <li>- Safety and health in shipbuilding and ship repairing, 2019</li> <li>- Code of practice on safety and health in shipbreaking: Guidelines for Asian countries and Turkey, 2004</li> </ul>
	<b>Ports and maritime</b> <ul style="list-style-type: none"> <li>- Safety and health in ports, 2016</li> <li>- Guidelines for implementing the occupational safety and health provisions of the Maritime Labour Convention, 2006 (MLC, 2006)</li> <li>- Security in ports, 2004</li> <li>- Accident prevention on board ship at sea and in port, 1996</li> </ul>
	<b>Services</b> Workplace violence in services sectors and measures to combat this phenomenon, 2003
	<b>Other industries/sectors:</b> <ul style="list-style-type: none"> <li>- Safety and health in the iron and steel industry, 2005</li> <li>- Safety and health in the non-ferrous metals industries, 2001</li> </ul>

## 5. OSH duties of persons who design, manufacture, import or supply substances, machinery and equipment for use in workplaces

Different kinds of machinery, equipment and substances are found in every workplace, which are purchased by employers who had no involvement in the manufacturing process. Because they can potentially represent a workplace hazard, it is important for employers to be satisfied that any machinery, equipment and substances that enter their workplace are safe for users. Because of the potential risks they introduce into a workplace, the designers, manufacturers, importers, providers and suppliers of machinery, equipment and substances should also be treated as duty holders under OSH legislation.

This subsection will examine the legal provisions that may be adopted with regard to

- (a) machinery and equipment; and
- (b) dangerous substances.



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Article 12 of Convention No. 155 states that measures shall be taken to, in accordance with national law and practice, with a view to ensuring that those who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use -

- (a) satisfy themselves that, so far as is reasonably practicable, the machinery, equipment or substance does not entail dangers for the safety and health of those using it correctly;
- (b) make available information concerning the correct installation and use of machinery and equipment and the correct use of substances, and information on hazards of machinery and equipment and dangerous properties of chemical substances and physical and biological agents or products, as well as instructions on how known hazards are to be avoided; and
- (c) undertake studies and research or otherwise keep abreast of the scientific and technical knowledge necessary to comply with subparagraphs (a) and (b) of this Article.

### a. Machinery and equipment

In order to ensure the regulation of machinery and equipment safety, national OSH laws often include a general duty that designers, manufacturers, importers or suppliers must ensure the safety of the machinery and equipment that they design, manufacture or supply. The legislation may include additional obligations, including:

- taking specific engineering measures;
- carrying out safety tests and examinations;
- placing safeguards;
- affixing safety labels and signs;
- providing user manuals with safety information; and
- issuing safety certificates or declarations.



### International labour standards

- [Occupational Safety and Health Recommendation, 1981\(No. 164\)](#)

Taking into account the principle of giving priority to eliminating hazards at their source, Paragraph 3(d) of Recommendation No. 164 encourages measures to be taken in particular in relation to the “design, construction, use, maintenance, testing and inspection of machinery and equipment liable to present hazards and, as appropriate, their approval and transfer”.



### Country example 50

#### European Union

Article 5 of the *Directive 2006/42/EC* on machinery provides for a comprehensive spectrum of requirements for machinery manufacturers. This includes ensuring compliance with the health and safety requirements listed in Annex I to the Directive; ensuring that a technical file is available; providing the necessary information and instructions; carrying out the appropriate procedures for assessing the machinery’s compliance with the provisions of the Directive and the EC Declaration; and affixing the CE marking (which denotes compliance with EU safety, health and environmental protection requirements).

#### India

In India, the *Dangerous Machine (Regulations) Act of 1983* imposes a duty on manufacturers, designers and dealers of dangerous machinery to ensure that machinery complies with industry standards. They must also place safeguards on the machinery; provide clear legible indicators on machines, including points beyond which human contact must be avoided; label the machinery with the appropriate signals, manufacturing details and power requirements; supply a manual containing general operational instructions; and provide the person buying the machine with a declaration indicating that the machine conforms with legal requirements.

#### Philippines

The *Occupational Safety and Health Standards of 1989* requires manufacturers, vendors and lessors of machinery, machine parts or other working equipment to “ensure that every article delivered, sold or let by them is provided with all the required protective devices”. Rule 1200 is very detailed and includes requirements on the provision and removal of guards, fillers, floor clearances, interlocks, wood guards, machine guards at point of operation, transmission machinery guarding, governors, collars and couplings, keys and set screws, tail rods, shafting, belt and pulley drive, conveyors, gears and sprockets, starting and stopping devices and so on.

## b. Dangerous substances

Many countries impose requirements on persons who manufacture, import or supply substances to provide information, for example through proper labelling and providing chemical safety data sheets on dangerous or hazardous chemicals and substances. This is particularly important in long supply chains, in which the manufacturer does not have direct communication channels with the person using the chemicals or substances in the workplace.



### International labour standards

- [Working Environment \(Air Pollution, Noise and Vibration\) Recommendation, 1977 \(No. 156\)](#)
- [Chemicals Convention, 1990 \(No. 170\)](#)

Paragraph 7 of Recommendation No. 156 states that: “the competent authority should determine the substances of which the manufacture, supply or use in the working environment should be prohibited or made subject to its specific authorisation, requiring compliance with particular measures of prevention or protection”.

Article 9 of Convention No. 170 imposes responsibilities on suppliers of chemicals, whether manufacturers, importers or distributors, to ensure that (a) chemicals have been classified on the basis of knowledge of their properties and a search of available information or assessed on the basis of a search of available information on their properties in order to determine whether they are hazardous chemicals; (b) chemicals are marked so as to indicate their identity; (c) hazardous chemicals are labelled and (d) chemical safety data sheets are prepared, provided to employers and revised whenever new relevant safety and health information becomes available.

A number of other international Conventions impose similar duties on producers, importers, exporters and suppliers of chemicals and hazardous substances in order to preserve human health and the environment, including the Stockholm Convention, the Rotterdam Convention, the Basel Convention, the Minimata Convention, the Vienna Convention and the Montreal Protocol.

The *Globally Harmonized System of Classification and Labelling of Chemicals (GHS)*, agreed under the auspices of the United Nations, addresses the classification of chemicals by types of hazard and proposes harmonized hazard communication elements, including labels and safety data sheets. It aims to ensure that information on physical hazards and toxicity from chemicals is made available in order to enhance the protection of human health and the environment during the handling, transport and use of these chemicals. The GHS also provides a basis for the harmonization of rules and regulations on chemicals at the national, regional and international levels, which is also important for trade facilitation.

The following EU Directives provide useful examples of comprehensive legislation that sets out legal requirements to prevent the use of certain hazardous substances by workers and safeguard the safety and health of workers who are exposed to dangerous substances and mixtures.



### Country example 51

#### European Union

**Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE) (RoHS Directive)**

This Directive sets out rules restricting the use of hazardous substances in EEE with a view to contributing to the protection of human health and the environment, including the environmentally sound recovery and disposal of waste. To this end, it places a variety of obligations on manufacturers, importers and distributors when placing EEE on the market, some of which are described below.

- Article 7. Manufacturers ensure that the EEE has been designed and manufactured in accordance with the requirements set out in the Directive (for example, that dangerous prohibited substances has not been used), draw up the required technical documentation and carry out an internal production control procedure.
- Article 9. Importers, before placing an EEE on the market, ensure that the appropriate conformity assessment procedure has been carried out by the manufacturer and also ensure that the manufacturer has drawn up the technical documentation and that the EEE bears the CE marking and is accompanied by the required documents.
- Article 10. Distributors verify that the EEE bears the CE marking and is accompanied by the required documents in a language that can be easily understood by consumers and other end-users in the member State in which the EEE is to be made available on the market.

#### **Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)**

This Regulation provides a regulatory example on the requirements for the timely delivery of information on chemicals throughout the supply chain. REACH imposes on all companies in a supply chain the duty to exchange information about the safe use of chemical substances and mixtures. In particular, it creates the following obligations:

- duty to provide safety data sheets and related requirements in the supply chain (art. 31);

- duty to communicate information down the supply chain for substances and mixtures for which safety data sheets are not required (art. 32);
- duty to communicate information on substances in articles (art. 33);
- duty to communicate information on substances and mixtures up the supply chain (art. 34);
- access to information for workers (art. 35);
- obligation to keep information (art. 36);
- duties of downstream users to assess chemical safety and to identify, apply and recommend risk reduction measures (art. 37); and
- obligation for downstream users to report information (art. 38).

## 6. OSH duties of workers

In addition to the various rights set out in this section of the Support Kit, workers bear a number of OSH duties that should be reflected in OSH legislation. However, when embedding the duties of workers in legislation, it is important for the legislator to envisage at the same time the obligation of the employer to provide workers with the necessary OSH training that will enable them to comply with their assigned OSH duties.

The CEACR indicated that Article 19(d) of Convention No. 155 (requiring that workers and their representatives in the undertaking are given appropriate training in OSH) highlights the importance of OSH training for ensuring that workers and their representatives have the knowledge and skills required to collaborate effectively with the employer in implementing OSH requirements in the workplace and to implement the required preventive and protective measures.<sup>7</sup>

### 6.1 Duty to take reasonable steps to protect their own safety and health and that of other persons

#### International labour standards



- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Recommendation No. 164 states in Paragraph 16 (a) that the arrangements at the undertaking (described in Article 19 of Convention No. 155) should aim at ensuring that workers “take reasonable care for their own safety and that of other persons who may be affected by their acts or omissions at work”.

This duty is an outcome-based provision, in that it is a broad duty designed to ensure that workers are safe and healthy at work and does not prescribe the steps that must be taken to achieve this goal.

<sup>7</sup> ILO, *General Survey*, 2009, para.201.



### Country example 52

#### Angola

*Safety, Hygiene and Health at Work Decree No. 31, 1994, article 3(1)*

Each worker must take care of his/her health and safety and that of other persons who may be affected by his/her actions or omissions in the execution of his/her activities.

#### Comoros

*Law No. 12, 2012 abrogating, amending and supplementing certain provisions of Law No. 84-108/PR establishing the Labour Code), article 154*

Following the instructions given by the employer or supervisor and based on their training and abilities, workers shall protect their own health and safety as well as that of other workers or persons concerned by their actions or neglects at work. This provision shall not affect the employers' or managers' main responsibility.

An analysis is set out below of other workers' duties that specifically encompass some of the measures or actions that workers can take in order to take reasonable steps to protect their safety and health and that of others.

## 6.2 Duty to comply with OSH-related instructions

A worker's actions or omissions can contribute to both preventing and creating risks and it is therefore important that they comply with the OSH rules and instructions established in the workplace.



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

Recommendation No. 164 provides in Paragraph 16 (b) that the arrangements at the undertaking (described in Article 19 of Convention No. 155) should aim to ensure that workers "comply with instructions given for their own safety and health and those of others and with safety and health procedures".



### Country example 53

#### Cameroon

*Order No. 39/MTPS/IMT, 1984 establishing the general measures regarding hygiene and safety at workplaces, article 7*

Every worker shall strictly comply with the legal and regulatory provisions relating to hygiene and safety at the workplace, as well as with the employer's instructions and the procedural rules, in particular those that refer to the performance of work; the use and maintenance of material, engines, machines and installations; and the use of the PPE that workers have been provided with.

#### Portugal

*Legal Regime of the Promotion of Safety and Health at Work Act No. 102, 2009, article 17*

Workers have a duty to meet the requirements of safety and health at work established by the legal provisions and instruments of collective labour regulation, as well as the specific instructions given by the employer.

### 6.3 Duty to use safety devices and protective equipment correctly

#### International labour standards



- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

Recommendation No. 164 indicates in Paragraph 16(c) that the arrangements at the undertaking (described in Article 19 of Convention No. 155) should aim to ensure that workers “use safety devices and protective equipment correctly and do not render them inoperative”.

#### Country example 54



##### Benin

*Labour Code No. 98-004, 1998, article 185*

Workers shall properly use safety and security devices and refrain from removing or modifying them without permission from the employer.

##### Greece

*Law No. 3850, 2010 ratifying the Code of Laws related to Occupational Safety and Health, article 49*

Workers shall correctly use machinery, appliances, tools, hazardous substances, transportation and other means; correctly use the personal safety equipment that is at their disposal and after its use put it back in its place; and refrain from disabling, deactivating, changing or arbitrarily relocating the safety mechanisms of the machinery, tools, appliances, facilities and buildings, and use all these safety mechanisms correctly.

Workers should also inform the employer of the disappearance or lack of any safety device or protective equipment, as well as of any damages or defects, so that the employer can take prompt action to arrange for their reparation or substitution.

#### Country example 55



##### Guyana

*Occupational Safety and Health Act No. 32, 1997, article 49(1)(c)*

A worker shall report to his or her employer or supervisor the absence or defect in any equipment or protective device and clothing of which the worker is aware and which may endanger himself, or another worker.

##### Mauritius

*Occupational Safety and Health Act of 2005, section 14(1)(d)*

Every employee shall, while at work, report forthwith to his employer the loss or destruction of, or defect in, the protective equipment or clothing entrusted to him.

Other related obligations that countries may wish to consider embedding in their OSH law include, for instance, the duty to return safety devices immediately after the need for removal has ceased (for example, for repair purposes). Also, logically the use of machinery should be prohibited for work purposes until the safety devices are assembled and replaced on the machine, where and as they were originally placed until a malfunctioning machine is repaired or replaced by one in working order.



**Country example 56**

**Denmark**

*Working Environment Act No. 1072, 2010, section 28(3)*

Any person who has to remove a safety device temporarily to perform a job, such as repair work or installation, shall ensure that such a device is replaced immediately after the performance of the job or that an equally safe protective measure is taken.

**6.4 Duty to cooperate with the employer**



**International labour standards**

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Convention No. 155 states in Article 19 that “there shall be arrangements at the level of the undertaking under which-

- (a) workers, in the course of performing their work, cooperate in the fulfilment by their employer of the obligations placed upon him;
- (b) representatives of workers in the undertaking cooperate with the employer in the field of occupational safety and health;”

Workers should also collaborate with and provide support to entities and persons delivering occupational health services in the execution of their duties pursuant to Paragraph 44(2) of Recommendation No. 171.



**Country example 57**

**Barbados**

*Safety and Health at Work Act, 2005, section 9(1)(b)*

It shall be the duty of every employee, as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to cooperate with his employer so far as is necessary to enable that duty or requirement to be performed or complied with.

**Malaysia**

*Occupational Safety and Health Act No. 514, 1994, section 24(1)(b)*

It shall be the duty of every employee while at work to cooperate with his employer or any other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any regulation made thereunder.

**6.5 Duty to report a situation which a worker has reason to believe could present a hazard**



**International labour standards**

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

Recommendation No. 164 states at Paragraph 16 (d) that the arrangements at the undertaking (described in Article 19(f) of Convention No. 155) should aim at ensuring that workers “report forthwith to their immediate supervisor any situation which they have reason to believe could present a hazard and which they cannot themselves correct”.



### Country example 58

#### South Africa

*Occupational Health and Safety Act No. 85, 1993, section 14(d)*

Every employee shall at work if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer.

## 6.6 Duty to report to management any accident, injury to health, and dangerous occurrence



### International labour standards

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Recommendation No. 164 states in Paragraph 16 (e) that the arrangements at the undertaking (described in Article 19 of Convention No. 155) should aim at ensuring that workers “report any accident or injury to health which arises in the course of or in connection with work”.



### Country example 59

#### Nicaragua

*General Hygiene and Safety at Work Act No. 618, 2007, article 32(6)*

Workers shall ) inform their manager of all accidents and injuries that are originated by work or related to it, and to provide information required by labour hygiene and safety inspectors.

#### South Africa

*Occupational Health and Safety Act No.85, 1993, section 14*

Every employee shall at work-  
(...)

- (d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and
- (e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.

#### Norway

*Working Environment Act No. 62, 2005, section 2-3(2)(e)*

Employees shall notify the employer if an employee suffers injury at work or contracts diseases which the employee believes to result from the work or conditions at the working premises.

## 6.7 OSH responsibilities of workers in a managerial role or with some degree of seniority

Supervisors, middle management and senior officials can be assigned with OSH-related duties by law or by the employer. In these cases, OSH laws may articulate that the employer cannot transfer or delegate his/her overall responsibility for OSH in the workplace (see subsection 2 above on General and primary OSH duty of the employer).

It is important that a concise definition of the term *supervisor* or any similar managerial function is provided to avoid any uncertainty. This can be done in a separate article or section of the law (for example in the definitions section) or incorporated into the relevant section that sets out the duties.



### Country example 60

#### Denmark

*Working Environment Act No. 1072, section 26*

The supervisor shall contribute towards ensuring that the working conditions are safe and healthy within the field of activity of which he is supervisor. In this connection, he shall check the effectiveness of the measures taken to promote health and safety. If the supervisor becomes aware of errors or deficiencies which may involve a risk of accidents or diseases, he shall take steps to avert such danger. Where the risk cannot immediately be averted by his intervention, he shall inform the employer without delay. The term supervisor is defined by section 24 as “a person whose work consists solely or primarily of managing or supervising, on behalf of the employer, the work in an enterprise or any part thereof”.

#### Zambia

*Occupational Health and Safety Act No. 36, 2010, section 19(1)*

A person who has the management or control of (a) a workplace or of the means of access to, or exit from, any workplace; or (b) any plant or substance in a workplace; shall take such measures as are reasonable for a person in that position to take so as to ensure, so far as is reasonably practicable, that the workplace, or means of access to, or exit from, that workplace are available for use by persons using the workplace, and any plant or substance in the workplace provided for use in that workplace is safe and does not cause any risk to the health or safety of the persons using them.

## 6.8 Prohibitions for workers

An OSH law may also impose a duty on workers to refrain from certain behaviour. In particular, the OSH law may explicitly prohibit workers from undertaking actions that may be dangerous and pose a risk to the safety and health of workers and other persons at the workplace. Prohibitive provisions may be outcome-based – that is they may prohibit workers from doing anything that could endanger their safety and health. They may also be proscriptive, that is they may describe specific actions that workers are forbidden to take. Such actions may include:

- interfering with, misusing, damaging, disabling, deactivating, changing or arbitrarily relocating machinery, tools, appliances, materials, belongings, facilities and buildings (including their safety devices);
- modifying, removing, destroying or withdrawing notices or instructions posted at the workplace and alarm systems set up at workplaces;
- hindering the application of the health and safety measures prescribed at the workplace;
- smoking at the workplace (particularly in places where inflammable material is stored, chemicals are used and so on); and
- consuming alcohol beverages, (not medically prescribed) psychotropic drugs or other intoxicant products.



### Country example 61

#### Guatemala

*General Regulation on Hygiene and Safety at Work, article 9*

Workers are prohibited from:

- Preventing safety measures in operations and work processes from being complied with;
- Damaging or destroying the guards and protections of machinery and facilities or remove them from their site;
- Damaging or destroying PPE or deny its use without justification;
- Damaging, destroying or removing warnings about unsafe or unhealthy conditions;
- Playing games (...) that endanger their life, health or safety or that of their co-workers;
- Oiling, cleaning or repairing machine in motion unless it is absolutely necessary and that all the precautions indicated by the person in charge of the machinery are followed;
- Going to work under the influence of a narcotic or a stimulant drug.

## 7. OSH rights of workers

### 7.1 General right to a safe and healthy workplace

The workers' right to safe and healthy working conditions may be articulated in the OSH law, the Labour Code and even in the Constitution<sup>8</sup>.



### Country example 61bis

#### Mozambique

Constitution of 2004, article 85(2)

The worker has the right to protection, safety and hygiene at work.

#### Ghana

Labour Act (No. 651) of 2003, article 10

The rights of a worker include the right to work under satisfactory, safe and healthy conditions.

#### Spain

Act 31 of 8 November 1995 on Prevention of Occupational Risks, article 14

Workers have the right to effective protection in matters of OSH.

### 7.2 Specific OSH-related rights

In addition to establishing workers' right to safe and healthy working conditions in a general fashion, specific OSH rights of workers may also be articulated.



#### International labour standards

- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)

<sup>8</sup> Implicit to the employer's obligation to secure safe and healthy working conditions.

Conventions Nos. 176 and 184 explicitly set out various specific rights of workers in relation to OSH.

Article 13(1) of Convention No. 176 stipulates that “under the national laws and regulations referred to in Article 4, workers shall have the following rights:

- (a) to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;
- (b) to request and obtain, where there is cause for concern on safety and health grounds, inspections and investigations to be conducted by the employer and the competent authority;
- (c) to know and be informed of workplace hazards that may affect their safety or health;
- (d) to obtain information relevant to their safety or health, held by the employer or the competent authority;
- (e) to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health; and
- (f) to collectively select safety and health representatives.”

Article 13(3) further requires that procedures for the exercise of these rights should be specified:

- (a) by national laws and regulations; and
- (b) through consultations between employers and workers and their representatives.

Article 13(4) stipulates that national laws and regulations should ensure that these rights are exercised without discrimination or retaliation.

Article 8(1) of Convention No. 184 states that “workers in agriculture shall have the right:

- (a) to be informed and consulted on safety and health matters including risks from new technologies;
- (b) to participate in the application and review of safety and health measures and, in accordance with national law and practice, to select safety and health representatives and representatives in safety and health committees; and
- (c) to remove themselves from danger resulting from their work activity when they have reasonable justification to believe there is an imminent and serious risk to their safety and health and so inform their supervisor immediately. They shall not be placed at any disadvantage as a result of these actions.”

Article 8(3) further provides that the procedures for the exercise of the rights and duties established under this Convention should be established by national laws and regulations, the competent authority, collective agreements or other appropriate means.

Some countries have adopted a similar approach to that of Conventions Nos. 176 and 184 and have embedded in their OSH laws specific workers’ rights.



### Country example 61<sup>ter</sup>

#### China

Law of the People’s Republic of China on Prevention and Control of Occupational Diseases (Order of the President No.60)

#### Article 36

Under the right to protection of their occupational health, workers shall enjoy the rights to:

- receive education and training in occupational health;
- receive services for the prevention and control of occupational diseases, such as health check-ups, diagnosis, treatment and recuperation;

- be informed about the occupational disease hazards that may or are likely to exist at the workplace, the consequences of such hazards and the necessary measures to be taken for the prevention of occupational diseases;
- ask the employer to provide facilities for the prevention of occupational diseases that meet the requirements for prevention and control of such diseases, provide the workers with PPE for the same purpose and improve working conditions;
- criticize, report and call to account violations of the laws and regulations on prevention and control of occupational diseases and acts that endanger the lives and health of the workers;
- reject directions that are against regulations and coercive orders for doing jobs where the measures for prevention of occupational diseases are lacking; and
- participate in the undertaking's democratic management of occupational health and put forward comments and suggestions about prevention and control of occupational diseases.

### Spain

*The Prevention of Occupational Risks Act No. 31, 1995, article 14*

The rights to information, consultation and participation, training in preventive matters, cessation of activity in case of serious and imminent risk, and monitoring of their health status, in the terms provided for in this Law, are part of the right of workers to effective protection in matters of OSH.

The rest of this subsection addresses key OSH-related workers' rights.

## 7.3 Right of workers to information and training on OSH and to correct erroneous data on their health in relation to work

The right of workers to information and training on OSH correlates to the employer's duty to provide such information and training (see subsection 4 above).



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)
- [Working Environment \(Air Pollution, Noise and Vibration\) Convention, 1977 \(No. 148\)](#)

In relation to information regarding health hazards and examinations, Paragraph 22 of Recommendation No. 171 states that each worker should be informed in an adequate and appropriate manner of the health hazards involved in his work, the results of any health examinations he has undergone and of the assessment of his health. Moreover, each worker should have the right to review and correct any erroneous data and must be provided with personal advice concerning his/her health in relation to work. This information should be known and communicated only by the occupational service (never by the employer); that is, confidentiality should be strictly ensured (for further discussion, see subsection 3.10 above and section VIII of the Support Kit).

In addition to having access to relevant information, workers must receive adequate training on how to execute their tasks safely without endangering their health and safety or that of others, including the nature of existing risks; the collective preventive measures that have been implemented; the protocol for executing work safely and for the safe use of substances, machinery, tools, appliances and any other type of equipment; the appropriate use of PPE; and emergency and evacuation protocols.

Convention No. 155 prescribes in Article 21 that "occupational safety and health measures shall not involve any expenditure for the workers". Consequently, preventive measures, including provision of information and training, should be at no cost to workers.

Article 7(2) of Convention No. 148 stipulates that “Workers or their representatives shall have the right to present proposals, to obtain information and training and to appeal to appropriate bodies so as to ensure protection against occupational hazards due to air pollution, noise and vibration in the working environment”.

Some OSH laws tend to keep the right of workers to information and training on OSH in general, while including more detailed requirements in the provisions that capture the employers’ duties (see subsection 4 above).



**Country example 62**

**Panama**

*General Regulation on Occupational Risk Prevention and Safety and Hygiene at Work (approved by Resolution No 45.588–2011–J.D.), article 8(c)(d)*

Workers have the right to participate in training on risk prevention and emergencies provided by the employer or by the Social Security Fund ... Workers have the right to training and re-training on risk prevention and control methods, as well as other adequate methods to protect themselves from risks.

**7.4 Right to be consulted/ participate in decision-making on safety and health**

Workers and/or their representatives must be consulted on decisions affecting OSH in the workplace. This is because they are the ultimate beneficiaries of OSH-related measures and so they should have the opportunity to provide input into the adequacy and efficacy of existing or proposed OSH measures. Moreover, it would be important for workers to be able to request external expertise when needed. This entitlement to be consulted should be set out in OSH law, along with a corresponding duty for the employer to ensure that the consultation actually takes place.



**International labour standards**

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Convention No. 155 prescribes in Article 19(e) that “There shall be arrangements at the level of the undertaking under which “workers or their representatives and, as the case may be, their representative organisations in an undertaking, in accordance with national law and practice, are enabled to enquire into, and are consulted by the employer on, all aspects of occupational safety and health associated with their work; for this purpose technical advisers may, by mutual agreement, be brought in from outside the undertaking”.



**Country example 63**

**Dominican Republic**

Regulation on Safety and Health at Work (Approved by Decree No. 522-06, 2006), article 4(2)  
Workers have the right to participate in the design, adoption and implementation of preventive actions, including consultations on risk assessment and subsequent planning and organization of preventive action, as well as access to related documentation.

## 7.5 Right to withdraw from an imminent and serious danger without undue consequences and to refrain from returning as long as the danger persists

The right to withdraw from a situation where there is imminent and serious danger in the workplace plays an important role in preventing deaths and serious injuries in the workplace. Many workers today are not aware of this right under ILS and may fear negative consequences if they choose to remove themselves from an imminent and serious danger. Such consequences might include dismissal, reduction of pay or removal of other workplace benefits and entitlements. It is important that national laws reflect this entitlement and clearly state that workers who exercise this right are protected from adverse action as a result. Moreover, workers must not be required by their employer to return to a workplace until the imminent and serious danger has been controlled or eliminated.



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Safety and Health in Construction Convention, 1988 \(No. 167\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)

Convention No. 155:

- prescribes in Article 13 that “a worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice”;
- requires member States in Article 5(e) to ensure that the national OSH policy addresses “the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them”; and
- establishes in Article 19(f) that “there shall be arrangements at the level of the undertaking under which a worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health ...”.

Sectoral Conventions also clearly include this right.

Article 12(1) of Convention No. 167 states that: “National laws or regulations shall provide that a worker shall have the right to remove himself from danger when he has good reason to believe that there is an imminent and serious danger to his safety or health, and the duty so to inform his supervisor immediately”.

Article 13(1)(e) of Convention No. 176 provides that “Under the national laws and regulations ..., workers shall have the following rights: ... (e) to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health;”

Article 8(1)(c) of Convention No. 184 provides that: “Workers in agriculture shall have the right: ... (c) to remove themselves from danger resulting from their work activity when they have reasonable justification to believe there is an imminent and serious risk to their safety and health and so inform their supervisor immediately. They shall not be placed at any disadvantage as a result of these actions.”

The CEACR has emphasized that the protection provided for in Article 5(e) of Convention No. 155 as set out above extends not only to workers’ representatives with OSH responsibilities

but also to individual workers without OSH responsibilities who take action that conform to the procedure set out in Article 4 of the Convention.<sup>9</sup>

The CEACR has indicated that the three above-mentioned articles of Convention No. 155 represent a careful balance between employers' interests in the proper management of the enterprise, on the one hand, and the protection of workers' life and health, on the other.<sup>10</sup>

The CEACR has expressed the view that the right of workers to remove themselves from situations when there is a reasonable justification to believe that there is a serious and imminent danger remains an essential foundation for the prevention of occupational accidents and diseases and must not be undermined by any action by the employer. It is linked to the duty of workers to inform their employer about such situations, although this obligation should not be seen as a prerequisite for the exercise of the right of removal.<sup>11</sup> The duty to report would logically come into play only once workers have removed themselves from the imminent and dangerous situation, as reporting while still in such a situation is likely to increase the risk of being harmed.

The importance of the workers' right to remove themselves from an imminent and serious danger is such that, in addition to ILS, it has been replicated in regional legal instruments as well.



### Country example 64

#### European Union

*Council Directive 89/391/EEC*

*Article 8(4)(5)*

Workers who, in the event of serious, imminent and unavoidable danger, leave their workstation and/ or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences, in accordance with national laws and/ or practices. Their actions shall not place them at any disadvantage, unless they acted carelessly or there was negligence on their part.

#### Mercosur

*Socio-Occupational Declaration of Mercosur, 2015*

Article 25(11) requires national legislation and practices to guarantee the right of workers to refuse carrying out their professional activities in conditions of imminent and grave danger.

## 7.5.1 Arrangements that enable workers to effectively exercise this right

A legislative approach to ensure that workers **can** and **do** exercise their right to stop work and leave the worksite when faced with an imminent and serious danger is to articulate in law the employers' obligation to provide mechanisms that will enable workers to effectively exercise this right. In practice, such mechanisms may include, for instance, emergency protocols that are activated whenever there is a risk which workers assess to be serious and imminent. Workers should also be informed of their right to leave the workplace in certain situations and should be trained to identify such dangers and to follow the emergency protocol. Such provisions will not only recognize this fundamental right of workers but also empower them and give them the authority to exercise it, which is crucial in emergency situations.

<sup>9</sup> ILO, *General Survey*, 2009, para.74.

<sup>10</sup> ILO, *General Survey*, 2009, para.145.

<sup>11</sup> ILO, *General Survey*, 2009, para. 146; and ILO, *General Survey*, 12017, para.298.



### Country example 65

#### European Union

##### *Council Directive 89/391/EEC*

Article 8(5) adopts a proactive approach that requires the employer to “ensure that all workers are able, in the event of serious and imminent danger to their own safety and/ or that of other persons, and where the immediate superior responsible cannot be contacted, to take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger”.

Article 8 also sets out obligations for the employer in relation to first-aid, firefighting and evacuation, which are possible elements of a scenario that presents an imminent and serious danger. These include:

- taking the necessary measures and designating workers to implement them;
- arranging the necessary contacts with external services specializing in emergency procedures;
- providing the adequate training and equipment to workers:
- informing workers who are, or may be, exposed to serious and imminent danger of the risk involved and of the steps taken or to be taken as regards protection;
- taking action to enable workers to stop work and/ or immediately leave the work place and proceed to a place of safety in the event of serious, imminent and unavoidable danger; and
- refraining from asking workers to resume work in a working situation where there is still a serious and imminent danger.

### 7.5.2 Right to retain salary while an imminent and serious danger persists

Some states recognize the right of workers to receive their usual salary while they cannot return to a situation where danger persists (as indicated above, no worker can be required to return to a dangerous situation).



### Country example 66

#### Namibia

##### *Labour Law Act No. 11, 2007, article 42(3)*

An employee who leaves a place of work in terms of this section (employee’s right to leave dangerous place of work) is entitled to the same conditions of service applicable to that employee and to receive the same remuneration during the period of absence.

## 7.6 Rights of workers when continued risk exposure at the workplace is medically inadvisable

Exposure to risks is never advisable, although laws usually tolerate some exposure not exceeding the threshold limit values (that is, maximum exposure limits) as they are considered to be safe by the national authorities. However, when the health of a worker has declined due to exposure to workplace risks or due to non-work-related circumstances that are aggravated by risks presents in the workplace, that worker should ideally be removed from the risk exposure.

In principle, both the state and employers can play a key role to ensure that risk exposure ceases when it is medically inadvisable. For example, the state may provide employment injury benefits and vocational training and support the worker in the search for a new job that does not entail risk exposure; the employer may make adjustments to the workstation and

working conditions; change duties, including by reassignment; change the worker's working time; establish other reasonable accommodations; and provide training.

Although international labour standards are silent on how exactly to embed this principle in national legislation (whether as a duty or right), they do explicitly refer to it. This provides countries with important flexibility in deciding how to regulate such situations.



### International labour standards

- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)
- [Working Environment \(Air Pollution, Noise and Vibration\) Convention, 1977 \(No. 148\)](#)
- [Asbestos Convention, 1986 \(No. 162\)](#)
- [Radiation Protection Recommendation, 1960 \(No. 114\)](#)
- [Occupational Cancer Recommendation, 1974 \(No. 147\)](#)

Article 11(3) of Convention No. 148 stipulates that “where continued assignment to work involving exposure to air pollution, noise or vibration is found to be medically inadvisable, every effort shall be made, consistent with national practice and conditions, to provide the worker concerned with suitable alternative employment or to maintain his income through social security measures or otherwise”.

Article 21(4) of Convention No. 162 stipulates that “when continued assignment to work involving exposure to asbestos is found to be medically inadvisable, every effort shall be made, consistent with national conditions and practice, to provide the workers concerned with other means of maintaining their income”.

Paragraph 27 of Recommendation No. 114 recommends that “if, as the result of such medical advice ... it is inadvisable to subject a worker to further exposure to ionising radiations in that worker's normal employment, every reasonable effort should be made to provide such a worker with suitable alternative employment”.

Paragraph 14 of Recommendation No. 147 recommends that “if as the result of any action taken in pursuance of this Recommendation it is inadvisable to subject a worker to further exposure to carcinogenic substances or agents in that worker's normal employment, every reasonable effort should be made to provide such a worker with suitable alternative employment”.

Recommendation No. 171 indicates in Paragraph 11(1)(c) that “surveillance of the workers' health should include ... all assessments necessary to protect the health of the workers, which may include health assessment ... for the purpose of ... recommending appropriate action to protect the workers and of determining the worker's suitability for the job and needs for reassignment and rehabilitation”.



### Country example 67

#### Peru

*Safety and Health at Work Act, No. 29783, 2011, article 76*

Workers have the right to be transferred in case of accident or occupational disease to another post involving less risk to their safety and health, without any prejudice to their pay rights and category.

In other Member States, there is a focus on vocational training to enable workers to find another job suitable to their health condition in a different company when reassignment in the same enterprise is not possible. Vocational training and rehabilitation may also be part of the employment injury benefits that a worker should receive after sustaining an occupational injury.



### Country example 68

#### Angola

*Decree No. 31/1994 on Safety, Hygiene and Health at Work, article 14(g)*

Workers have the right to be transferred to a new post and to receive appropriate training when they suffer some reduction in their ability to work that makes impossible the exercise of normal duties.

## 7.7 Right to elect OSH representative(s)

The right of workers to freely elect their representatives (including those who will be specifically assigned with OSH functions) should be explicitly stated in the relevant legislation. This could be the labour law/code or in laws governing freedom of association and collective bargaining. This right may also be included in the OSH law with respect to workers' representatives on OSH. Workers' representation on OSH is further discussed in section VI of this Support Kit.

## 7.8 Right to protection of workers against retaliation measures

Legislators should implement measures to ensure that workers who complain about or notify the employer of irregularities regarding OSH, or who report an employer's breach of OSH legislation to the competent authority, are not subjected to reprisals by the employer. Such retaliations may consist of dismissal, decrease of pay, functional or geographical transfer against the worker's will, denial of any benefit to which the worker has a legal right or any other retribution or punishment.



### International labour standards

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Violence and Harassment Convention, 2019 \(No. 190\)](#)

Recommendation No. 164 states in Paragraph 17 that "no measures prejudicial to a worker should be taken by reference to the fact that, in good faith, he complained of what he considered to be a breach of statutory requirements or a serious inadequacy in the measures taken by the employer in respect of occupational safety and health and the working environment".

Article 10(b)(iv) of Convention No. 190 stipulates that "Each Member shall take appropriate measures to: ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work, such as protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers".



### Country example 69

#### Norway

*Working Environment Act No. 62, 2005, section 2 A-4*

- (1) Retaliation against an employee who notifies censurable conditions at the undertaking is prohibited. As regards workers hired from temporary-work agencies, the prohibition shall apply to both employers and hirers.
- (2) By retaliation is meant any unfavourable act, practice or omission that is a consequence of or a reaction to the fact that the employee has notified, for example
  - (a) threats, harassment, arbitrary discrimination, social exclusion or other improper conduct
  - (b) warnings, change of duties, relocation or demotion
  - (c) suspension, dismissal, summary discharge or disciplinary action.

#### Trinidad and Tobago

*The Occupational Safety and Health Act No. 1 of 2004, section 20A*

No employer or person acting on behalf of an employer shall:

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker, or intimidate or coerce a worker, because the worker has acted in compliance with this Act or the Regulations or an order made thereunder, has sought the enforcement of this Act or the regulations, has observed the procedures established by the employer or has given evidence in a proceeding in respect of the enforcement of this Act or the Regulations.



## Checklist

### Section 04

Relevant ILS	Duties of employers	Covered by OSH law?		Observations
		YES	NO	
C155, Art. 16	Overarching outcome-based duty to ensure the safety and health of workers			
- <sup>1</sup>	The principle of non-transferability of the ultimate responsibility for OSH of the employer			
C170, Art. 13(1) C174, Art. 9(a) C176, Art. 6 C184, Art. 7(a) ILO-OSH Guidelines 2001, para. 3.7.2	Duty to conduct a risk assessment in consultation with workers			
R164, Para. 14 C190, Art. 9 ILO-OSH 2001 Guidelines, para.3.1	Duty to formulate a workplace OSH policy and plan			
C155, Art. 19(c) C162, Art. 9(3) C170, Art. 15 C190, Art. 9(d)	Duty to provide OSH information to workers			
C155, Art. 19(e) R164, Para. 12(2) ILO-OSH 2001, para. 3.6.1	Duty to consult workers on OSH and enable them to participate in OSH management			
C155, Art. 19(d) R164, Para. 12(2)(i) C162, Art. 9(3) C170, Art. 15 C190, Art. 9(d) ILO-OSH 2001, para. 3.4.4	Duty to provide OSH training to workers at no cost and if possible during working hours			
C155, Arts 16(3), 21, C176, Art. 9(6) R164, Para. 16(c) C162, Art. 18 C167	Duty to provide, maintain and ensure the proper use of PPE at no cost to workers			
C155, Art. 18 C161, Art. 5(j) ILO-OSH 2001 Guidelines (3.10.3)	Duty to provide emergency plans and first aid			

<sup>1</sup> General consideration taking into account country practices.

Relevant ILS	Duties of employers	Covered by OSH law?		Observations
		YES	NO	
<b>R164; R102</b> <b>R115, Para. 3(o)</b> <b>C167, Art. 32</b> <b>C176, Art. 5(4)(e)</b> <b>C184, Art. 19</b> <b>C188, Arts 26, 27</b> <b>C110, Art. 86</b> <b>C120, Arts 12,13,15</b>	Duty to provide welfare facilities at work			
<b>C155, Art. 19(f)</b>	Duty to take remedial action before requiring workers to return to work where workers have informed the employer that there is an imminent and serious danger to life or health			
<b>C161, Art. 1(a)(ii)5,12,</b> <b>C148, Art. 11</b> <b>C115, Art. 12,13</b> <b>R171, 11, 14, 16, 22</b> <b>ILO Technical and Ethical Guidelines for Workers' Health Surveillance, paras 3, 6.9, 6.10</b>	Duty to ensure surveillance of workers' health at no cost for workers and during working hours			
<b>P155, Art. 3,4</b> <b>C81, Art. 14</b> <b>Code of practice on recording and notification of accidents and diseases, paras 5.2.2, 6.2.2, 10.2.1-9</b>	Duty to record, notify and investigate occupational accidents, commuting accidents, dangerous occurrences and occupational diseases			
<b>C155, Art. 14</b> <b>C161, Art. 11</b>	Duty to secure OSH competence and expertise at the workplace			
<b>R197, Para. 6</b> <b>ILO-OSH 2001 Guidelines</b>	Duty to implement an OSH management system			
<b>C155, Art. 17</b> <b>R164, Para. 11</b> <b>C167, Art. 8(1)</b> <b>C176, Art. 12</b> <b>C184, Art. 6(2)</b>	Duty to collaborate on OSH management in shared workplaces			
<b>C115; C120; C139; C148;</b> <b>C162; C167; C170; C174;</b> <b>C176; C14; C190; and</b> <b>their accompanying Recommendations and codes of practice</b>	Specific risk or industry-based OSH duties of employers			

Relevant ILS	Duties of other persons	Covered by OSH law?		Observations
		YES	NO	
<b>C155, Art. 12</b> <b>R164, Para. 3(d),</b> <b>R156, Para. 7</b> <b>C170, Art. 9</b>	Duties of persons who design, manufacture, import or supply substances, machinery and equipment for use in workplaces			

Relevant ILS	Workers' duties	Covered by OSH law?		Observations
		YES	NO	
<b>R164, 16(a)</b>	Duty to take reasonable steps to protect their own safety and health and that of other persons			
<b>R164, 16(b)</b>	Duty to comply with OSH-related instructions			
<b>R164, 16(c)</b>	Duty to use safety devices and protective equipment correctly			
<b>C155, Art. 19</b>	Duty to cooperate with the employer			
<b>R164, Para. 16(d)</b>	Duty to report any situation which they have reason to believe could present a hazard			
<b>R164, Para. 16(e)</b>	Duty to report to management any accident, injury to health, and dangerous occurrence			
<sup>2</sup>	Possible prohibition for workers			

<sup>2</sup> General consideration taking into account country practices and in relation to R164, Para. 16.

Relevant ILS	Workers' rights	Covered by OSH law?		Observations
		YES	NO	
- <sup>3</sup>	Right to a safe and healthy workplace			
<b>C176, Art. 13</b> <b>C184, Art. 8</b>	Specific OSH-related rights			
<b>R171, Para. 22 C148, Art. 7</b>	Right to enquire, be informed and trained in OSH			
<b>C155, Art. 19(e)</b>	Right to be consulted/participate in decision-making on OSH			
<b>C155, Arts 5(e),13, 19(f)</b> <b>C167, Art.12(1) C176, Art. 13(1)(e)</b> <b>C184, Art. 8(1)(c)</b>	Right to withdraw from an imminent and serious danger without undue consequences and to refrain from returning while the danger persists			
<b>C148, Art. 11(3) C162, Art. 21(4) R114, Para. 27</b> <b>R147, Para. 14</b>	Rights of workers when continued risk exposure at the workplace is medically inadvisable			
<b>C87, Art. 3(1)</b> <b>C176, Art. 13(1)(f)</b> <b>C155, Art. 20</b> <b>R164, Para. 12(1)</b> <b>R197, Para. 5(f)</b>	Right to elect OSH representative(s)			

Relevant ILS	Workers' protections	Covered by OSH law?		Observations
		YES	NO	
<b>R164, Para. 17</b> <b>C190, Art. 10(b)(iv)</b>	Protections of workers against retaliation measures			

<sup>3</sup> Implicit to the employer's obligation to secure safe and healthy working conditions.



SECTION

05

**Workers'  
representatives  
on OSH**

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# 05

## Workers' representatives on OSH

### 1. Introduction

This section of the Support Kit addresses how OSH laws can ensure that there is effective worker representation. It analyses the various elements of a sound regulatory framework that supports effective worker representation on OSH, including representative arrangements, functions, statutory rights and powers, procedures and protections that should be awarded by law to workers representatives. This section also analyses how the election of workers' representatives on OSH and the establishment, composition and functioning of joint OSH committees may be regulated in the OSH law (or in implementing regulations).

#### 1.1 Definition of “workers’ representatives”

##### International labour standards

- [Workers' Representatives Convention, 1971 \(No. 135\)](#)
- [Workers' Representatives Recommendation, 1971 \(No. 143\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)



Convention No. 135 and Recommendation No. 143 are the key ILO instruments relating to workers' representation.

Article 3 of Convention No. 135 provides a **definition** of “workers’ representatives” as follows:

“For the purpose of this Convention the term **workers’ representatives** means persons who are recognized as such under national law or practice, whether they are

- (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or

(b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the exclusive prerogative of trade unions in the country concerned.”

Similarly, paragraph 12(2) of Recommendation No. 164 refers to many different types of worker representation, including workers’ safety delegates, workers’ safety and health committees, and joint safety and health committees and other workers’ representatives.

## 1.2 Effectiveness of worker representation arrangements on OSH and the rationale for regulating them<sup>1</sup>

The literature (reviewed in Walters et al. 2014) shows that participatory workplace arrangements are associated with improved OSH management practices, which in turn are expected to lead to improved OSH performance outcomes (that is lower levels of accidents and injuries) and ultimately improved productivity. Conversely, non-participation was found to be associated with a higher incidence of injuries (Robinson and Smallman 2013:698).

In other studies reviewed by Walters (1996), **improved health and safety management practices** were found to be associated with the presence of joint health and safety committees and well-trained committee members, along with the use of established channels for relations between management and workers (see for example Beaumont et al. 1982; see also Coyle and Leopold 1981 for the United Kingdom; Bryce and Manga 1985 for Canada; Roustang 1983 and Cassou and Pissaro 1988 for France; Assennato and Navarro 1980 for Italy; and Walters et al. 1993 for EU countries generally).

Studies that attempt to establish a more direct relationship between the role of worker representation and indicators of improved health and safety performance such as injury or illness rates indicated that **better standards of health and safety were achieved in unionized workplaces** than in non-unionized ones (Fuller and Suruda 2000; Dedobbeleer et al. 1990; Grunberg 1983; Cooke and Gautschi 1981). Joint health and safety committees were associated with reduced lost-time injuries (Lewchuck et al. 1996).

Moreover, the “participation of the workforce in health and safety decisions” was found to be a factor related to **lower claims rates** and “empowerment of the workforce” was found to be consistently associated with **lower injury rates** (Shannon et al. 1996, 1997). A Canadian review showed “a correlation between unionization and the effectiveness of the internal responsibility system” (O’Grady 2000:191).

A series of Australian studies also generally support this positive relationship between the engagement of workers’ representatives on OSH in the workplace OSH management and better OSH performance (Biggins and Phillips 1991a, 1991b; Biggins et al. 1991; Gaines and Biggins 1992; Warren-Langford et al. 1993; Biggins and Holland 1995).

Moreover, academics have found that in countries where trade unions and other workers’ representatives are empowered to access businesses they are not employed by and support their workers, they are able to stimulate “activation” of health and safety, raise awareness and contribute to the establishment of better OSH arrangements in small firms, as well as influence the enforcement of OSH regulation. This was shown for example in reviews of the Swedish, Norwegian, Italian and Spanish experiences (Frick and Walters 1998; Walters 2002; Robinson 1991; Weil 1991,1992).

<sup>1</sup> Many of the arguments provided here can be found in EU-OSHA, *Worker Participation in the Management of Occupational Safety and Health: Qualitative Evidence from ESENER-2: Overview Report*, 2017.

**Figure 11.** Correlation between degree of workers' representation and OSH performance



The 2012 analysis of the EU-OSHA 2009 European Survey of Enterprises on New and Emerging Risks (ESENER) surveyed data revealed that:

workplaces that have worker representation on OSH are more likely to display management commitment to health and safety and to have preventive measures in place for both general OSH and psychosocial risks; and

- where worker representation is combined with a high level of management commitment to health and safety, the effect is particularly strong and is even stronger if there is a works council or shop floor trades union in place and if the representative is given appropriate training and support.
- Many factors influence the degree of effectiveness of worker representation arrangements and their potential to improve safety and health at the workplace.

The EU-OSHA study (EU-OSHA 2017) found that there are other contextual elements that contribute to the effectiveness of workers' representation structures, which can be both internal and external to the undertaking.

Internal factors include establishment size and sector; the knowledge held by employers, managers, workers and their representatives concerning regulatory requirements on worker representation; the risk profile of the establishment and the commitment of managers to introducing and supporting participative arrangements for health and safety to address them; the institutional arrangements for worker representation on OSH at the workplace; the extent to which OSH is explicitly addressed in collective agreements at the establishment or in other agreements made by employers and representatives of labour; the extent to which representation on OSH is prioritized by organized workers at the establishment; and the awareness of OSH among workers.

External determinants include macroeconomic labour market factors that influence job security, flexibility and the labour market power of individual workers; the presence or absence of preventive services; the support of trade unions and access to trade union meetings; the nature of sector-level and national-level agreements on procedures for collective bargaining and the extent to which these refer to OSH; and the position of the undertaking in the labour market in a given supply chain and in relation to its buyers and suppliers.

Such contextual elements are not static but are subject to changes that are themselves determined by the nature of the political economy and wider relations between workers and their employers.

Although there are various aspects that influence the effectiveness of workers' representatives arrangements and bodies, the EU-OSHA study argues that worker representation is more likely to be effective when there is a strong legislative direction that sets out respective rights and duties and provides a framework governing the required structure and functions of joint arrangements, to which representatives, their employers and managers can relate.

Moreover, the fact that international labour standards on OSH have clearly embedded principles related to workers' representation, as well as workers' representatives' rights and protections, showcases an international tripartite consensus and support for legislation governing these issues.

### 1.3 ILS requiring workers' representation



#### International labour standards

- [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)

Freedom of association is a fundamental principle and right. Article 3(1) of Convention No. 87 states that "workers' and employers' organisations shall have the right to draw up their constitutions and rules, **to elect their representatives in full freedom**, to organise their administration and activities and to formulate their programmes".

Article 13(1)(f) of Convention No. 176 also stipulates that "under the national laws and regulations ... workers shall have the following rights ... to collectively select safety and health representatives".

Convention No. 155 emphasizes in Article 20 that cooperation between management and workers and their representatives within the undertaking is an essential element of organizational and other OSH measures. Recommendation No. 164 states in paragraph 12(1) that the measures taken to facilitate the cooperation referred to in Article 20 of Convention No. 155 should include, where appropriate and necessary, the appointment, in accordance with national practice, of:

- workers' safety delegates;
- workers' safety and health committees; and/or
- joint safety and health committees (in which workers should have at least equal representation with employers' representatives).

Recommendation No. 197, Paragraph 5(f), states that "in promoting a national preventative safety and health culture ... Members should seek to promote, at the level of the workplace, the establishment of ... joint safety and health committees and the designation of workers' occupational safety and health representatives, in accordance with national law and practice".

## 1.4 Modalities of workers' representation on OSH

There is no uniform approach to worker representation on OSH matters across national systems. In fact, there are a variety of different representation modalities (further discussed below). The nature of the modalities adopted in different countries usually reflects their wider approach to the regulation of labour relations in general.

However, despite the existence of various regulatory models, the 2017 EU-OSHA report shows that in the EU, the differences in these models, such as whether they are based on safety representatives, safety committees or works councils, may not in themselves be the most important determinant of their effectiveness.

### Representation modalities

Broadly speaking, the OSH representation of workers in any given workplace may be assumed by:

- workers elected to represent workers specifically and exclusively on OSH issues (specialized OSH representatives);
- joint OSH committees (representing workers on OSH issues only and formed by representatives of workers and the employer);
- workers elected to represent workers on all labour-related matters (general representatives, also referred to as "workers' delegates"), including OSH among other issues;
- trade unions with affiliates from any given workplace (whether the trade union representatives are employed in the workplace or not), representing workers on all issues; and
- workplace committees, commissions or councils (representing workers on all issues).

There is some variation in terms of the technical and geographical scope of the mandate of the various possible structures and arrangements of workers' representatives. Specialized OSH representatives elected at the level of the undertaking have a mandate to represent workers on OSH issues exclusively. General workers' representatives elected at the level of the undertaking have a broader mandate that may include matters such as OSH, flexible working arrangements, training opportunities and so on. The OSH committees and the general labour/work committees, commissions and councils may be established at different levels, including at the workplace, region, industry and national levels. Again, OSH committees have a specific mandate to address OSH questions, whereas the general labour/work committees/commissions or councils have a broader mandate that includes OSH and other technical topics.

**Figure 12:** Workers' representatives at the level of the undertaking: regional, industry and national levels



This section of the Support Kit closely analyses workplace arrangements for OSH-specific consultations and participation at the workplace, **that is** workers' representatives on OSH and workers' OSH committees. Subsections 2 and 3 analyse their functions, rights, powers and protections, while subsections 4 and 5 **address** the creation of such mechanisms.



## Country example 70

### European Union

Research conducted by the European Trade Union Institute (ETUI)<sup>2</sup> showcases the diversity of the representation modalities that were found in the EU:

- (a) The most frequently used model is a combination of employee health and safety representatives, elected or chosen in some other way, who have their own specific rights, plus a joint employee/employer health and safety committee; 13 countries use this model.
- (b) In the second model, employee health and safety representation is provided through the employee members of a joint employee/employer health and safety committee and there are no separate health and safety representatives with their own rights; 4 countries use this model.
- (c) In the third model, only employee health and safety representatives are provided rather than a joint employer/employee committee; 5 countries use this model.
- (d) In the fourth model, health and safety issues are primarily dealt with through the existing representational structure for other issues (often through a works council); 6 countries are in this group.

### Spain

*Prevention of Occupational Risks Act 31/1995, article 35(2)*

OSH representatives (prevention delegates) are elected among and by (general) workers' representatives who cover all issues (staff delegates); in undertakings with less than 30 workers, OSH representation is assumed by workers' representatives.

### Burkina Faso

*Creation, attributions, composition and functioning of safety and health at work committee: Order No. 2008-02/MTSS/MS/SG/DGSST, article 7*

Workers' occupational safety and health representatives are chosen among staff representatives or trade unions representatives.

### Australia/New Zealand/Sweden

*The "work groups" model*

Other variations found in national systems on workers' representation include requiring election of a workers' representatives for "groups of workers", as in Australia (*Work Health and Safety Act 2011, section 51*) and New Zealand (*Health and Safety at Work Act 2015, section 64*) or "departments" or "groups of departments" performing similar work, as in Sweden (*Work Environment Ordinance, No. 1977:1166, section 6*).

The Australian Work Health and Safety Act 2011 requires businesses to set up one or several working groups for the purpose of workers' representation. These may be useful for larger businesses or those with multiple locations or work activities and types of risk. Groups may be organized for instance by task, risk, location or shift.

While this scheme may facilitate representation, given the homogenous character of the working conditions in each work group that is represented, this model also presents challenges, such as how to ensure collaboration and communication between working groups.

<sup>2</sup> See ETUI, "Health and Safety".

## Coexistence of several representation modalities



### International labour standards

- [Workers' Representatives Convention, 1971 \(No. 135\)](#)

Article 5 of Convention No. 135 states that “Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives”.

## 2. Functions, rights and powers of workers' representatives

Modern OSH legislation establishes a framework of functions, rights and powers for workers' representatives. This is an essential part of the relevant ILO standards. This subsection outlines:

- the key functions performed by workers' representatives; and
- the key rights and powers conferred by OSH legislation on workers' representatives that enable them to perform their OSH-related functions effectively.



### Useful tools and resources

Industrial relations databases:

- ILO, “[Legal Database on Industrial Relations \(IRLEX\)](#)”.
- ETUI, “[Compare Countries](#)”.

These topics are examined first in relation to elected workplace representatives or those representing a trade union within an enterprise or undertaking. The position of trade union representatives who are external to the undertaking is considered later. The functions, rights and powers of OSH committees in undertakings are addressed separately in subsection 5.5 below.

Broadly, the role of workers' representatives who have been elected at an enterprise or undertaking is to represent the interests of the workers concerned in having safe and healthy working conditions.

### 2.1 Key functions performed by elected workers' representatives on OSH<sup>3</sup>

The key functions of workers' representatives on OSH under OSH legislation to improve safety and health at work may include:

- representing workers in all matters relating to OSH;
- monitoring the measures taken by employers or other relevant duty holders to meet their OSH and employment injury social security responsibilities;

<sup>3</sup> General consideration taking into account country practices.

- ▶ investigating OSH issues raised by workers;
- ▶ inquiring into any potential risk to workers' safety and health that arises from the work of the undertaking;
- ▶ making representations to management on matters that affect the safety and health of workers;
- ▶ collaborating with and assisting the primary duty holder to address any work-related risks at the undertaking concerned;
- ▶ promoting and encouraging the cooperation of workers in complying with regulations on preventing occupational risks;
- ▶ participating and representing workers in decision-making processes regarding OSH; and
- ▶ investigating occupational accidents and diseases, as well as near misses.

Some OSH laws simply spell out the rights and obligations of workers' representatives, allowing their overall functions to be inferred from those provisions (non-statutory guidance may also be available). Other OSH laws, such as those in Australia, New Zealand and Spain, specify the general functions of *health and safety representatives* and then spell out their particular powers.

## 2.2 Statutory rights and powers to support representatives in performing their functions

OSH legislation should ensure that workers' representatives have the rights and powers they need to perform their functions and duties. The essential rights and powers as stipulated in relevant ILO instruments are summarized below.

The CEACR has acknowledged that workers' representatives should have minimum powers that enable them to "... be adequately informed, consulted before any changes are made in the enterprise and protected from dismissal while exercising their functions. They should also be able to contribute to decision-making processes and negotiations, have free access to all parts of the undertaking and to all workers, be free to contact the competent authorities, have reasonable time during their paid working hours to exercise their functions, and be able to have recourse to external specialists when the need arises".<sup>4</sup>

4 ILO, *Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981*, ILC.98/III(1B), 2009. para. 213.



**International labour standards**

**Rights/powers of workers' representatives and ILS-specific duties of employers**

- [Workers' Representatives Convention, 1971, No. 135](#)
- [Occupational Safety and Health Convention, 1981, No. 155](#)
- [Safety and Health in Mines Convention, 1995, No. 176](#)
- [Labour Inspection Recommendation, 1947 \(No. 81\)](#)
- [Workers' Representatives Recommendation, 1971 \(No. 143\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

<b>Facilities</b>	Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.	C135, Art. 2 R143, Para. 9
<b>Time off</b>	Workers' representatives in the undertaking should be afforded the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking.  In order to enable them to carry out their functions effectively, workers' representatives should be afforded the necessary time off for attending trade union meetings, training courses, seminars, congresses and conferences.	R143, Paras 10(1), 11(1)  R164, Para. 12(2)(i)
<b>Information</b>	There shall be arrangements at the level of the undertaking under which representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure occupational safety and health and may consult their representative organizations about such information provided they do not disclose commercial secrets.  Workers' safety delegates, workers' safety and health committees, and joint safety and health committees or, as appropriate, other workers' representatives should be given adequate information on safety and health matters, enabled to examine factors affecting safety and health, and encouraged to propose measures on the subject.	C155, Art. 19(c) e)  R164, Para. 12(2)(a)
<b>Training at no cost</b>	The management should make available to workers' representatives ... such ... information as may be necessary for the exercise of their functions.  There shall be arrangements at the level of the undertaking under which workers and their representatives in the undertaking are given appropriate training in occupational safety and health.  Occupational safety and health measures shall not involve any expenditure for the workers.	R143, Para. 16  C155, Arts 19(d), 21 R164, Para. 12(2)(i)

<b>Access to workplaces of workers' reps in the undertaking</b>	Workers' representatives in the undertaking should be granted access to all workplaces in the undertaking, where such access is necessary to enable them to carry out their representation functions.	R143, Para. 12 R164, Para. 12(2)(f)
<b>Access to workplaces of trade union reps from outside the undertaking</b>	Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking.	R143, Para. 17(1) R164, Para. 12(2)(f)
<b>Access to management</b>	Workers' representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions.	R143, Para. 13
<b>Access to workers</b>	Workers' safety delegates, workers' safety and health committees, and joint safety and health committees or, as appropriate, other workers' representatives should be able to communicate with the workers on safety and health matters during working hours at the workplace.	R164, Para. 12(2)(f)
<b>Posting of notices</b>	Workers' representatives acting on behalf of a trade union should be authorized to post trade union notices on the premises of the undertaking in a place or places agreed on with the management and to which the workers have easy access. The management should permit workers' representatives acting on behalf of a trade union to distribute news sheets, pamphlets, publications and other documents of the union among the workers of the undertaking.	R143, Para. 15(1),(2)
<b>Cooperation with employers</b>	<p>There shall be arrangements at the level of the undertaking under which representatives of workers in the undertaking cooperate with the employer in the field of occupational safety and health.</p> <p>The measures taken to facilitate cooperation should include, where appropriate and necessary, the appointment, in accordance with national practice, of workers' safety delegates, of workers' safety and health committees, and/or of joint safety and health committees; in joint safety and health committees workers should have at least equal representation with employers' representatives.</p>	C155, Arts 19(b), 20  R164, Para. 12(1)

<p><b>Consultation of workers' representatives</b></p>	<p>There shall be arrangements at the level of the undertaking under which workers or their representatives and, as the case may be, their representative organizations in an undertaking are enabled to enquire into, and are consulted by the employer on, all aspects of occupational safety and health associated with their work.</p> <p>Workers' safety delegates, workers' safety and health committees, and joint safety and health committees or, as appropriate, other workers' representatives should be consulted when major new safety and health measures are envisaged and before they are carried out, and seek to obtain the support of the workers for such measures; be consulted in planning alterations of work processes, work content or organization of work, which may have safety or health implications for the workers.</p>	<p>C155, Art. 19(e)</p> <p>R164, Para. 12(2)(b)</p>
<p><b>Participating in decision-making</b></p>	<p>Workers' safety delegates, workers' safety and health committees, and joint safety and health committees or, as appropriate, other workers' representatives should be able to contribute to the decision-making process at the level of the undertaking regarding matters of safety and health; and be able to contribute to negotiations in the undertaking on occupational safety and health matters.</p>	<p>R164, Para. 12(2)(e), (h)</p>
<p><b>Access to external expertise</b></p>	<p>Technical advisers may, by mutual agreement (that of the employer and of workers' representatives), be brought in from outside the undertaking (for the purpose of providing information to and consulting with workers' representatives).</p> <p>Workers' safety delegates, workers' safety and health committees, and joint safety and health committees or, as appropriate, other workers' representatives should have recourse to specialists to advise on particular safety and health problems.</p>	<p>C155, Art. 19(e)</p> <p>R164, Para. 12(2)(j)</p>
<p><b>Access to labour inspectors</b></p>	<p>Workers' safety delegates, workers' safety and health committees, and joint safety and health committees or, as appropriate, other workers' representatives should be free to contact labour inspectors.</p> <p>Representatives of the workers and the management, and more particularly members of works safety committees or similar bodies where such exist, should be authorized to collaborate directly with officials of the labour inspectorate, in a manner and within limits fixed by the competent authority, when investigations and, in particular, enquiries into industrial accidents or occupational diseases are carried out.</p>	<p>R164, Para. 12(2)(g)</p> <p>R81, Para. 5</p>

In addition to powers globally agreed in ILS, other powers exist under some national OSH laws that broaden the scope of workers’ representatives functions, including:

- power to issue provisional improvement notices (see country example 71);
- power to order cessation of dangerous work (see country example 72); and
- power to confirm or reject an employer’s decision related to OSH (see country example 73).

**Power to issue provisional improvement notices**

This power is usually reserved exclusively to labour inspectors. However, in some countries such as Australia and New Zealand, a workers’ representative is also empowered to issue such notices (*Australian Work Health and Safety Act, 2011, section 90; New Zealand Health and Safety at Work Act 2015, section 69*).



**Country example 71**  
**Law awarding the power to issue provisional improvement notices**

**Australia**

Under Australia’s *Work Health and Safety Act*, a provisional improvement notice can be issued if the representative reasonably believes that a person is contravening the OSH Act or regulations or has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated. The provisional improvement notice may require the person to remedy the contravention or prevent a likely contravention from occurring, or remedy the things or operations causing the contravention or likely contravention. The provisional improvement notice issued by a workers’ representative may be reviewed by a labour inspector.

**Power to order cessation of dangerous work**

This power is awarded to workers’ representatives in some countries.



**Country example 72**  
**Law awarding the power to order cessation of dangerous work**

Country	Law awarding the power
<b>Australia</b>	<i>Work Health and Safety Act, 2011, section 85</i>
<b>Estonia</b>	<i>Occupational Safety and Health Act 1999, section 17 (6)(4)</i>
<b>Finland</b>	<i>Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, No. 44/2006, section 36</i>
<b>New Zealand</b>	<i>Health and Safety at Work Act 2015, section 84</i>
<b>Norway</b>	<i>Working Environment Act, No. 62, 2006, Ch. 6, art. 6–3(1)</i>
<b>Spain</b>	<i>Prevention of Occupational Risks Act 31/1995, art. 21(3)</i>
<b>Sweden</b>	<i>Work Environment Act (1977:1160), Ch. 6, section 7</i>
<b>Viet Nam</b>	<i>Occupational Safety and Health Act, No. 84/2015/QH13, 2015, art. 74(5)(c)</i>

The exercise of this power by workers’ representatives may be limited or regulated by the OSH law; for example:

- workers’ representatives must consult with the employer before making use of this power unless the risk is so serious and immediate or imminent that it is not reasonable to do so before giving the direction to cease work (Australia, Finland, New Zealand);

- workers' representatives must inform the employer and the competent authority immediately after directing work to cease (Australia, New Zealand, Spain);
- the competent authority must confirm or revoke the suspension of work (Spain); and
- workers' representatives on OSH are not authorized to give direct a worker to cease work that, because of its nature, inherently or usually carries an understood risk to health and safety, unless the risk has materially increased beyond the understood risk (New Zealand).

### Power to confirm or reject an employer's decision related to OSH

A few countries have extended the prerogative workers' representatives to be consulted on various OSH-related questions to include the responsibility for making joint decisions with the employer on certain matters.



Country example 73 Law awarding the power to confirm or reject an employer's decision related to OSH	
<b>Country and law</b>	Provision providing the power to workers' representatives to confirm or reject employers' decisions related to OSH
<b>Belgium</b> <i>Well-being at Work Code, 2017</i>	The law requires the employer to obtain the agreement of the committee in a number of cases, including: Appointing, replacing and dismissing prevention counsellors (art. II.1-19) Deciding the amount of time prevention counsellors should spend on health and safety (art. II.1-16)
<b>Netherlands</b> <i>Works Councils Act, 2019 (art. 27)</i>	The approval of the Works Council shall be required for every proposed decision on the part of the entrepreneur to lay down, amend or withdraw: ... (b) regulations relating to working hours or holidays; ... (d) regulations relating to working conditions, sick leave or reintegration; ... (f) regulations relating to staff training; ... (k) regulations relating to the handling and protection of personal information of persons working in the enterprise; ...

## 2.3 Rights and powers of workers' representatives who do not work for the undertaking



International labour standards
- <a href="#">Workers' Representatives Recommendation, 1971 (No. 143)</a>

Paragraph 17 of Recommendation No. 143 states that "trade union representatives who are not employed in an undertaking but whose trade union has members employed therein should be granted access to the undertaking". It also indicates that the determination of the conditions for such access should be left to national laws or regulations, collective agreements, arbitration awards or court decisions or in any other manner consistent with national practice.

Analysis of laws shows that in addition to accessing workplaces in which workers' representatives are not employed, laws may also give those representatives more specific powers, such as to investigate contraventions of the OSH law and consult and advise workers at the workplace on OSH.

Relevant provisions from countries providing for the powers of workers' representatives who are not engaged by the undertaking are briefly described in country example 74.



### Country example 74

#### Access to workplaces for workers' representatives who do not work for the undertaking

Country and law	Provision
<p><b>Australia</b> Work Health and Safety Act, 2011, part 7</p>	<p>A union may apply to an authorizing authority (e.g., an industrial tribunal) for an entry permit (a WHS entry permit) for a specified official of the union. The permit is to be issued if the person has completed relevant training and holds (or will hold) an entry permit for labour relations purposes under Australian labour relations legislation (Fair Work Act, 2009).</p> <p>An entry permit operates for three years and may be renewed. Various circumstances may lead to the earlier expiry of a permit (for example, the holder ceases to be an official of the applicant union). A permit may be revoked by the tribunal on application if the permit holder ceases to be eligible to have that status or has engaged in a specified type of improper conduct.</p>
<p><b>Italy</b> Health and Safety at the Workplace Legislative Decree No. 81, 2008, art. 47.3; arts 48-49; art. 50.1.a</p>	<p>The law provides for the election of an OSH representative of workers from outside the workplace:</p> <ul style="list-style-type: none"> <li>- at the regional level: in workplaces of up to 15 workers and without OSH representative of workers; and</li> <li>- at the sectorial level: only in specific productive sectors provided by law.</li> </ul> <p>In both scenarios, OSH representatives of workers at the regional/sectorial level have access to workplaces where workers perform their tasks.</p>
<p><b>New Zealand</b> <i>Employment Relations Act 2000, No. 24</i></p>	<p><i>Section 20</i></p> <p>A representative of a union is entitled to enter a workplace for <b>purposes</b> ... related to the health and safety of any employee on the premises who is not a member of the union, if the employee requests the assistance of a representative of the union on those matters.</p> <p>A representative is also entitled to enter a workplace for purposes related to the employment of the union's members, including:</p> <ul style="list-style-type: none"> <li>(a) to participate in bargaining for a collective agreement;</li> <li>(b) to deal with matters concerning the health and safety of union members;</li> <li>(c) to monitor compliance with the operation of a collective agreement;</li> <li>(d) to monitor compliance with this Act and other Acts dealing with employment-related rights in relation to union members;</li> <li>(e) with the authority of an employee, to deal with matters relating to an individual employment agreement or a proposed individual employment agreement or an individual employee's terms and conditions of employment or an individual employee's proposed terms and conditions of employment;</li> <li>(f) to seek compliance with relevant requirements in any case where non-compliance is detected.</li> </ul> <p><i>Section 21</i></p> <p>(1) A representative of a union may enter a workplace—</p> <ul style="list-style-type: none"> <li>(a) for a purpose specified in section 20(2) if the representative believes, on reasonable grounds, that a member of the union, to whom the purpose of the entry relates, is working or normally works in the workplace.</li> </ul> <p>(2) A representative of a union exercising the right to enter a workplace:</p> <ul style="list-style-type: none"> <li>(a) may do so only at reasonable times during any period when any employee is employed to work in the workplace; and</li> <li>(b) must do so in a reasonable way, having regard to normal business operations in the workplace; and</li> <li>(c) must comply with any existing reasonable procedures and requirements applying in respect of the workplace that relate to— <ul style="list-style-type: none"> <li>(i) safety or health; or</li> <li>(ii) security.</li> </ul> </li> </ul>

	<p>(3) A representative of a union exercising the right to enter a workplace must, at the time of the initial entry and, if requested by the employer or a representative of the employer or by a person in control of the workplace, at any time after entering the workplace,—</p> <p>(d) give the purpose of the entry; and</p> <p>(e) produce—</p> <p>(i) evidence of his or her identity; and</p> <p>(ii) evidence of his or her authority to represent the union concerned.</p> <p>(4) If a representative of a union exercises the right to enter a workplace and is unable, despite reasonable efforts, to find the employer or a representative of the employer or the person in control of the workplace, the representative must leave in a prominent place in the workplace a written statement of—</p> <p>(a) the identity of the person who entered the premises; and</p> <p>(b) the union the person is a representative of; and</p> <p>(c) the date and time of entry; and</p> <p>(d) the purpose or purposes of the entry.</p> <p>(5) Nothing in subsections (1) to (4) allows an employer to unreasonably deny a representative of a union access to a workplace.</p>
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### Country example 75

#### Rights of the representative to investigate, consult and advise workers at the workplace on OSH

Country and law	Provision
<p><b>Australia</b> <i>Work Health and Safety Act, 2011, part 7</i></p>	<p>A union official who holds a WHS entry permit may, after giving notice to the operator of the relevant business or undertaking or the person with management or control of the workplace concerned, enter a workplace during usual working hours of that workplace:</p> <p>to inquire into a suspected contravention of the OSH law (notice may be waived by the authorizing authority when it reasonably believes there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard at the workplace.);</p> <p>to consult on OSH matters with, and provide advice on those matters to, one or more relevant workers who wish to participate in the discussions.</p> <p>When inquiring into a suspected contravention, the union official may:</p> <ul style="list-style-type: none"> <li>- inspect anything that is relevant to the suspected contravention;</li> <li>- consult relevant workers about the suspected contravention;</li> <li>- consult the person conducting the business or undertaking about the suspected contravention;</li> <li>- inspect and copy any directly relevant document that is accessible at the workplace.</li> </ul> <p>A WHS entry permit holder may exercise a right of entry to a workplace only in relation to: (a) the area of the workplace where the relevant workers work; or (b) any other work area that directly affects the health or safety of those workers. <i>Relevant worker</i>, in relation to a workplace, means a worker: (a) who is a member, or eligible to be a member, of a relevant union; and (b) whose industrial interests the relevant union is entitled to represent; and (c) who works at that workplace.</p>
<p><b>Bulgaria</b> Labour Code, art. 406(2)</p>	<p>Representatives of trade unions have the right to:</p> <p>visit at any time enterprises and other places where work is performed and premises used by workers;</p> <p>require the employer to give explanations and presentation of the necessary information and documents; and</p> <p>obtain information directly from workers on all matters of compliance with labour legislation.</p>

## 2.4 Right to initiate and participate in prosecutions

Where a union official identifies an existing or likely OSH problem at a workplace but cannot resolve it with the employer or workplace manager, the matter may be referred to a labour inspector. The inspector may take action on the actual or possible contravention. However, the workers' representative or union may also be able to initiate legal proceedings for an OSH contravention.



Country example 75bis
<b>New South Wales (Australia)</b>
<p><i>Work Health and Safety Act No. 10 of 2011, article 230(1)(c)</i>                      The secretary of an industrial organization of employees and any members concerned with an offence may bring proceedings for that offence when the regulator has declined to follow the advice of the Director of Public Prosecutions to bring the proceedings.</p>
<b>Kyrgyzstan</b>
<p><i>Labour Protection Act No. 167, 2003, article 19</i>                      Trade unions, represented by their appropriate bodies and other representative bodies authorized by workers, have the right to appeal to the relevant authorities, with requirements of bringing to justice the persons responsible for violation of occupational safety and health requirements, as well as concealment of facts on occupational accidents.</p>
<b>Viet Nam</b>
<p><i>Occupational Safety and Health Act, No. 84/2015/QH13, 2015, article 9(5))</i>                      Trade unions have the right to represent workers to make lawsuits when the OSH rights are violated and when authorized by workers.</p>

## 3. Protection of workers' representatives

The law must ensure that workers' representatives, when properly performing their functions, are protected against retaliation or prejudicial actions or threats of such action to discourage them to effectively exercise their functions. This is crucial to enable workers' representatives (whether elected at the **undertaking or trade union** representatives) to carry out their functions efficiently.

Retaliation and prejudicial action that can be taken against workers' representatives include unfair dismissal; improper reduction of wages; unjustified functional or geographical transfer; and altering labour conditions to the detriment of the worker and without valid grounds for doing so.

This subsection addresses provisions that bring protection to workers' representatives against an unjustified retaliation or prejudicial action taken by the employer.

Protections for workers' representatives that are currently embedded in laws of Member States include:

- protection from unlawful or discriminatory dismissal, which may be achieved by including:
  - a requirement for a review of dismissals by a competent authority;
  - the requirement that any dismissals be fair and based on lawful and justifiable grounds; and

- ▶ procedural requirements, such as the manner in which notice of dismissal should be provided; minimum notice periods; the content and timing of a dismissal notice; mandatory warning to and consultation with the concerned worker's representative; and conciliation prior to dismissal;
- ▶ switching the burden of proof from the worker to the employer by adopting the presumption that any disciplinary measure taken by the employer in relation to a worker representative is undue;
- ▶ protections from unfair dismissals, such as declaring the dismissal void, reinstating the workers' representative in his/her position and representative role in the undertaking and compensating the workers' representative; and
- ▶ immunity from civil and criminal liability for exercising representative functions in good faith.

Protections granted to workers' representatives may extend to:

- ▶ workers' representative candidates on the electoral lists until the representatives are elected;
- ▶ unsuccessful candidates for a certain period after representatives are elected; and
- ▶ former workers' representatives for a certain period after the end of their term of office.

#### International labour standards



- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Workers' Representatives Convention, 1971 \(No. 135\)](#)
- [Workers' Representatives Recommendation, 1971 \(No. 143\)](#)

Under Article 5(e) of Convention No. 155, a national OSH policy must take account of ... the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the (national) policy.

Under Article 1 of Convention No. 135, workers' representatives who act in conformity with existing laws or collective agreements, or other jointly agreed arrangements, must have effective protection against any act prejudicial to them. This includes dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities.

Paragraph 6(1) of Recommendation No. 143 indicates that "where there are not sufficient relevant protective measures applicable to workers in general, specific measures should be taken to ensure effective protection of workers' representatives.

Paragraph 6(2) of Recommendation No. 143, lists the following measures that may be considered to protect workers' representatives against improper prejudicial action:

- (a) detailed and precise definition of the reasons justifying termination of employment of workers' representatives;
- (b) a requirement of consultation with, an advisory opinion from, or agreement of an independent body, public or private, or a joint body, before the dismissal of a workers' representative becomes final;
- (c) a special recourse procedure open to workers' representatives who consider that their employment has been unjustifiably terminated, or that they have been subjected to an unfavourable change in their conditions of employment or to unfair treatment;
- (d) in respect of the unjustified termination of employment of workers' representatives, provision for an effective remedy which, unless this is contrary to basic principles of the

- law of the country concerned, should include the reinstatement of such representatives in their job, with payment of unpaid wages and with maintenance of their acquired rights;
- (e) provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified;
- (f) recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce.

Paragraph 8(1) of Recommendation No. 143 states that persons who, upon termination of their mandate as workers' representatives in the undertaking in which they have been employed, resume work in that undertaking should retain, or have restored, all their rights, including those related to the nature of their job, to wages and to seniority.

The CEACR has indicated that:

- each country should determine the extent and conditions of the protection in consultation with the most representative organizations of employers and workers; and
- the protection is only for actions properly taken in conformity with the national OSH policy.<sup>5</sup>



### Country example 76

#### Protections and sanctions for retaliation measures

Country and law	Protections and sanctions for retaliation measures
<p><b>Angola,</b> <i>General Labour Law No. 2/00, 2000, art. 227</i></p>	<p>The law presumes abusive disciplinary sanctions if they concern events that occurred during the respective mandate or until six months after it finished.</p>
<p><b>Australia</b> <i>Work Health and Safety Act, 2011, part 6 (Prohibition of discriminatory, coercive or misleading conduct)</i> <i>Fair Work Act 2009 (part 3-1, General protections)</i></p>	<p>Discriminatory conduct for a prohibited reason is forbidden. Discriminatory conduct covers a wide range of prejudicial conduct, including dismissal and taking action that is detrimental to a worker or job applicant. Conduct is engaged in for a prohibited reason if it is engaged in because a worker or prospective worker is a health and safety representative, or exercises or has exercised powers as a representative or member of a health and safety committee.</p> <p>Criminal and civil sanctions are available for breaches of the laws and compensation may be ordered to be paid to the workers' representative. There is a reverse onus of proof in criminal prosecutions, meaning that the employer must prove that the conduct was not triggered by a prohibited reason.</p> <p>Protections are provided against adverse action (a wide range of harmful work-related conduct, including refusal to employ a person, dismissal or altering a worker's position to the worker's disadvantage) which is taken on grounds that include holding office in a union or engaging in lawful industrial activity (such as organizing and promoting a lawful activity for or on behalf of a union).</p>
<p><b>Canada</b> <i>Labour Code 1985, section 136(10)</i></p>	<p>No health and safety representative is personally liable for anything done or omitted to be done by the representative in good faith under the authority or purported authority of this section.</p>

<sup>5</sup> ILO, *General Survey*, 2009. para. 73.

<p><b>Central African Republic</b></p> <p><i>Labour Code, Act No. 09.004, 2009, arts 89–93, 152</i></p>	<p>Any dismissal of a workers' representative shall be subject to the prior authorization of the labour and social laws inspector.</p> <p>Protection measures extend to candidates on the electoral lists until the representatives are elected; unsuccessful candidates from the moment when the representatives are elected to the expiration of six months after the election; former workers' representatives for a period between the termination of the mandate and the expiry of six months following the second ballot; and alternate candidates from the moment they are on the electoral lists.</p> <p>The dismissal of a worker will be considered as being abusive when he/she had previously filed a complaint or participated in proceedings against the employer because of alleged violation of applicable provisions or had appealed to competent administrative authorities.</p>
<p><b>Spain</b></p> <p><i>Workers' Statute, approved by Royal Legislative Decree No. 2, 2015, art. 68</i></p>	<p>A proceeding is launched to hear the worker, workers' committee and workers' representatives when disciplinary measures are imposed on a workers' representative.</p> <p>In case of dismissal for technological or economic reasons, workers' representatives shall be the last ones to be dismissed.</p> <p>Workers' representatives cannot be dismissed, suspended, nor discriminated in terms of economic or professional promotion due to the exercise of their representation functions, during the course of their mandate or within the following year.</p>

## 4. Workers' representatives on OSH in the undertaking

### International labour standards



- [Workers' Representatives Convention, 1971 \(No. 135\)](#)

Article 3(b) of Convention No. 135 indicates that the procedures for the election of representatives with OSH responsibilities are left to national legislation and collective agreements. Regulating such procedures provides baseline guidelines to workers on how to elect their representatives and also ensures transparency and rigour. This subsection focuses only on the election of workers representatives on OSH. It does not address either the election of representatives of trade unions or the election of (general) workers' representatives at the level of the undertaking, who represent workers in all fields of labour.

National laws can contain provisions on the election of workers' representatives on OSH, including on the following issues, which are further discussed below:

- who is eligible to be elected;
- the election procedure;
- the terms of holding office as a workers' representative on OSH;

- the circumstances in which workers’ representatives on OSH may be removed from office; and
- how casual vacancies are filled.

### 4.1 Eligibility to be elected as a workers’ representative on OSH in an undertaking<sup>6</sup>

It is common for countries to establish eligibility criteria for workers to be elected as workers’ representatives on OSH. Such criteria are usually linked to the age of the worker, his/her experience in the undertaking and his/her qualifications and skills. Its purpose is to ensure that workers elected as representatives:

- have attained some degree of maturity to assume additional responsibilities (age-related requirements);
- are familiar with the workplace and the type of risks present in it (experience in the undertaking-related requirements);
- have a good understanding of OSH, which enables them to understand their role, without prejudice to the training required by law for workers’ representatives (skills and qualifications-related requirements);
- are not relatives or representatives of the employer; and
- are responsible citizens, which may be demonstrated for example by a clean criminal record.

Laws, regulations or other guidance instruments may also require or encourage the participation of women.

However, there are also countries that have decided not to impose any eligibility requirements.



Country example 77				
Eligibility requirements to be elected as a workers’ representative				
Country and law	Eligibility requirements to be elected as a workers’ representative			
	Age	Experience in the undertaking	Skills/qualifications	Other
<b>Australia</b> <i>Work Health and Safety Act, 2011, sections 60, 65</i>	-	-	-	- must be a member of the work group that the workers’ representative will represent; and - must not have been disqualified for exercising a power or improperly using or disclosing information.
<b>Cyprus</b> <i>Safety Committees at Work Regulations No. 134/1997, arts 3(3), 3(5)</i>	-	>2 years	good knowledge of the premises and be well-informed with regard to OSH matters	-

<sup>6</sup> General consideration taking into account country practices.

<p><b>Rwanda</b> Ministerial Order No.1 of 11/11/2014 Determining the Modalities of Electing Workers' Representatives and Fulfilment of their Duties, arts. 4, 11</p>	-	-	-	<ul style="list-style-type: none"> <li>- having worked at the enterprise for at least a year;</li> <li>- elected workers' representatives in the enterprise shall comprise at least 30 per cent women, if possible.</li> </ul>
<p><b>Spain</b> <i>Workers' Statute, approved by Royal Legislative Decree No. 2, 2015, art. 69(2)</i></p>	>18 years	>6 months	-	-
<p><b>Viet Nam</b> <i>Occupational Safety and Health Act, No. 84/2015/QH13, 2015, art. 74(2)</i></p>	-	-	Knowledge on OSH	Workers who are dedicated and strictly follow OSH regulations.

## 4.2 Election procedure for workers' representatives on OSH in an undertaking<sup>6</sup>

OSH legislation may provide guidance on how an election procedure for individual workers' representatives should be conducted. Such regulation eases the elections by fixing organizational arrangements and supporting the transparency and fairness of the procedure, and thus avoiding procedural anarchy, misunderstandings and procedural manipulations to pursue individual interests. The law may regulate the following issues, among others:

- issuance of votes;
- ballot counting; and
- resources needed for the election procedure.



### Country example 78

#### Election procedures for workers' representatives on OSH

Country and law	Election procedures
<p><b>Australia</b> <i>Work Health and Safety Act, 2011, sections 61, 63</i></p>	<p>The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted. However, an election must comply with the procedures (if any) prescribed by the regulations. If a majority of the workers in a work group so determine, the election may be conducted with the assistance of a union or other person or organization. The person conducting the business or undertaking to which the work group relates must provide any resources, facilities and assistance that are reasonably necessary or are prescribed by the regulations to enable elections to be conducted.</p> <p>If the number of candidates for election as health and safety representative for a work group equals the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a health and safety representative for the work group .</p>

<p><b>Finland</b>  <i>Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, No. 44/2006, section 30</i></p>	<p>The time and place of the election shall be agreed on in advance with the employer. The election shall be organized in a manner that provides all employees at the workplace with an opportunity to participate in the election and does not cause any unnecessary inconvenience to the activities of the workplace.</p> <p>For the organization of the election, the employer shall give the employees a list of all employees of the workplace and, when necessary, a separate list of clerical employees. The employer shall also let the employees use premises in its control free of charge for organizing the election. The employer shall not prevent or complicate the organization of the election.</p> <p>The election organizers shall immediately, in writing, inform the employer of the result of the election of an occupational safety and health representative and vice representatives.</p> <p>When uncertainty arises at the workplace about the organization of the election of an occupational safety and health representative, an inspector shall give the employees any instructions they need. If no election has been organized in a workplace where, according to section 29, an occupational safety and health representative shall be selected, the inspector shall take necessary measures to get the election organized.</p> <p>Further provisions on the date of the election of an OSH representative and vice representatives, eligibility of a candidate for office, nomination of candidates, voting procedure, and other matters concerning the organization of the election may be issued by Government Decree.</p>
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### 4.3 Term of office for workers’ representatives on OSH<sup>6</sup>

National legislation usually regulates the term of office for a workers’ representative. Providing workers with the opportunity to change their representatives after the elapse of a certain amount of time is particularly useful when workers are not satisfied with the performance of their representatives or have lost trust. Analysis of national laws shows that the term of office that countries tend to envisage is usually between 2 and 4 years.



<b>Country example 79</b>	
Terms of office for workers’ representatives on OSH	
Country and law	Terms of office
<p><b>Australia</b>  <i>Work Health and Safety model Act, 2011, Section 64</i></p>	3 years with a possibility of re-election
<p><b>Finland</b>  <i>Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, No. 44/2006, section 30(1)</i></p>	2 years with a possibility to be increased to 4 years
<p><b>Sweden</b>  <i>Work Environment Ordinance, No. 1977:1166, section 6</i></p>	3 years

### 4.4 Circumstances in which workers’ representatives on OSH may be removed from office<sup>6</sup>

The OSH law may also stipulate the circumstances in which a workers’ representative may be disqualified from continuing to hold office or how the representative may be removed from office. As is the case for regulating the term of office, specifying the circumstances in which the representatives may be disqualified or removed from office provides a mechanism to control their performance and their ethical behaviour in the exercise of their functions.



**Country example 80**

**Legislative formulas addressing workers' representatives' removal from office**

Countries and laws	Legislative formulas addressing workers' representatives removal from office
<p><b>Australia</b>  <i>Work Health and Safety Act 2011, section 64(2)(d), 65</i>  <i>Model Work Health and Safety Regulations, 2019, regulation 20</i></p>	<p>A workers' representative is removed from office when:</p> <ul style="list-style-type: none"> <li>- the majority of the relevant work group members sign a written declaration that the representative should no longer represent the work group;</li> </ul> <p>A workers' representative may be disqualified under by a court or tribunal if the representative has:</p> <ul style="list-style-type: none"> <li>- exercised a power or performed a function as a workers' representative for an improper purpose, or</li> <li>- used or disclosed any information he or she acquired as a workers' representative for a purpose other than in connection with that role.</li> </ul>

**4.5 Filling casual vacancies<sup>6</sup>**

For various reasons, including a change of employment, ill health or removal from office, a workers' representative may not be able to complete the full term of office. In such circumstances, the vacancy should be filled promptly. Vacancies are normally filled by deputies or alternates of workers' representatives. These are usually elected at the same time and following the same process as that for electing workers' representatives.



**Country example 81**

**Arrangements for filling vacancies for workers' representatives on OSH**

Country	Arrangements for filling vacancies
<p><b>Australia</b>  <i>Work Health and Safety Act, 2011, section 67</i></p>	<p>If an elected health and safety representative ceases to hold office or cannot perform his/her duties, a deputy assumes the role.</p>

**5. OSH committees in the undertaking**

OSH committees are a mechanism for workers and employers to work together in a coordinated fashion to address OSH issues in the workplace. OSH questions are frequently an area in which workers and employers can easily find common ground, as safety and health for workers is important to both sides, not only from a human (or human rights) perspective but for other compelling reasons as well. Workers do not want to work in unsafe conditions that jeopardize their health or life, while modern employers look at it from a productivity point of view, as disruptions of the work process due to accident, injury or illness is a costly event, in monetary terms as well as from a motivational perspective. The CEACR has observed that cooperation on OSH issues at the enterprise level often takes place through the establishment of OSH committees.<sup>7</sup>

<sup>7</sup> ILO, *Working Together to Promote a Safe and Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning The Promotional Framework, Construction, Mines and Agriculture*, ILC.106/III(1B), 2017, para. 191.

## 5.1 Establishing OSH committees

The establishment of OSH committees is mandatory in many countries;<sup>8</sup> however, often depending on the size of the enterprise. National OSH laws take differing approaches to the requirements for establishing such bodies, including variations in titles and constitution.



### International labour standards

- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

OSH committees may be composed of workers’ representatives only or both employer and worker representatives (see country example 82, Colombia and Spain). In the latter case, **they are referred to** as “joint OSH committees” and should consist of equal numbers of employer’s and workers’ representatives (Recommendation No. 164, Para. 12(1)).

In some countries, legislation requires OSH committees to have an OSH practitioner as a member (see country example 82, Thailand). A multi-enterprise joint OSH committee is required by some national laws for certain types of work sites or projects, such as construction sites (for example in Burkina Faso).

Moreover, in some countries the law may require that workers’ representatives appointed as members of the OSH committee should be elected workers’ representatives on OSH, while in other countries the law may give the option to workers to assign general workers’ representatives (also referred to as “workers’ delegates”) to OSH committees.

In countries in which the establishment of an OSH committee is mandatory, the law may specify the composition of OSH committees (that is, the number and type of members), which usually depends on the workforce size of the undertaking. Some examples are given below.



### Country example 82

#### Composition of OSH committees

Country	Number of workers	Composition
<b>Côte d’Ivoire</b> <i>Committee on Health, Safety and Working Conditions</i> <i>Committee Decree No. 96-206, arts 4-6</i>	50-100	2 workers’ reps + the employer + the security supervisor + the doctor of the workplace + the social assistant of the workplace + the official responsible for training + the secretary, appointed by the employer among the workers’ representatives
	101-300	3 workers’ reps + idem
	301-750	5 workers’ reps + idem
	>751	7 workers’ reps + idem

<sup>8</sup> See ILO, “LEGOSH”, under theme 8.6, “Joint OSH Committee”.

<b>Colombia</b> <i>Organization and Functioning of Occupational Medicine, Hygiene and Industrial Safety Committees Resolution No. 02013, 1986, arts 1–3</i>	10–49	1 workers' rep + 1 employer's rep.
	50–499	workers' reps + 2 employer's reps
	>500	4 workers' reps + 4 employer's reps
<b>Malaysia</b> <i>Occupational Safety and Health Act No. 514, 1994, section 30; Occupational Safety and Health Committee Regulations 1996, section 5</i>	>40 –100	2 workers' reps + 2 employer's reps + chairman + secretary
	>100	4 workers' reps + 4 employer's reps + chairman + secretary
<b>Spain</b> <i>Prevention of Occupational Risks Act No. 31/1995, arts 34, 38.2</i>	50–100	2 workers' reps + 2 employer's reps
	101–500	3 workers' reps + 3 employer's reps
	501–1000	4 workers' reps + 4 employer's reps
	1001–2000	5 workers' reps + 5 employer's reps
	2001–3000	6 workers' reps + 6 employer's reps
	3001–4000	7 workers' reps + 7 employer's reps
	> 4001	8 workers' reps + 8 employer's reps
<b>Thailand</b> <i>Ministerial Regulation Prescribing Standards for the Administration and Management of Occupational Safety, Health and Environment, No. B.E. 2549, 2006, clause 23</i>	50–99	2 employer's reps + 2 workers' reps + 1 safety officer
	100–499	3 employer's reps + 3 workers' reps + 1 safety officer
	> 500	5 employer's reps + 5 workers' reps + 1 safety officer

In countries in which the establishment of OSH committees is not mandatory for smaller companies, the law may mandate the competent authority to require an undertaking to establish an OSH committee when the competent authority deems it necessary, as is the case in Malawi (*Occupational Safety, Health and Welfare Act No. 21, 1997, section 21*).

In countries in which establishing an OSH committee is mandatory above a certain minimum volume of workforce, the law may also require the establishment of such a committee in workplaces below that minimum volume upon the request of a worker. For instance, in Norway OSH committees are mandatory in undertakings with more than 50 employees and must also be established in undertakings with 20–50 employees at the request of any of the parties at the undertaking or at the discretion of the Labour Inspection Authority (*Working Environment Act No. 62, 2005, section 7–1*).

Procedures relating to the work of OSH committees may be specified in legislation or regulations or in collective agreements, or may be left to the committees to determine themselves; for example, in Spain article 38.3 of the Prevention of Occupational Risks Act No. 31/1995 requires OSH committees to adopt their own working rules.

## 5.2 Functions, rights and powers of OSH committees<sup>6</sup>

The functions, rights and powers of OSH committees may differ in different countries; however, they are often the same or similar to those for workers' representatives. The functions of OSH committees prescribed by law may be more in number and also more complex than those assigned to individual workers' representatives, most probably due to the fact that a committee has more human resources and therefore greater capacity than individuals.

Tasks that may be assigned to committees include the implementation and monitoring of policy programmes for hazard prevention; workers' training on OSH; contributing to OSH record maintenance; and monitoring data relating to accidents, injuries and hazards.

The success of OSH committees may be dependent on many factors, such as committee members' commitment; their mandates; the strength of the support and confidence of those whose interests the members represent; effective two-way communication with workers; and the quality and effect of such committees' decisions. These factors can be supported by:

- meaningful rights to be provided with the resources it needs; and
- the information, logistical support and expert assistance necessary for them to perform their functions.

The above should be regulated in national legislation at least to a level that meets the standards set out in international labour standards.

### 5.3 Governance of OSH committees<sup>6</sup>

Good governance is important for OSH committees to operate successfully. Generally, OSH legislation provides minimal guidance on the governance and operations of OSH committees. A good example is provided in information published by the Government of Ontario in Canada as suggested items for possible inclusion in the terms of reference of a joint health and safety committee under the OSH legislation of that province.



#### Country example 83

#### Ontario Guide for Health and Safety Committees and Representatives

##### Canada

##### Ontario Guide for Health and Safety Committees and Representatives

The Guide suggests the following key topics that might be covered by an OSH committee's terms of reference (depending on the governing OSH legislation)

- (a) an appropriate committee structure, having considered legislated requirements
- (b) a procedure for co-chairs (if there are co-chairs) to facilitate the committee's operations and actions
- (c) a method for selecting alternates and a protocol for their attendance at committee meetings;
- (d) a committee meeting schedule, setting out their frequency and location (there may be statutory requirements about the frequency of meetings)
- (e) a procedure for the attendance of resource persons at committee meetings
- (f) a determination of the number of certified members (if more than the minimum number) and a method for their selection
- (g) a schedule for inspection of the workplace and provisions for the conduct of inspections, including a process by which the worker members designate one member from among themselves to perform the workplace inspections
- (h) a process for developing and conveying recommendations in writing arising from inspections to the chair or co-chairs, the committee and to the employer
- (i) a method and system for receiving accident statistics and other OSH information
- (j) procedure for accident investigations, including the types and severity of accidents to be investigated (beyond the legal requirements), including a method for designating a worker member to conduct or participate in the investigations
- (k) a method and system for reporting on an accident investigation to the committee
- (l) a procedure for selecting members representing workers or designated workers in the workplace to accompany OSH inspectors during workplace inspections

- (m) a procedure for selecting a member representing workers or designated workers in the workplace for investigating a refusal to perform work on OSH grounds
- (n) a procedure for selecting a worker member to attend the start of workplace testing
- (o) the arrangements for minutes of meetings, including a requirement to identify issues and set out recommendations, the responsibility of taking, reviewing, circulating and editing the minutes, and the preparation of agendas for meetings and giving notice of meetings
- (p) a determination of a quorum for a committee meeting
- (q) a method or system for achieving consensus at meetings
- (r) a procedure for dispute resolution by the committee
- (s) a procedure for cases when, if there are co-chairs, they do not agree on a recommendation
- (t) a procedure for referring issues to the committee
- (u) matters relating to payment for members attending meetings or carrying out statutory duties and responsibilities
- (v) a regular review of the terms of reference and committee and members' responsibilities, including confidentiality and effectiveness
- (w) such other OSH matters as the workplace parties or committee members consider appropriate or necessary

Source: Canada, Government of Ontario, "[Guide for Health and Safety Committees and Representatives](#)", Appendix C.

Note: The above list is not an exact copy of that in the Ontario government's guideline. It has been generalized in places where the original terms refer to specific terms of the Ontario OSH Act.

## 6. General mechanisms for worker consultation and participation on OSH<sup>6</sup>

Other mechanisms for workers' consultation, participation and ultimately representation on OSH include workers' general representatives or delegates, trade unions and works councils. These are not discussed in detail in this Support Kit as their election, establishment and functioning is usually regulated in general labour laws and industrial relations laws.

However, a brief discussion is provided on works councils. The essential difference between a works council and an OSH committee is that the mandate of a works council is much broader and covers all aspects and topics relevant to workers, including OSH. Countries in which such representation mechanisms exist usually have the OSH committee as a subcommittee within the ambit of the works council. Countries in which work councils are required or exist de facto include Austria, Belgium, Croatia, Czechia, France, Germany, Greece, Hungary, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain. This is driven by EU Directive 2002/14/EC on establishing a general framework for informing and consulting employees. As is the case for independent OSH committees, the composition of works councils is usually determined based on the number of workers in the company.



### Country example 84 Composition of works councils

Country	Numbers of workers	Composition	
<b>Croatia</b> <i>Labour Code, 2014, art. 142</i>	< 76	1 workers' rep	+ the employer
	76–250	3 workers' reps	
	251–500	5 workers' reps	
	501–750	7 workers' reps	
	751–1000	9 workers' reps	
	Per additional 1000	+ 2 workers' reps	
<b>Netherlands</b> <i>Works Councils Act, 1971, art. 6</i>	< 50	3 workers' reps	
	50 – 100	5 workers' reps	
	100 – 200	7 workers' reps	
	200 – 400	9 workers' reps	
	400 – 600	11 workers' reps	
	600 – 1000	13 workers' reps	
	1000 – 2000	15 workers' reps	
	Per additional 1000	+ 2 workers' reps (up to a max. 25 members).	

In Europe, European Works Councils (EWCs) also exist, which are created to ensure communication for staff in transnational companies. Countries without a history of works councils may find it difficult to draw specific guidance from the European system of EWCs. Even so, the principles underpinning that system and the experience of its operation reinforces the value of providing information to, and consulting with, workers.



## Country example 85 European Works Councils

### European Union

Directive 2009/38/EC provides the basis for EWCs. It aims to ensure information and consultation rights on transnational issues for staff in:

- *community-scale companies* (those with at least 1,000 employees in more than one EU country and 150 staff in a minimum of two EU countries); or
- *groups of companies* (a group must have (a) at least 1,000 employees overall; (b) two or more companies in different EU countries; and (c) 150 employees in a minimum of two countries).

This is achieved by establishing an EWC (or other appropriate procedures). EWCs are intended to bring together employee representatives from the different European countries in which each relevant multinational company operates. During EWC meetings, central management informs and consults representatives about transnational issues of concern to the company's employees (see ETUI, "[European Works Councils](#)").

Either a request by 100 employees from two countries or an initiative by the employer triggers the process of creating a new EWC. The composition and functioning of each EWC are adapted to the company's circumstances by a signed agreement between management and workers' representatives from the different countries involved (see European Commission, "[Employee involvement - European Works Councils](#)"). The workers are represented at this stage by a Special Negotiation Body (SNB), which is established with employee representatives.

Under article 5 of the directive, Member States determine whether SNB members are elected or appointed. In some countries, SNB members are elected by a ballot of the whole workforce. In others, a relevant trade union appoints one of its members or a representative from a local or central works council is invited to negotiate at the European level. Under article 5, employee representation should be "in proportion to" the number of employees of the company in each country.

At the beginning of the negotiation process, both management and the competent European workers' and employers' organizations must be informed of the composition of the SNB.

The SNB and management determine:

- the proposed EWC's scope, composition and functions; and
- term of office (OSH does not have to be covered) or other arrangements for implementing a procedure for informing and consulting employees.

External experts may assist. If the SNB decides against negotiations or no agreement is reached, a request to convene a new SNB may only be made after a period of two years (unless a shorter period has been agreed).

## Relevant resources

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**Checklist**  
Section 05



ILS	Provisions	Covered by OSH law		Observations
		YES	NO	
- <sup>1</sup>	Provisions regulating workers’ reps on OSH in the undertaking including:			
	- eligibility criteria			
	- election procedure			
	- terms of office			
	- disqualification and removal criteria			
	- filling casual vacancies			
- <sup>1</sup>	Key functions of workers’ reps on OSH:			
	- representing workers in matters relating to OSH;			
	- monitoring the measures taken by the employer or other relevant duty holders to meet their OSH responsibilities;			
	- investigating OSH issues raised by the workers;			
	- inquiring into anything that appears to be a risk to the workers’ safety and health, arising from the work of the undertaking;			
	- making representations to the person/s responsible for the business or undertaking on matters affecting the safety and health of workers;			
	- collaborating with and assisting the primary duty holder to address any work-related risks at the undertaking concerned;			
	- promoting and encourage the co-operation of workers in complying with the regulations on preventing occupational risks;			
	- participating and represent workers in decision making processes regarding OSH; and			
	- investigating occupational accidents and disease as well as near misses.			

<sup>1</sup> General consideration taking into account country practices.

ILS	Provisions	Covered by OSH law		Observations
		YES	NO	
	Powers of workers' reps on OSH to:			
R143, Paras 10, 11 R164, Para. 12(2)(i)	- time off work, without loss of pay or benefits, to carry out representation functions			
C155, Art. 19(c)(e) R164, Para. 12(2)(a) R143, Para. 16	- receive information on measures taken by the employer to secure occupational safety and health			
R143, Paras 12, 17 R164, Para. 12(2)(f)	- have access to all parts of the workplace			
C155, Art. 19(d), 21 R164, Para. 12(2)(i)	- receive training on occupational safety and health at no cost			
R164, 12(2)(f)	- communicate with workers on OSH matters during working hours			
R143, Para. 13	- access to management and its representatives, without undue delay			
C155, Art. 19(e), R164, Para. 12(2)(b)	- be consulted about all OSH aspects and major new OSH measures before they are carried out			
R164, Para. 12(2)(e)(h)	- participate in the decision-making process regarding OSH matters			
C155, Art. 19(e)	- have recourse to specialists to advise on particular OSH problems			
C135, Art. 2 R143, Para. 9	- use workplace facilities to perform the functions of a workers' representative			
R164, Para. 12(2)(g) R81, Para. 5	- contact labour inspectors			
	- Other, please specify			
C155, Art. 5(e) C135, Art. 1 R143, Paras 6(1), 8(1)	Protections of workers' representative on OSH			
R164, Para. 12(1)	Provisions regulating OSH committees including:			
_1	- establishment of OSH committees			
	- functions, rights and powers of OSH committees			
	- governance of OSH committees			



SECTION

06

**Provisions protecting workers  
in specific conditions  
of vulnerability**

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## Provisions protecting workers in specific conditions of vulnerability

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### 1. Introduction

In any country, the workforce is highly diverse in terms of age, background, work experience, physical abilities, gender and other factors, reflecting the diversity of the broader community. This diversity means that some persons may be more susceptible than others to harm from specific workplace hazards. This vulnerability can be the result of (a) external circumstances or situational factors; or (b) the intrinsic characteristics of certain workers. For the purposes of this section, the term “vulnerable workers” is used to refer to both groups of workers.

#### International labour standards



- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)
- [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#)

Paragraph 3 of Recommendation No. 197 calls for “appropriate measures for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers”.

Moreover paragraph 7(i) of Recommendation No. 204 recommends that “in designing coherent and integrated strategies to facilitate the transition to the formal economy, Members should take into account the need to pay special attention to those who are especially vulnerable

to the most serious decent work deficits in the informal economy, including but not limited to women, young people, migrants, older people, indigenous and tribal peoples, persons living with HIV or affected by HIV or AIDS, persons with disabilities, domestic workers and subsistence farmers”.

It is important that employers are aware of the vulnerabilities of their workforce so that they can address their needs in OSH risk assessments and management systems and provide a workplace that is safe and healthy for all workers.

This section is designed to assist lawmakers to protect vulnerable workers. It focuses on the key groups that are particularly vulnerable to safety and health risks at work and whose particular vulnerabilities are addressed by existing ILS and legislation, namely: pregnant and breastfeeding women; workers with disabilities; young workers; mature-aged/elderly workers; migrant workers; and domestic workers.

Truly comprehensive legislation must acknowledge and address the specific vulnerabilities of everyone in the workplace. OSH legislation cannot be based on a “one-size-fits-all” model. Legislation that fails to take into account the vulnerabilities of particular worker groups may adversely impact those workers or allow the most vulnerable workers to “fall through the gaps”. There is a growing recognition within the international community that OSH laws and regulations must address the specific vulnerabilities of particular worker groups.

## 1.1 How to address vulnerable workers in OSH legislation?

A 2017 European Union evaluation based on a commissioned study observes that some vulnerable workers, namely pregnant/breastfeeding women, young workers, and temporary workers, are addressed by stand-alone EU legal instruments (individual EU directives), while other categories of vulnerable workers such as older, migrant or new workers are not. The evaluation acknowledges the possibility of new groups of vulnerable workers arising in the future and finds that a clarification may be needed on how such groups can be included in the existing legal framework.

### Useful tools and resources



- [EU, Evaluation of the Practical Implementation of the EU Occupational Safety and Health \(OSH\) Directives in EU Member States, 2017.](#)

This section discusses the various approaches that can be adopted in OSH laws to protect vulnerable workers.

## 2. Protection of pregnant and breastfeeding women at work

### 2.1 Introduction

More than half a billion women have joined the world's paid workforce over the last 30 years and they now represent 40 per cent of that workforce (World Bank 2012, pp. xx–xxi<sup>1</sup>). There is therefore a clear need to incorporate gender-specific considerations such as pregnancy and breastfeeding into legislation and OSH management frameworks.

Special measures for the protection of women should be limited to maternity protection in the strict sense. The CEACR has clearly indicated that any protective measures applicable to women's employment that are based on stereotypes regarding women's professional abilities and role in society violate the principle of equality of opportunity and treatment between men and women in employment and occupation. In addition, it considered that provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health.<sup>2</sup>

#### Useful tools and resources



- ILO, "[Maternity Protection Resource Package](#)".
- ILO, "[Working Conditions Laws Database](#)"; includes maternity protection.
- ILO, [10 Keys for Gender Sensitive OSH practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health](#), 2013.

A holistic approach should be taken to protecting pregnant and breastfeeding women at work. In addition to mainstreaming legal protections regarding their safety and **health**, national legislation and policy should also ensure adequate social protection, including access to maternity benefits and health care and adequate time off for medical visits and children care. National authorities should also promote workplace policies that support pregnant and breastfeeding women by providing appropriate ergonomic and physical arrangements, resting space, breastfeeding and sanitation facilities, internal or external childcare services and so on.

In fact, the ILO has found that 111 of the 160 countries with data available have specific statutory measures in place to protect pregnant or breastfeeding women in the workplace.

#### International labour standards



- [Maternity Protection Convention, 2000 \(No. 183\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)
- [Benzene Convention, 1971 \(No. 136\)](#)
- [Plantations Convention, 1958 \(No. 110\)](#)

1 World Bank. 2011. *World Development Report 2012: Gender Equality and Development*.

2 ILO, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization*, ILC.101/III/1B, 2008, paras. 839 and 840.

Convention No. 183 states in Article 3 that “Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother’s health or that of her child”. The Convention specifies that it applies to all working women, including those in atypical forms of dependent work.

Specific reference is made to protecting the health of pregnant and breastfeeding women in sectorial and risk-based Conventions as well.

Convention No. 184 in Article 18 indicates that “measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health”.

Convention No. 136 indicates in Article 11 that “women medically certified as pregnant, and nursing mothers, shall not be employed in work processes involving exposure to benzene or products containing benzene”.

Convention No. 110 indicates in Article 47.8 that “no pregnant woman shall be required to undertake any type of work harmful to her in the period prior to her maternity leave”.

## 2.2 General employers’ duty to ensure that pregnant and breastfeeding women do not perform work that is harmful for them or to the foetus or infant

One generic and flexible option is for the OSH law to state that the employer has the duty to ensure that pregnant women do not perform tasks that may be harmful or hazardous for the pregnant woman and/or the foetus or infant.

The advantage of using this model is that it requires the employer to identify the risks to pregnant women based on an assessment of the specific workplace and so does not require the legislation to specify an exhaustive list of tasks or duties that are prohibited for pregnant women. However, some employers may require more legislative guidance to ensure that they are effectively identifying potentially hazardous tasks, substances or duties for pregnant women.

Therefore, an optimal model is one that combines both approaches, whereby the legislation provides an outline or framework of the tasks that are particularly risky for pregnant and breastfeeding women, while at the same time placing an obligation on the employer to carry out a risk assessment of the workplace and identify any additional risks that may be unique to that working environment.

The following subsection discusses work and duties that, due to the negative impact these may have on the health of the foetus or infant, may be prohibited to women.

## 2.3 Specific tasks or duties that are prohibited or subject to limitations for women during pregnancy and breastfeeding

OSH laws can identify specific tasks or duties that women should not perform while pregnant or breastfeeding. This list must be sufficiently comprehensive and based on scientific evidence. The different types of prohibitions or limitations that are found in such laws are discussed below.

### Work involving dangerous substances and agents that pose physical, chemical and biological risks

Some countries prohibit exposure to a list of specific dangerous substances and agents, such as ionizing radiation, biological and chemical agents (for example benzene or substances containing benzene) and so on (see country example).



**Country example 86**  
Prohibitions for pregnant women

Country	Prohibitions for pregnant women
Bulgaria	<i>Decree No. D-07-4 of 2015</i> on the improvement of working conditions of pregnant workers and workers mothers or breastfeeding workers contains a non-exhaustive list of the risks that pregnant workers cannot be exposed to.
European Union	<i>Council Directive 92/85/EEC</i> on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Annex II, provides a non-exhaustive list of agents and working conditions, exposure to which should be prohibited for pregnant and breastfeeding workers.
Peru	<i>Ministerial resolution 374-2008</i> approves the list of physical, chemical, biological, ergonomics and psychosocial agents that generate risks to the health of pregnant woman or to the development of the foetus.
Mexico	<i>Articles 153-157 of the Federal Regulation on Occupational Safety, Hygiene and the Working Environment</i> contain restrictions on a pregnant woman's contact with teratogenic or mutagenic substances and exposure to ionizing radiation and abnormal or altered environmental thermal conditions, among others.

**Night work**

A number of countries attempt to mitigate the risk to women working during their pregnancies by specifying periods during which they should not be permitted to work or by specifying certain shifts or hours that pregnant or breastfeeding women should be prohibited from working – night work is a particularly common example.

**Attention**



A blanket ban on women working at night **is not in alignment with** international labour standards.

**International labour standards**



- [Maternity Protection Recommendation, 2000 \(No. 191\)](#)
- [Night Work Convention, 1990 \(No. 171\)](#)

**Recommendation No. 191** reflects a relatively recent shift in international norms, from a blanket ban on pregnant or breastfeeding women working night shifts to allowing women to work at night as long as it does not pose a risk to their pregnancy instead. It states in Paragraph 6(4) that “a pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing”. This reflects the move towards a risk assessment-based model.

On the other hand, the CEACR has indicated that Convention No. 171 is not devised as a gender-specific instrument but focuses on the protection of all night workers, thereby shifting the emphasis from a specific category of workers and sector of economic activity to the protection of all night workers, irrespective of gender in almost all branches and occupations. It demonstrates the major shift that has occurred over time, from a purely protective approach

concerning the employment of women to one that is based on promoting genuine equality between women and men and eliminating discriminatory law and practice.<sup>3</sup>

The CEACR further recalled that general protective measures for women workers, such as blanket prohibitions, in contrast with special measures aimed at protecting maternity, are increasingly regarded as obsolete and unnecessary infringements on the fundamental principle of equality of opportunity and treatment between men and women.<sup>4</sup>



**Country example 87**

**Singapore**

*Article 3 (1) of the Employment (Female Workmen) Regulations, 1988*, states that no female workman who is pregnant shall be employed to work during the night or part thereof unless she has for this purpose consented in writing and is not certified unfit by a medical officer or a registered medical practitioner.

**Albania**

*Article 108 of Law No. 136, 2015* prohibits the employer from requiring pregnant women and women who have given birth within the previous 12 months to work at night if they are provided with evidence from a medical practitioner that it could be harmful to the health of the baby or the woman.

**Overtime**



**International labour standards**

- [Reduction of Hours of Work Recommendation, 1962 \(No. 116\)](#)

Paragraph 18 of Recommendation No. 116 states that “in arranging overtime, due consideration should be given to the special circumstances of ... pregnant women and nursing mothers ...”.

Examples of countries with specific provisions relating to pregnant or breastfeeding women working overtime hours are given in country example 88.



**Country example 88**  
**Overtime provisions**

Country	Overtime provision
<b>Viet Nam</b> <i>Labour Code, 2012, art. 155</i>	Prohibition against requiring women who are more than seven months pregnant to work overtime.
<b>Ghana</b> <i>Labour Act, 2003, No. 651, art. 55</i>	Prohibition against overtime work by pregnant women or women with a child less than eight months old except with their consent.
<b>Cuba</b> <i>Labour Code, Law No. 49, 1984 art. 215</i>	Pregnant women or women with a child up to one year old cannot be required to work overtime or double shifts.

3 ILO, *Ensuring Decent Working Time for the Future: General Survey concerning Working-Time Instruments*, ILC.107/III(B), 2018, para.418.

4 ILO, *General Survey*, 2018, para. 409.

<p><b>Poland</b> <i>Labour Code, 1974, art. 178</i></p>	<p>Prohibition against employing pregnant workers to work overtime hours.</p>
<p><b>Netherlands</b> <i>Working Hours Act, 1995, arts 4(5), 4(6), 4(7) and 4(8)</i></p>	<p>Guidelines on the maximum number of hours that a pregnant or breastfeeding employee can work.</p>
<p><b>Switzerland</b> <i>Labour Law, art. 60</i></p>	<p>It is forbidden for pregnant and breastfeeding women to work over nine hours daily.</p>

### Other

Some countries have identified and prohibited other work-related scenarios that they have assessed can be harmful to a pregnant woman’s health or that of the foetus.



#### Country example 89

##### Ghana

Article 56 of the Labour Act No. 651, 2003 prohibits the assignment of pregnant women workers to posts outside their place of residence after the completion of the fourth month of pregnancy if the assignment, in the opinion of a medical practitioner or midwife, is detrimental to her health.

## 2.4 Risk assessment

Incorporating the increased risks faced by pregnant women in the workplace into risk assessment is necessary to ensure that the risk assessment has taken fully into account the specific vulnerabilities of this group and that these workers are therefore effectively protected from risks. The ILO has noted that musculoskeletal disorders are the most common workplace injuries and that the risk of sustaining a musculoskeletal injury increases during pregnancy. Similarly, exposure to certain chemicals, standing for prolonged periods of time and heavy lifting are also particularly heightened risks in the context of pregnancy.



#### International labour standards

- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)
- [Safety and Health in Agriculture Recommendation, 2001 \(No. 192\)](#)
- [Maternity Protection Recommendation, 2000 \(No. 191\)](#)

Article 18 of Convention No. 184 requires that “measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health”.

**Recommendation No. 192** indicates in paragraph 11 that “in order to give effect to Article 18 of the Convention, measures should be taken to ensure assessment of any workplace risks related to the safety and health of pregnant or nursing women, and women’s reproductive health”.

**Recommendation No. 191** indicates in paragraph 6(1) that “Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child; the results of the assessment should be made available to the woman concerned”.



**Country example 90**

**Bulgaria**

*Decree No. D-07-4 of 2015* on the improvement of working conditions of pregnant workers and workers mothers or breastfeeding workers states that the employer is under the obligation to do a risk assessment and identify any potential risks for pregnant and breastfeeding workers. When the results of the risk assessment show the existence of a risk for pregnant workers, workers who have recently given birth or workers who are breastfeeding or a risk that may affect their pregnancy or lactation, the employer shall take the necessary measures for the temporary adaptation of the working conditions in the workplace and/or the working hours of the worker in order to eliminate the risk. The positions and jobs suitable for the appointment of pregnant workers and workers who have recently given birth or are breastfeeding are defined under the *Decree on Work Reassignment of 1986*.

**Norway**

*Article 3 of Ordinance No. 1357 of 2011* concerning the performance of work, use of work equipment and associated technical requirements creates the obligation for employers to include any potential risks to the reproductive health of women when conducting workplace OSH assessments and prohibits employers from assigning work to a pregnant employee if any harm is identified.

**International labour standards**

- [Safety and Health in Agriculture Recommendation, 2001 \(No. 192\)](#)



## 2.5 Health surveillance

**International labour standards**

- [Safety and Health in Agriculture Recommendation, 2001 \(No. 192\)](#)



**Recommendation No. 192** states in Paragraph 4(3) that “health surveillance measures for ... pregnant and nursing women ... should be taken, where appropriate”.

The CEACR called on governments to undertake and strengthen preventive and protective measures pertaining to the reproductive health of women agricultural workers, in particular from the beginning of pregnancy, as well as for breastfeeding workers. It encouraged governments to promote the conduct of assessments of any workplace risks related to the safety and health of pregnant or nursing women, as well as to women’s reproductive health, and the adoption of appropriate measures to address the risks identified, and to provide such workers with appropriate health surveillance.<sup>5</sup>

<sup>5</sup> ILO, *Working Together to Promote a Safe and Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning The Promotional Framework, Construction, Mines and Agriculture*, ILC.106/III(1B), 2017, para. 425.

Various states require employers to continue to monitor the health of workers while they are pregnant or breastfeeding.



### Country example 90bis

#### Bulgaria

*Decree No. D-07-4 of 2015 on the improvement of working conditions of pregnant workers and workers mothers or breastfeeding workers states that the employer is under the obligation to do a risk assessment and identify any potential risks for pregnant and breastfeeding workers. When the results of the risk assessment show the existence of a risk for pregnant workers, workers who have recently given birth or workers who are breastfeeding or a risk that may affect their pregnancy or lactation, the employer shall take the necessary measures for the temporary adaptation of the working conditions in the workplace and/or the working hours of the worker in order to eliminate the risk. The positions and jobs suitable for the appointment of pregnant workers and workers who have recently given birth or are breastfeeding are defined under the Decree on Work Reassignment of 1986.*

#### Norway

*Article 3 of Ordinance No. 1357 of 2011 concerning the performance of work, use of work equipment and associated technical requirements creates the obligation for employers to include any potential risks to the reproductive health of women when conducting workplace OSH assessments and prohibits employers from assigning work to a pregnant employee if any harm is identified.*



### Country example 91

#### Lebanon

*Article 38 of the Decree No. 11802 of 2004 regulating the prevention, security and professional hygiene in all establishments that are governed by the Labour Code states that all workers shall undergo regular medical examinations during employment as determined by the applicable rules and regulations, in particular pregnant women and mothers of children under two.*

## 2.6 Alternatives to hazardous work



### International labour standards

- [Maternity Protection Recommendation, 2000 \(No. 191\)](#)
- [Nursing Personnel Recommendation, 1977 \(No. 157\)](#)

Recommendation No. 191 indicates in Paragraph 6(2) that with regard to work that represents a risk to the health of the mother or the child, "measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of (a) elimination of risk; (b) an adaptation of her conditions of work; (c) a transfer to another post, without loss of pay, when such an adaptation is not feasible; or (d) paid leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible".

Similarly, the Nursing Personnel Recommendation (No. 157) states in Paragraph 50 that “pregnant women and parents of young children whose normal assignment could be prejudicial to their health or that of their child should be transferred, without loss of entitlements, to work appropriate to their situation”.



### Country example 92

#### South Africa

*Section 26(2) of the Basic Conditions of Employment Act, 1997* states that “during an employee’s pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if the employee is required to perform night work ... or her work poses a danger to her health or safety or that of her child; and it is practicable for the employer to do so”.

## 2.7 Right of pregnant women to refuse to perform dangerous duties<sup>6</sup>

Countries may also include the right of a pregnant or breastfeeding worker to refuse work which is dangerous for her or her foetus or infant.



### Country example 93

#### Canada

*Section 132(1) of the Labour Code* establishes the right of a pregnant or nursing woman to cease to perform her job if she believes that, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or to that of the foetus or child.

#### *Consult health care practitioner*

The employee must consult with a qualified medical practitioner ... of her choice as soon as possible to establish whether continuing any of her current job functions poses a risk to her health or to that of the foetus or child.

#### *Provision no longer applicable*

Without prejudice to any other right conferred by this Act, by a collective agreement or other agreement or by any terms and conditions of employment, once the medical practitioner has established whether there is a risk as described in subsection (1), the employee may no longer cease to perform her job under subsection (1).

#### *Employer may reassign*

For the period during which the employee does not perform her job under subsection (1), the employer may, in consultation with the employee, reassign her to another job that would not pose a risk to her health or to that of the foetus or child.

#### *Status of employee*

The employee, whether or not she has been reassigned to another job, is deemed to continue to hold the job that she held at the time she ceased to perform her job functions and shall continue to receive the wages and benefits that are attached to that job for the period during which she does not perform the job.

<sup>6</sup> General consideration taking into account country practices.

## 2.8 Resting space for pregnant and breastfeeding women

Reserving areas for the rest of pregnant women and for breastfeeding purposes will provide more well-being for these workers.



### International labour standards

- [Maternity Protection Recommendation, 2000 \(No. 191\)](#)

Recommendation No. 191 indicates in paragraph 9 that “where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace”.



### Country example 94

#### Bulgaria

Pursuant to *article 308 of the Labour Code*, employers employing 20 or more women shall provide rooms for the personal hygiene of women and for the rest of pregnant women and women receiving in-vitro fertilization treatment, as established by the Minister of Health.

#### New Zealand

*Section 69 Y of the Employment Relations Act 2000* indicates that an employer must ensure that, so far as is reasonable and practicable in the circumstances, appropriate facilities are provided in the workplace for an employee who is breastfeeding and who wishes to breastfeed in the workplace.

## 2.9 Time for breastfeeding



### International labour standards

- [Maternity Protection Convention, 2000 \(No. 183\)](#)
- [Maternity Protection Recommendation, 2000 \(No. 191\)](#)

Article 10 of Convention No. 183 provides that “A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly”.

Article 7 of Recommendation No. 191 states that on production of a medical certificate or other appropriate certification as determined by national law and practice, the frequency and length of nursing breaks should be adapted to particular needs.



**Country example 95**  
**Breastfeeding time allowance**

Country	Legislation	Breastfeeding time allowance
<b>Benin</b>	<i>Labour Code No. 98-004, 1998, art. 173</i>	Breaks of up to one hour per day must be provided to women for the first 15 months after the return to work from maternity leave.
<b>Mozambique</b>	<i>Labour Law No. 23/2007, art. 11(1)</i>	During the period of pregnancy and after childbirth, female employees shall be guaranteed for a maximum of one year the right to interrupt daily work in order to breastfeed the child, for two periods of half an hour each, or for a single one hour period when work is performed in a single unbroken shift, with no loss of remuneration in either case.
<b>Argentina</b>	<i>Employment Contract Regime No. 20744, 1974, art. 195</i>	Lactating women workers may take two half-hour breaks each workday to breastfeed their child.
<b>China</b>	<i>Special Rules on the Labour Protection of Female Employees, Order No. 619, 2012, art. 9</i>	Employers shall grant women employees with less than one year infant feeding breaks of one hour counted as a working hour every day. Feeding breaks for women workers who have given birth to more than one child shall be extended by one hour for each additional baby born in a single birth.

### 3. Protection of workers with disabilities

#### 3.1 What is the definition of a worker with a disability?

The Preamble to the UN’s Convention on the Rights of Persons with Disabilities recognizes in subparagraph (e) that the term “disability” is an evolving concept.



**Definition**

*Convention on the Rights of Persons with Disabilities, article 1*

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

Given this broad definition, the term “disability” may encompass an array of different sustained health conditions that lead to a serious impairment of virtually any nature.

OSH considerations with respect to workers with disabilities involve workers who have acquired a disability in the course of their employment, as well as those who have existing disabilities that must be accommodated in OSH management systems in the workplace.



**International labour standards**

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)

Recommendation No. 164 indicates that Member States must:

- (a) provide appropriate measures for handicapped workers when formulating a national policy on occupational safety and health legislation as prescribed by Article 4 of Convention No. 155 (Para. 4(g)); and
- (b) ensure that handicapped workers are included in the review of the situation regarding occupational safety and health and the working environment (Para. 9).

### 3.2 Why are workers with disabilities vulnerable?

Noting the broad definition of “disability” in the Convention on the Rights of Persons with Disabilities, which includes physical, mental and sensory impairments, workers with disabilities face many barriers to their full participation in the workplace.

According to a recent study by the Institute for Work and Health in Toronto<sup>7</sup> workers who identify as having a disability are more likely to be exposed to workplace hazards and are more likely to report inadequate OSH protections. The report also noted that individuals with disabilities are often not provided with adequate accommodations or adjustments in their duties, exposing them to further safety risks.

Factors which increase the vulnerability profile of workers with disabilities include the fact that emergency procedures may not be suited to all (for example the requirement to walk downstairs in the event of a fire may not be an accessible option for people with various physical disabilities) and risk management and training materials may not be available in a format that is accessible to workers with visual, intellectual or speech impairments.

### 3.3 What legal provisions can be included in domestic law?

#### Reasonable accommodation

With respect to the recruitment and retention of workers with disabilities, Article 27(i) of the Convention on the Rights of Persons with Disabilities clearly states that reasonable accommodation (individual workplace adjustments) should be provided by employers to workers.

#### Definition

##### Reasonable accommodation

Article 2 of the Convention on the Rights of Persons with Disabilities defines “reasonable accommodation” to mean “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

The reasonable accommodation requirement differs from direct or formal anti-discrimination provisions, which require the identical treatment of all individuals. Rather, the reasonable accommodation requirement forms part of substantive equality, in which different treatment is required based on the different circumstances or needs of the individual in question.

Section 7 of the ILO’s code of practice on managing disability in the workplace provides guidance on the various adjustments that may be needed for workers with disabilities,<sup>8</sup>

<sup>7</sup> At Work, Issue 90, Fall 2017: Institute for Work & Health, Toronto

<sup>8</sup> See ILO, *Code of Practice on Managing Disability in the Workplace*, 2002.

including by improving physical access to the workplace; entrance to and movement around the premises and of toilet and washroom facilities; considering the impact of signage or audio alerts to workers with vision or hearing disabilities; ensuring that emergency procedures are adapted to accommodate an employee's disability; and consulting with disabled workers to consider their specific accessibility needs.

The code of practice also suggests that employers may need to make appropriate adaptations to the workplace to accommodate the needs of workers with disabilities. This can include adapting the workstation, tools, job description, work schedules or performance requirements of the particular role. However, the code also emphasizes that in many cases, adjustments are not required.

The competent authorities should provide employers with incentives for workplace adjustments, as well as a technical advisory service that provides up-to-date advice and information on how to implement adjustments to the workplace or to the organization of job tasks, as required.

The code of practice also recommends that:

- employers develop a comprehensive disability management strategy in the workplace, which should be linked to the promotion of a safe and healthy workplace more broadly and be featured in risk management, including in OSH policies, risk assessments and mitigation strategies to meet the needs of their specific enterprise and its workforce (section 3.1);
- workers' representative organizations advocate for workers with disabilities on safety committees (section 2.3.3);
- with respect to workers who have acquired a disability in the course of their work at the workplace, introducing measures for early intervention and their referral to appropriate services; taking steps to ensure their gradual resumption of work; providing opportunities for them to be transferred to alternative duties and tasks more suited to their disability; and obtaining appropriate technical advice in relation to the necessary adjustments that must be made at the workplace to accommodate the worker's disability (section 6.1).



### Country example 96

#### Italy

*Article 63(3) of the Health and Safety at the Workplace Legislative Decree No. 81/2008* requires the employer to ensure that adequate sanitary facilities are available to workers with disabilities.

### Disability and discrimination

Article 27(1)(a) of the Convention on the Rights of Persons with Disabilities prohibits "discrimination on the basis of disability with regard to all matters concerning all forms of employment, including ... safe and healthy working conditions".

EU-OSHA's 2004 fact sheet on workers with disabilities highlights the close connection between providing suitable OSH protection for disabled workers at the workplace and ensuring that the workplace is free from discrimination (both direct and indirect). It points out that "all stages of the risk management process need to take account of anti-discrimination approaches so that work environments, work equipment and work organisation are changed or adapted where necessary to ensure that both safety and health risks and discrimination are removed or at least minimised".<sup>9</sup>

Although in some circumstances it may be appropriate or necessary to include specific provisions requiring the health monitoring or surveillance of workers with disabilities, at the

<sup>9</sup> EU-OSHA, "Factsheet 53: Ensuring the Health and Safety of Workers with Disabilities", 2004.

same time states must ensure that these workers are protected from unlawful discriminatory practices whereby the burden (perceived or actual) of OSH-related requirements is used by employers to justify their failure to employ or retain workers with disabilities. Legislation can and should make clear that any special requirements pertaining to workers with disabilities must be read in conjunction with the employers’ obligation to make reasonable adjustments to accommodate the needs of such workers, as well as any existing anti-discrimination provisions in the OSH law or elsewhere.

To balance these considerations, provisions could require the undertaking to first assess whether special treatment for workers with disabilities is required or whether the implementation of adequate workplace adjustments is sufficient to address any potential issues.

## 4. Protection of young workers, including by providing a list of prohibited dangerous work

### 4.1 What are the definitions of “young worker” and “hazardous child labour”?

#### Young worker



##### Definition

The category of “young worker”, is a broad term used by the UN and the ILO specifically to refer to workers aged 15 to 24.

Workers under the age of 18 are identified in the international labour standards as “child” workers.

While there is significant evidence to suggest that workers aged between 18 and 24 have vulnerabilities that increase their risk factors in the workplace, workers in this age group do not usually enjoy specific protections in national legislation other than those foreseen for other workers; however, a few international labour standards do make specific mention of that age group.

#### Hazardous child labour



##### International labour standards

- [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)
- [Worst Forms of Child Labour Recommendation, 1999 \(No. 190\)](#)

Article 3(d) of Convention No. 182 indicates that the worst forms of child labour comprise “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

Paragraph 3 of [Recommendation No. 190](#) indicates that “in determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

- (a) work which exposes children to physical, psychological or sexual abuse;

- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

## 4.2 Why are young workers vulnerable?

Young workers have a significantly higher occupational accident rate than older workers (EU-OSHA 2007).<sup>10</sup> There are a number of risk factors that are higher for young workers or are unique to them as a cohort at the workplace. These risk factors may be inherent to their age, such as their stage of psychological and physical development, or may be influenced by their age, such as risk factors relating to a relative lack of skills and experience and lower levels of education. Risk factors that characterize young workers and make them more vulnerable to workplace hazards include:

- they are less likely to have reached full physical maturity and are therefore more susceptible to occupational diseases and accidents;
- similarly, they are less likely to have reached full psychological development and are therefore more susceptible to mental strain and risk-taking behaviour and reluctant to raise concerns about workplace risks;
- they have a lack of professional training, job skills and work experience, including a lack of understanding of workplace OSH hazards and risks; and
- they have lower levels of education;

In addition to the above, young workers are often engaged in the informal labour market or in family businesses that do not have preventive OSH management in place. Moreover, they are often employed in insecure or short-term contractual arrangements such as apprenticeships, which may mean that they are excluded from the workers' compensation insurance schemes of their employers.

### Useful tools and resources



- ILO, [Improving the Safety and Health of Young Workers](#), 2018.

## 4.3 How can national legislation protect young workers?

The OSH law can address the vulnerabilities of young workers by prohibiting their exposure to specific dangerous works and requiring specific protections. Risk assessment is also a valuable tool for identifying the worst forms of child labour and any work that could be particularly dangerous for young workers.

<sup>10</sup> EU-OSHA. 2007. *OSH in figures: Young workers — Facts and figures*.

## Prohibitions



### International labour standards

- [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)
- [Safety and Health in Construction Recommendation, 1988 \(No. 175\)](#)

Article 1 of Convention No. 182 clearly states that “each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”.

Many countries have hazardous work lists with prohibited works for children and young workers given their dangerous nature.



### Useful tools and resources

- ILO, “**LEGOSH**”, under theme 9.8.4, “Limits to workers’ access to specific occupations, undertakings or shifts by reason of age”.
- ILO, “**NATLEX**”, under “Hazardous Child Labour”.

The prohibition to engage young persons in hazardous work applies to children under 18; however, there may be some exceptions. Convention No. 184 states in Article 16(1) and (3) that the minimum age for assignment to work in agriculture which by its nature or the circumstances in which it is carried out is likely to harm the safety and health of young persons shall not be less than 18 (**an** exception may be permissible as from 16 if appropriate prior training is given and the safety and health of the young workers are fully protected).

Paragraph 29 of Recommendation No. 175 advises establishing a minimum age and training requirements for drivers and operators of lifting appliances.

## Protections



### International labour standards

- [Medical Examination of Young Persons \(Industry\) Convention, 1946 \(No. 77\)](#)
- [Medical Examination of Young Persons \(Non-Industrial Occupations\) Convention, 1946 \(No. 78\)](#)
- [Medical Examination of Young Persons \(Underground Work\) Convention, 1965 \(No. 124\)](#)
- [Medical Examination of Young Persons Recommendation, 1946 \(No. 79\)](#)
- [Welfare Facilities Recommendation, 1956 \(No. 102\)](#)

The accompanying Recommendation No. 192 to Convention No. 184 provides for the adoption of health surveillance measures for young workers (Para. 4(3)).

Conventions No. 77, No. 78 and No. 124 require that there be pre-employment medical examinations for children and young persons under 18 in order to check their fitness for the work in question; they also require the medical supervision of such workers until they reach the age of 18. These requirements are extended to the age of 21 for occupations that involve high health risks. Recommendation No. 79 also recognizes that protection is still needed beyond the age of 18, as in most cases the adolescent stage of development does not end at that age (Para. 7).

Paragraph 16(1) of Recommendation No. 102 states that in undertakings where any workers, especially women and young workers, have in the course of their work reasonable opportunities for sitting without detriment to their work, seats should be provided and maintained for their use.

Some examples of countries whose domestic legislation reflects the various ways in which countries have created an obligation for employers to protect young workers from chemical, biological and physical risks are provided in country examples 97–99.



### Country example 97

#### The European Union

*EU Directive 94/33/EC on the protection of young people at work* includes a number of key areas of working life that Member States should consider regulating or prohibiting in the context of child and young workers in order to ensure children and young workers are provided with working conditions that are suitable to their age and level of development and to prevent them from sustaining physical, mental or developmental harm in the workplace.

- *Article 5* states that the employment of children (under 15) in cultural, artistic, sporting or advertising activities must be subject to special regulations to ensure that the activities are not likely to harm the safety, health or development of children.
- *Article 6* sets out the general obligations on employers, including the requirement to conduct an assessment of the workplace hazards to young people (a person under 18) in their working environment; the provision of health and safety monitoring and assessment of their health; the provision of advice and education regarding any identified risks; and the utilization of protective and preventive health services in the assessment and monitoring of these risks.
- *Article 7* sets out the specific hazards that, as a minimum, the EU considers children and young workers should be protected from in the workplace owing to the increased risk of harm that is a “consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured”.
- *Article 8* sets out the maximum number of hours per day that children, young persons and adolescents should be permitted to work in one day, as well as regulations around the manner in which these working hours should be calculated.
- *Article 9* sets out prohibitions and restrictions on children and adolescents working at night and potential exceptions to these prohibitions.
- *Articles 10–12* set out minimum standards with regard to annual leave and rest periods between and during shifts.

**The Annex** sets out a non-exhaustive list of the physical, biological and chemical agents as well as various duties and processes that young people should be prohibited from exposure to in domestic legislation.



### Country example 98

#### South Africa

*The Basic Conditions of Employment Act, 1997 and the Health and Safety of Children at Work Regulations, 2010 (art. 4)* state that no person may employ a child who is under 15 or the minimum school-leaving age. Furthermore, the law states that no person may employ a child in employment that is “inappropriate for a person of that age,” or that “places at risk the child’s well-being, education, physical or mental health, or spiritual, moral or social development”.



### Country example 99

#### Malaysia

In contrast to the other examples, *article 2 of the Children and Young Persons (Employment) Act 1966* prescribes the limited categories of work in which children and young workers are permitted to be employed, including light work; public entertainment; work approved as part of school or other training; apprenticeships; domestic work; employment in any office, shop (including hotels, bars, restaurants and stalls), factory, workshop, store, boarding house, theatre, cinema, club or association; employment in an industrial undertaking suitable to his capacity; and employment on any vessel under the personal charge of his parent or guardian. The Minister may authorize other employment if he or she is satisfied that the employment is not dangerous to “life, limb, health or morals” of the young worker.

## 5. Protection of mature-aged/elderly workers<sup>6</sup>

### 5.1 Why are mature-aged/elderly workers vulnerable?

The world’s population is ageing and the changing economic climate has seen many states increase the age at which workers can access old-age pensions. However, age has an impact on health and that should be taken into consideration in managing safety and health at the workplace. The working conditions and methods may need to be adapted to the age factor (for example by adjustments to working hours and breaks, work processes, amount of lighting and so on).

The EU-OSHA has identified the ageing workforce as priority work area<sup>11</sup> and EU-OSHA has made a number of key findings regarding the ageing workforce and OSH in a 2016 report,<sup>12</sup> including:

- Some cognitive abilities decline with age. However, older workers often show better judgement, job-specific knowledge, ability to reason and motivation to learn than their younger colleagues. Also, key elements of cognitive performance do not generally decrease markedly until after the age of 70.
- Older workers are more likely to suffer from chronic health problems; however, many chronic diseases are controllable and do not affect work performance.
- Cumulative exposure over the course of a working life to a variety of physical and chemical hazards has implications for OSH.
- The propensity for injury is related more to the difference between the demands of the work and the worker’s ability to work than to their age.
- The causes of work-related stress in older workers are different from those in younger workers and this should be considered.
- The evidence is that continuing to work under good-quality working conditions is associated with better physical health and psychological well-being than being out of work.
- While the evidence that older workers are more likely to have difficulties with shift work is mixed, those who do report difficulties need extra support or the option of non-shift work.
- The experience of older workers may enable them to overcome age-related challenges and increase their efficiency in the workplace.

11 See EU-OSHA, EU Strategic Framework on Health and Safety at Work 2014-2020; [EU Strategic Framework on Health and Safety at Work 2021-2027: Occupational Safety and Health in a Changing World of Work](#), 2021.

12 EU-OSHA, [The Ageing Workforce: Implications for Occupational Safety and Health – A Research Review](#), 2016.

- Many age-related changes and health issues, such as hearing or vision changes or chronic diseases, can generally be accommodated with simple aids or work adjustments.
- Measures that make work less demanding for older workers are likely to benefit all workers.

## 5.2 What legal provisions can be included in domestic law?

Specific obligations for employers to protect the unique vulnerabilities of older workers do not appear in existing ILO Conventions.

EU-OSHA's recommendation is that employers should utilize a "work ability"-based framework for risk assessment, which recognizes that age itself is not the most appropriate index of a person's abilities needs in the workplace and instead looks at an individual's resources in relation to the demands of their work. The working environment must be considered simultaneously with the individual capabilities of the worker.

The key point for governments is that the protection of older workers occurs when workplaces are supported to develop sustainable work practices with a positive OSH culture. The lack of clear-cut regulatory boundaries in international norms means that governments must develop ways to integrate the protection of aged workers into their policies and procedures in order to support sustainable work.

This is the approach that is adopted in Alberta, Canada, where guidelines<sup>13</sup> indicate that the best approach to the issue of protecting older employees from OSH risks in the workplace lies in adopting preventive measures to reduce the cumulative impact of exposure to workplace hazards over a long period of time. Similarly, a workplace hazard that poses a risk to elderly workers will pose a risk to all workers, regardless of age. For example, having poor lighting in the workplace poses a substantial risk to the healthy eyesight of older workers. However, having a well-lit workplace also helps to ensure the safety and health of all workers, regardless of age.

While the above-mentioned EU-OSHA report emphasizes the need for improved OSH legislation, policy and regulation in order to ensure sustainable workplaces, it also acknowledges that additional specific measures are also needed for older workers if and when necessary, *depending on the type of work and the individual*, meaning that the age of a worker and that worker's particular abilities must be incorporated into a "diversity-sensitive risk assessment approach".



### Country example 100

#### Japan

Article 62 of the Industrial Safety and Health Act No. 57, 1972 stipulates that in respect to middle-aged, aged and other workers to whom specified considerations should be given in placing them with a view to preventing industrial accidents, the employer shall endeavour to arrange an appropriate assignment for them according to their physical and mental conditions.

<sup>13</sup> Canada, Government of Alberta, *A Guide to Managing an Aging Workforce*, 2016.

## 6. Protection of migrant workers

### 6.1 What is the definition of migrant workers?

The ILS definition of migrant workers has its origin in the second paragraph of the Preamble of the ILO Constitution (1919), which calls for the “... protection of the interests of workers when employed in countries other than their own ...”, although it does not provide a generic legal definition of those “workers”.

The four international labour standards dedicated to labour migration and the protection of migrant workers and members of their families establish a number of exceptions to the definition of migrant workers or migrants for employment.

#### International labour standards



- [Migration for Employment Convention \(Revised\) \(No. 97\) and Recommendation \(No. 86\), 1949](#)
- [Migrant Workers \(Supplementary Provisions\) Convention \(No. 143\) and Recommendation \(No. 151\), 1975](#)

Convention No. 97 excludes frontier workers, seafarers and short-term liberal professionals and artists (Art. 11(2)), while Convention No. 143 contains exceptions relating to persons entering for the purposes of training or education, or employees of organizations or undertakings admitted temporarily to a country at the request of their employer to undertake specific duties or assignments for a limited and defined period of time, and who are required to leave the country upon their completion (Art. 11(2)).

No category of migrant workers is excluded from Part I (Migration in abusive conditions) of Convention No. 143, which applies to all migrant workers, including those in an irregular situation and self-employed migrant workers. Refugees and displaced persons, to the extent that they are workers in another country than their own, are also covered by the instruments.

The UN's International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 defines the rights of migrant workers under two main headings: “Human rights of all migrant workers and members of their families” (Part III), which are applicable to all migrant workers; and “Other rights of migrant workers and members of their families who are documented or in a regular situation” (Part IV), which are applicable only to migrant workers in a regular situation.

Article 1 of the Convention states that “the present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status”.

According to Article 2, the term “migrant worker” refers to “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”. The Convention applies during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

The Convention also identifies and defines a number of migrant-worker categories, including “frontier worker”, “seasonal worker”, “itinerant worker”, “project-tied worker”, “specified-employment worker” and “self-employed worker”. It also specifies excluded categories (Art. 3): persons employed by international organizations or governments in official functions; seafarer

and worker on an offshore installation (who have not been admitted to take up residence and engage in a remunerated activity); persons taking up residence as investors, students and trainees; and refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State party concerned.

Article 25 states that migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of safety, health, and any other conditions of work.

## 6.2 Why are migrant workers in a vulnerable situation?



### International labour standards

- [Migrant Workers Recommendation, 1975 \(No. 151\)](#)
- [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#)
- [Safety and Health in Construction Convention, 1988 \(No. 167\)](#)

While migrant workers today work in all sectors, owing to the increased globalization of the labour market, highly skilled workers now regularly form part of the migrant-worker profile in every country. However, despite this, the ILO notes that “contemporary migration flows are still dominated by workers moving to fill unskilled jobs in those segments of the labour market vacated by native workers who move on to better jobs” (ILC 2004, p. 8).

Some key factors that contribute to the increased OSH risk profile of this group include:

- (a) language barriers in the workplace leading to increased exposure to workplace accidents and diseases; difficulties in identifying toxic chemicals on labels; difficulties in understanding obligations as a migrant employer and worker; isolation and social exclusion (the latter may be also triggered by other factors listed below);
- (b) differences in cultural attitudes and behaviours related to risk perception and risk control;
- (c) the increased risk of being trapped in forced labour and human trafficking;
- (d) the increased likelihood that migrant workers will perform work in the informal economy (for example due to a lack of documentation), preventing them from gaining access to health care and social protection;
- (e) the increased likelihood of being employed in precarious work, that is on short-term or seasonal contracts;
- (f) the increased likelihood that migrant workers will prioritize income (and job security) over other considerations, resulting in a reluctance to report unsafe working conditions;
- (g) increased probability of lack of training and education;
- (h) unhygienic living conditions (common in groups of migrant workers performing agricultural or seasonal work), leading to the rapid spread of infection or diseases such as influenza;
- (i) Racism and xenophobia at the workplace may constitute bullying and mobbing and may have a serious effect on workers’ mental health.

The preparatory work of the Migrant Workers Recommendation, 1975 (No. 151) identified three types of special health risk to which migrant workers may be exposed: (a) conditions already suffered from in the country of origin (especially forms of parasitosis); (b) disorders contracted in the country of employment, where the migrant workers may have inadequate immunity to certain diseases; and (c) physical and psychological disorders peculiar to the process of adaptation to a new environment (particularly digestive disorders and neuroses).<sup>14</sup>

<sup>14</sup> ILO. 1999. *General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975*

Many migrant workers, especially low-skilled workers, are often employed in dangerous occupations. For example, migrants are frequently employed in seasonal agricultural work or industrial work that national workers may be unwilling to perform due to the transient nature of the work, hazardous working conditions or low pay, which are also known as “3-D jobs” (dangerous, dirty and difficult)(ILO 2004, p. 8<sup>15</sup>).

The CEACR noted the increased vulnerability of migrant workers in certain sectors. It noted that in many countries, the electronics industry, for example, is characterized by a high incidence of temporary and other forms of employment, while women and migrant workers are often the more vulnerable among workers under temporary contracts. It also noted the situation of migrant workers who are victims of trafficking in the textiles and clothing sector and the large number of unauthorized workshops in certain countries. It further noted the vulnerable situation of migrant workers in the fisheries sector, many of whom are in an irregular situation, which contributes to their willingness to accept poorer conditions and increasing their vulnerability to exploitation.<sup>16</sup>

The CEACR also noted that migrant workers are particularly vulnerable to industrial accidents and has emphasized the urgency of reinforcing safety and health mechanisms in occupations in which they are primarily employed; it reiterated the importance of taking the appropriate measures to prevent any special health risks to which migrant workers may be exposed, in particular those employed in hazardous occupations such as agriculture, construction, mining and fishing, manufacturing, and domestic work.<sup>17</sup>

Migrant workers are also particularly vulnerable to the negative impacts associated with sustaining illness or injury at work. As they are often very low paid and do not receive workplace benefits such as paid sick leave, being unable to work can mean a reduction in take-home pay and potential job loss.

These vulnerabilities can be compounded by difficulties that migrant workers face in accessing financial and compensatory support in their host countries for workplace accidents or injuries, due to them not being covered by social support or workers compensation laws (for example in Thailand, migrant workers are not covered by the country’s social security act, which excludes them from compensation for workplace injuries).

### International labour standards



- [Equality of Treatment \(Accident Compensation\) Convention, 1925 \(No. 19\)](#)
- [Migrant Workers \(Supplementary Provisions\) Convention, 1975 \(No. 143\)](#)
- [Migrant Workers Recommendation, 1975 \(No. 151\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Promotional Framework for Occupational Safety and Health Recommendation, 2006 \(No. 197\)](#)
- [Migration for Employment Convention \(Revised\), 1949 \(No. 97\)](#)

While Convention No. 155 does not specifically refer to migrant workers, its scope of application is in principle universal, that is, it is applicable to all workers as specified in Article 2(1). Therefore, the OSH requirements set out in this Convention are applicable to all “employed persons” without any distinction based on nationality. Recommendation No. 197 provides that, with a view to preventing occupational injuries, diseases and deaths, the national system for occupational safety and health (as defined in Convention No. 187) should provide appropriate measures for the protection of all workers, in particular, workers in high-risk sectors, and vulnerable workers such as those in the informal economy and migrant and young workers (Para. 3).

15 ILO. 2004. *Towards a Fair Deal for Migrant Workers in the Global Economy*. ILC.92/VI.

16 ILO, *Promoting Fair Migration: General Survey concerning the Migrant Workers Instruments*, ILC.105/IIIIB, 2016, para. 539.

17 ILO, General Survey, 2016 Promoting fair migration: General Survey concerning the migrant workers instruments, 2016 paras. 385 and 388.

Recommendation No. 164 calls in particular for special training programme for migrant workers in their mother tongue (Para. 4(d)), while the CEACR has on many occasions stressed the importance of ensuring that workers receive adequate and appropriate training on safety and health issues, tailored to their specific educational background, work preparation and in a language that they understand.<sup>18</sup>

Article 10 of Convention No. 143 states that “each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory”. The general nature of this provision encompasses OSH rights and protections.

Recommendation No. 151 specifically refers to OSH in relation to the principle of equality and non-discrimination applicable to migrant workers. It indicates that migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of ... conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment (Para. 2(f)).

Recommendation No. 151 also states that “a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work” (Para 21(2)).

Article 1 of Convention No. 19 requires Member States to give to foreign nationals the same treatment in respect of workmen’s compensation as it grants to its own nationals. This equality of treatment shall be guaranteed to foreign workers and their dependants without any condition as to residence.

Article 6(1)(a)(ii) of Convention No. 97 provides for equality of treatment of migrants lawfully in the country with nationals in relation to trade union membership and enjoyment of the benefits of collective bargaining.

Article 10 of Convention No. 143 requires governments to pursue a national equality policy with respect to “trade union rights”.

Paragraph 2(g) of Recommendation No. 151 refers to effective equality of opportunity between regular migrant workers and nationals and treatment with respect to trade union membership, exercise of trade union rights and eligibility for office and in labour-management relations bodies, including bodies representing workers in undertakings.

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<sup>18</sup> ILO, *General Survey*, 2016, para. 388; and ILO, 2017, paras 331 and 341.

### 6.3 How are the rights of migrant workers to OSH addressed in national law and policy?

Although there are various regulatory approaches, the main legislative responses that can be adopted are to expand the scope of application of OSH laws so as to ensure that they are applicable to migrant workers and to include provisions that address the specific needs of migrant workers (such as OSH information and training in a language they understand).



Policy options	
<b>Types of legislative measures</b>	
(a)	<b>Explicitly expanding the scope of application of OSH laws to cover migrant workers</b>
(b)	<b>Requiring equal treatment for nationals and foreigners and prohibiting discriminatory labour conditions based on nationality</b>
(c)	<b>Explicitly extending the scope of freedom of association laws to cover migrant workers</b>
(d)	<b>Requiring employers to provide information and training on OSH in (a) language(s) understood by all workers</b>
(e)	<b>Other provisions targeting specific issues that migrant workers face</b>

#### (a) Explicitly expanding the scope of application of OSH laws to cover migrant workers

This can be achieved by expressly stating in the OSH law that all workers *including migrant workers* are covered by the law and thus entitled to the rights and protections contained therein. However if migrant workers are explicitly mentioned, a definition of this term could be useful.

As opposed to this option, some countries fail to reference *migrant workers* at all in the definition of worker or employee, thus leaving it to legal interpretation to ascertain whether a migrant worker is covered by the relevant OSH legislation. The disadvantage of this modality is that it may create confusion or uncertainty regarding the coverage of migrant workers and other categories of workers.



Country example 101	
<b>Burundi</b>	
Article 15 of the Labour Code, approved by Decree-Law No. 1-037 of 1993 states that a worker is any natural person <i>regardless of nationality</i> who is engaged by an employer through an employment contract.	

### (b) Requiring equal treatment for nationals and foreigners and prohibiting discriminatory labour conditions based on nationality



#### Country example 102

##### Costa Rica

*Article 404 of the Labour Code, 1943* stipulates that discrimination at work is forbidden because of national origin, among others.

##### Tunisia

*Article 263 of the Labour Code, 1930* expressly states that “the foreign worker enjoys the same rights and is subject to the same obligations resulting from labour relations and applicable to the Tunisian worker”.

##### Argentina

*Article 6 of the Migration Law No. 25871, 2010* requires the State to ensure equal access of migrants to the same conditions of protection and rights of nationals, including social services, health, employment, social security, justice and so on.

##### Portugal

*Article 24 of the Law No. 7/2009 approving the Labour Code* indicates that workers have the right to equal treatment regarding the working conditions and cannot be discriminated on the basis of nationality, race, territory of origin or language.

### (c) Explicitly extending the scope of freedom of association laws to cover migrant workers



#### Country example 103

##### Republic of Korea

The Decision of the Supreme Court 2007Du4995 of 25 June 2015 found that a foreign worker who does not have the sojourn status of eligibility for employment may organize or join trade unions.

### (d) Requiring employers to provide information and training on OSH in a language understood by all workers (or in various languages depending on the diversity of the workforce) as well as to conduct consultations in language(s) that would enable migrant workers to participate in those processes.

### (e) Other provisions targeting specific issues that migrant workers face

One specific issue migrant workers recurrently face is poor living conditions, in particular poor accommodation. When these are dependent on the employer because the latter has undertaken or is required by law to provide accommodation and other facilities, the employer has the obligation to make sure that these meet a minimum quality standard in relation to safety, hygiene and privacy. A provision in the OSH law can help clarify this point.



### Country example 104

#### Singapore

*The Employment of Foreign Manpower (Work Passes) Regulations, 2012, first schedule, part I, paras 1–2*, provides that the employer is responsible for —

- (a) the upkeep and maintenance of the foreign employee in Singapore, including the provision of adequate food and medical treatment; and
- (b) bearing the costs of such upkeep and maintenance.

The employer shall ensure that the foreign employee has acceptable accommodation. Such accommodation must be consistent with any written law, directive, guideline, circular or other similar instrument issued by any competent authority.



### Country example 105

#### Bahrain

Several Arab States have laws that specifically embed the employers' obligation to provide OSH information in languages that are understood by workers. This is the case of *article 3(6) of the Occupational Safety and Health in Establishments Ministerial Order No. 8, 2013* of Bahrain, which requires employers to provide the necessary information and directives for all workers in all workplaces, both in Arabic and in other languages understood by the workers, in order to ensure the protection of their safety and health.

#### Ireland

*Section 9(1)(a) of the Irish Safety, Health and Welfare at Work Act of 2015* establishes the employer's duty to ensure that OSH information provided to workers "is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned".

## 7. Protection of domestic workers

### 7.1 What is the definition of domestic workers?



#### Definition

##### Domestic workers

Article 1 of the Domestic Workers Convention, 2011 (No. 189) defines a *domestic worker* as "any person engaged in domestic work within an employment relationship, and who performs domestic work on an occupational basis, where the term *domestic work* means "work performed in or for a household or households".

## 7.2 Why are domestic workers in a vulnerable situation?

Domestic work is an industry with a high incidence of work-related illness and injury due to a number of external factors, including:

- persons do not usually associate housework in their own homes with risks and therefore do not associate it with risks when they perform it in the house of another person;
- householders do not tend to see themselves as “employers” (in fact, sometimes they are not employers, such as when the employer is an agency or the domestic worker is a self-employed worker; but in many cases the household owner or occupier is the employer), nor do they associate housework to risks and consequently they do not view domestic workers as “workers” to be protected from risks;
- the private character of the household and the associated protection of the inviolability of privacy that is usually embedded in constitutions makes it more difficult for labour inspectors to enter and inspect such workplaces.<sup>19</sup>

These circumstances place domestic workers in a vulnerable situation.

The ILO has found that domestic workers are particularly vulnerable to certain OSH risks, including working long hours; exposure to chemicals and biological hazards, including HIV; lifting unsafe weights; various psychosocial risks; and violence and harassment in the workplace.<sup>20</sup> Some domestic workers face particular vulnerabilities, such as those who live in the homes of their employers due to their increased isolation, as well as migrant domestic workers who may not have social support networks or speak the local language.

Violence and harassment is ubiquitous in the sector. A 2011 report issued by Women in Information Employment Globalizing and Organizing<sup>21</sup> found that Brazilian domestic workers reported verbal abuse and humiliation as being their most pressing OSH concerns. Other key OSH risks identified in this report included:

- (a) overwork and a lack of regular or defined working hours, exacerbated when domestic workers also lived in the same home as their employer;
- (b) psychological stress;
- (c) exposure to chemicals and toxic substances (exacerbated by a regular lack of protective equipment); and
- (d) exposure to risks such as repetitive strain injury and back problems caused by heavy lifting.

## 7.3 Analysis of international and domestic legislative instruments

### International labour standards

- [Domestic Workers Convention, 2011 \(No. 189\)](#)
- [Domestic Workers Recommendation, 2011 \(No. 201\)](#)
- [Violence and Harassment Convention, 2019 \(No. 190\)](#)
- [Violence and Harassment Recommendation, 2019 \(No. 206\)](#)



Article 13 of Convention No. 189 states that “every domestic worker has the right to a safe and healthy working environment; each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers”.

<sup>19</sup> ILO, “*Migrant Domestic Workers: Promoting Occupational Safety and Health*”, 2016, pp. 1–2.

<sup>20</sup> ILO, “*Migrant Domestic Workers*”, pp. 1–2.

<sup>21</sup> WIEGO, *Social Protection Programme Occupational Health and Safety & Domestic Work A synthesis of research findings from Brazil and Tanzania*, Laura Alfors, December 2011

Article 10(f) of Convention No. 190 indicates that each Member shall take appropriate measures to recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work. Domestic workers are often explicitly excluded from coverage by labour laws. In 2010, only 10 per cent of domestic workers were fully included in labour laws.<sup>22</sup> Sometimes they are explicitly excluded from OSH legislation (see, for example, the *Danish Work Environment Act, section 2(2)*, which explicitly excludes work performed in the private household of the employer).

One way of providing domestic workers with legal protection could be to include them in the scope of the OSH law. This may be done by explicitly stating in the scope that the OSH law applies to them or by including them under the definition of workers. Another possibility could be to issue a specific law or regulations for this category of workers.

Also, Paragraph 19 of Recommendation 2011 No. 201 requires Member States to take necessary measures to:

- (a) protect domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace;
- (b) provide an adequate and appropriate system of inspection, consistent with Article 17 of the Convention, and adequate penalties for violation of occupational safety and health laws and regulations;
- (c) establish procedures for collecting and publishing statistics on accidents and diseases related to domestic work, and other statistics considered to contribute to the prevention of occupational safety and health related risks and injuries;
- (d) advise on occupational safety and health, including on ergonomic aspects and protective equipment; and
- (e) develop training programmes and disseminate guidelines on occupational safety and health requirements specific to domestic work.

Broadly speaking, Member States deal with the regulation of OSH for domestic workers in one of four ways:

- the OSH legislation explicitly states that its coverage extends to the employment of domestic workers, whether by being applied to domestic workers as it does to any other worker or by featuring a section in the OSH/labour law; domestic workers may be explicitly included in the definition of “worker” or “employee” or in the section of the legislation that deals with the law’s scope or coverage;
- the OSH legislation explicitly states that domestic workers are excluded from its coverage;
- the OSH legislation explicitly excludes domestic workers, but the relevant government legislature has issued parallel or complementary legislation or regulations that pertain specifically to domestic workers; or
- the OSH legislation does not explicitly reference domestic workers at all, which generally means that the domestic worker will only be covered if the authorities and/or courts interpret them to fall under the term “worker” or “employee” under the relevant OSH act. This leaves domestic workers in somewhat of a “grey area”, and if no further guidance is provided by competent authorities they are likely to be left in the informal economy.

Exclusion from OSH laws may have the knock-on effect of also excluding these workers from workers’ compensation and other social security schemes, compounding and exacerbating their precarious and vulnerable position in the workforce.

Below are examples from the legislation of various Member states that have adopted provisions that specifically deal with domestic workers. An analysis of existing provisions reveals that specific domestic worker legislation deals with a broad range of OSH-related issues.

<sup>22</sup> ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection*, 2013.

Commonly regulated aspects include hours of work, minimum age and break times. Below, key themes within various countries' legislation are dealt with separately.

### General obligation to ensure the safety and health of domestic workers

Some Member States that have adopted separate legislative provisions pertaining to domestic workers emphasize the employer's obligation to ensure the worker's safety and health in the workplace by including an introductory provision to that effect in domestic workers' legislation.



#### Country example 106

##### Spain

*Article 7.2 of the Employment Relationship of Special Character of Domestic Services Royal Decree No. 1620/2011* states that the employer is under the obligation to ensure that the work of the household employee is performed in the proper conditions of safety and health, for which it will adopt effective measures, taking due account of the specific characteristics of the domestic work. Failure to comply with these obligations will be just cause for resignation of the employee.

##### Portugal

*Article 26 of the Domestic Service Contract Decree Law No. 235/92* states that the employer shall take the necessary measures to ensure that the places of work, tools, products and processes do not present a risk to a workers' health, in particular:

Inform the worker on the way of operation and conservation of the equipment used in the performance of their tasks;

Promote the repair of utensils and equipment whose poor functioning may pose a risk to the safety and health of the worker;

Ensure the identification of containers containing products which toxicity may cause any type of injury and the instructions necessary for its proper use;

Provide, where necessary, protective clothing and protective equipment appropriate measures, in order to prevent, as far as possible, the risks of accidents and harmful effects on workers' health; and

Provide, when necessary, accommodation and food in conditions that maintain the safety and health of workers.

##### Guyana

*Article 4.2 of the Occupational Safety and Health Act* explicitly indicates that it applies to a domestic worker and to an owner or occupant of a private residence with respect to the work performed by the domestic worker for the owner or occupant of a private residence.

### Minimum age

Some countries prohibit domestic work for children.



#### Country example 107

##### Morocco

*Article 6 of the Working Conditions of Domestic Workers Dahir No. 1-16-121, 2016* states that the minimum age of employment for domestic workers is 18. However, during the first five years from the date of implementation of the Law, the employment of workers between 16 and 18 is

allowed, provided that the worker has an authenticated written permission document to that effect signed by his or her guardian.

#### Uruguay

*Article 11 of the Domestic Work Act No. 18065* states that the minimum age for domestic service workers is fixed at 18. Without prejudice to this, the Institute for Children and Adolescents of Uruguay may, on the basis of well-founded reasons, authorize children to work from the age of 15.

## Working time

Regulating the working time for domestic workers is particularly important due to the nature of the work performed and the fact that many domestic workers live on the premises in which they work ("live-in workers"); therefore, the boundaries between work and rest time may become blurred and result in these workers working excessive and unsociable hours. Hours of work must be limited to ensure the safety and health of domestic workers.

### Regular hours of work

Creating limits for the number of hours that domestic workers can work in a set period (that is per week) and regulating the way overtime is performed is an important aspect of ensuring that domestic workers do not work excessive hours. Many of the countries analysed have specific provisions limiting the maximum number of regular hours of work for domestic workers.



### Country example 108

#### Spain

*Article 9.1 of the Employment Relationship of Special Character of Domestic Services Royal Decree No. 1620/2011* states that the maximum ordinary work week shall be 40 hours of actual work, without prejudice to the amount of time spent at the employer's disposal that may be agreed between the parties. The schedule will be fixed by agreement between the parties. Once the agreed workday or amount of time present has ended, the employee is not obliged to remain in the family home.

#### Portugal

*Article 13 of the Domestic Service Contract Decree Law No. 235/92 of 2009* states that the normal weekly working hours must not exceed 44 hours.

#### Uruguay

*Article 2 of the Domestic Work Act No. 18065 of 2006* establishes that the hours of work of domestic workers shall be limited to a legal maximum of 8 hours per day and 44 hours per week.

## Overtime

Member States should consider what provisions regulating overtime for domestic workers should be included in their legislation. Key issues to consider include:

- limiting the number of hours that can be worked as overtime in a set period to ensure that domestic workers are not expected to work excessive or unsociable hours;
- regulating the manner in which employers can compel domestic workers to work overtime hours and the extent to which it must be a voluntary arrangement; and
- the scheme of compensation for overtime hours worked.



### Useful tools and resources

- ILO, *Effective Protection for Domestic Workers: A Guide to designing Labour Laws*, 2012.

### Rest periods and breaks

Paragraph 11(2) of Recommendation No. 201 addresses the question of weekly rest for workers, stating that “the fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker”.

Paragraph 12 of Recommendation 201 states that “national laws, regulations or collective agreements should define the grounds on which domestic workers may be required to work during the period of daily or weekly rest and provide for adequate compensatory rest, irrespective of any financial compensation”. This is a specific attempt to address the fact that due to the nature of domestic work, a certain degree of flexibility in working hours may be required. Any domestic laws that permit a derogation from standard or regular working hours must balance this flexibility with the worker’s entitlement to autonomy or control over their working hours and should not be at the expense of a domestic worker’s entitlement to sufficient rest and break periods.

In addition to rest periods between working days, national laws should also set out the domestic workers’ entitlement to break periods during shifts in order to ensure that domestic workers are able to have meals and rest time during working hours.



### Country example 109

#### Spain

*Article 9.4 of the Employment Relationship of Special Character of Domestic Services Royal Decree No. 1620/2011* states that “between the end of one day and the start of the next, (there must be a) minimum break of 12 hours. The rest between days of the domestic household employee may be reduced to 10 hours, compensating the rest up to 12 hours in periods of up to four weeks. The domestic household employee will have at least 2 hours per day for main meals, which will not be counted as work. Article 9.5 goes on to state that domestic employees are entitled to a weekly rest of 36 consecutive hours, which will normally include Saturday afternoon or Monday morning off plus a full day off on Sunday.

#### Portugal

*Article 14 of the Domestic Service Contract Decree Law No. 235/92 of 2009* states that the worker who lives in the home he/she serves has the right, each day, to enjoy meal breaks or rest, without prejudice to the functions of surveillance and assistance to the household. The worker shall be entitled to a night rest of at least eight hours which must not be interrupted except for serious or unforeseen cases or when the worker has been hired to assist patients or children up to the age of three. The organization of intervals for meal or rest is established by agreement or, failing that, fixed by the employer in the periods established for that purpose by customary usage.

### Night work

Article 9(2) of Recommendation 201 advises that Member States should regulate the maximum hours of work, rest time and remuneration for domestic workers whose duties are regularly performed at night, taking into account the constraints of night work.

Various countries limit the number of hours that can be performed at night.



### Country example 110

#### Zimbabwe

The *Labour Relations (Domestic Workers) Employment Regulations, 1992, section 5(2)*, provides that a domestic worker residing outside the premises of the employer shall not be required to work beyond 7 p.m.

#### Finland

*Section 9 of the Employment of Household Workers Act No. 951/1977* establishes that employers can require work to be carried out between 6 a.m. and 11 p.m. At other times of day [that is, during the night], workers can be required to work only in the following cases: (1) to carry out emergency work; (2) with the worker's consent, in a stand-by function or to carry out related work; or (3) with the worker's consent, temporarily, if required for a compelling special cause.

### Harassment and abuse

ILO research has concluded that domestic workers are often at a high risk of exposure to verbal and physical abuse in the course of their duties, often due to the isolated nature of their workplaces. In response to this reality, Article 5 of Convention No. 189 specifically calls for the protection of domestic workers from abuse and harassment: "each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence".



### Useful tools and resources

- ILO, "[Migrant Domestic Workers: Promoting Occupational Safety and Health](#)", 2016.

Paragraph 9 of Recommendation No. 206 further indicates that "Members should adopt appropriate measures for sectors or occupations and work arrangements in which exposure to violence and harassment may be more likely, such as domestic work". Also, Paragraph 18 suggests that "appropriate measures to mitigate the impacts of domestic violence in the world of work referred to in Article 10(f) of the Convention could include:

- (a) leave for victims of domestic violence;
- (b) flexible work arrangements and protection for victims of domestic violence;
- (c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences;
- (d) the inclusion of domestic violence in workplace risk assessments;
- (e) a referral system to public mitigation measures for domestic violence, where they exist; and
- (f) awareness-raising about the effects of domestic violence".

Accordingly, legislation that prohibits such treatment will help to reduce the risks associated with this hazard for domestic workers. Legal provisions for protection from abuse, harassment and violence may: define what constitutes abuse, harassment and violence; prohibit abusive, harassing or violent conduct; establish dissuasive sanctions; assign responsibility for prevention and protection; provide for preventive measures; and assign responsibility for monitoring and enforcement.



### Country example 111

#### Mozambique

*Article 10 of the Domestic Work Regulations, Decree No. 40/2008* explicitly establishes the workers' right to be treated with correctness and respect, while article 13 establishes the corresponding duty of the employer to treat domestic workers appropriately.

#### Austria

*Section 22 of the Domestic Help and Domestic Employees Act* indicates that if a person has been finally convicted of a criminal act directed against the life, health or physical safety of people or offending against morality, the district administrative authority may forbid the convicted person and the persons living in the same household with such persons for a specified period or forever to employ persons under age if, given the circumstances of the case, it is feared that such persons may be at risk.

#### Plurinational State of Bolivia

*Article 21 of the Household Work Act No. 2450, 2003* establishes the obligation of the employer to treat domestic workers with respect and refrain from physical or psychological abuse. *Article 23* assigns specific public authorities with the responsibility to investigate complaints of domestic workers regarding abuses.

### Living conditions

Domestic workers who live in the same premises in which they are performing work may require further protection to ensure the provision of safe, clean accommodation and hygienic facilities, food and privacy to ensure that domestic workers are able to fulfil their duties in safety and comfort. Legislative provisions may also cover access to and means of communication, the freedom to leave the workplace outside the hours of work and prohibitions on the removal of passports or travel documents. Addressing these matters through legislation contributes to preventing the occurrence of forced labour situations.



### International labour standards

- [Domestic Workers Recommendation, 2011 \(No. 201\)](#)

Paragraph 17 states:

“When provided, accommodation and food should include, taking into account national conditions, the following:

- (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker;
- (b) access to suitable sanitary facilities, shared or private;
- (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and
- (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.”



### Country example 112

#### Austria

*Section 4 of the Domestic Help and Domestic Employees Act* provides as follows: (1) If the employee resides in the household and is assigned a separate [room] of his/ her own, such room shall comply with the health, construction and fire regulations and shall be designed so as not to harm the employee's morals; it shall be possible to heat such room during the period when outdoor temperatures require heating, also to lock it from in- and outside, and it shall have the requisite fittings, including, in particular, a cupboard with a lock.

(2) If the employee cannot be assigned a separate living room of his/her own but is only given a bed, the provisions of paragraph (1) above shall apply to the room in which such bed is placed; except that it is only necessary to make provision for locking such room from inside.

(3) Employees whose compensation also includes the board shall be given healthy and adequate food which generally corresponds to the food given to the adult healthy family members.

#### Plurinational State of Bolivia

*Article 21 (b) of the Household Work Act No. 2450 of 2003* states that employers shall provide the workers who live in the home where they provide the service with a clean and suitable room, access to a bathroom and shower for personal hygiene and the same food that the employer consumes, and shall adopt necessary measures to safeguard the life and health of the worker.

### Access to health services

Some countries have enacted legislation to ensuring that domestic workers have access to health care.



### Country example 113

#### Jordan

*Section 4(h) of the Domestic Workers, Cooks, Gardeners and Similar Categories Regulation, No. 90/2009* states that it is the employer's responsibility to provide medical care to the worker.

#### Plurinational State of Bolivia

*Article 21(d) of the Household Work Act No. 2450, 2003* states that in cases of illness, accident or maternity, first aid and immediate transfer to a health centre shall be arranged by the employer. If the worker is not insured by the national health fund, the employer shall cover the medical expenses incurred.

#### Uruguay

*Article 10 of the Domestic Work Act No. 18065* establishes that domestic workers may opt to receive care from a collective health care institution or from one provided by the State Health Services Administration of the Ministry of Public Health.

#### Mozambique

*Article 13 of the Domestic Work Regulations Decree No. 40/2008* requires the employer to provide domestic workers with medical care for occupational accidents and diseases.

## Provision of a written contract

The requirement to provide domestic workers with a written contract of employment enables them to have certainty and a clear understanding of their agreed working hours and other key working conditions and entitlements, as well as to prove the existence of an employment relationship when seeking legal protection in relation to any abuses, including OSH-related abuses. Requirements to issue a written contract or/and to register the employment of domestic workers with the competent authorities is likely to contribute to the formalization of this sector.



### Country example 114

#### Morocco

Article 3 of the *Working Conditions of Domestic Workers Dahir No. 1-16-121 of 2016* requires that the employment of domestic workers must be evidenced by a written contract, a copy of which must be deposited with the relevant employment inspection department. *Decree No. 2-17 355 of 2017* establishes a model contract.

#### Mozambique

A written contract is similarly required in *article 6 of the Domestic Work Regulations Decree No. 40/2008*.

In some countries, the requirement for a written contract is combined with a requirement that the employment relationship be registered with the relevant competent authority.

Requiring that employment relationships are registered ensures that the terms and conditions of a domestic workers' employment are set out in writing and determined prior to entering into the relationship. Adopting such a requirement also enables the government authority to more effectively monitor the employment of this vulnerable group of workers and enforce the applicable legislation.



### Country example 115

#### Mali

In Mali, *Decree No. 96-178/P-RM of 1996 of the Labour Code (art.D.86-5)* provides that a fixed-term contract must be made in writing and issued in three copies. If the contract is concluded for a period exceeding three months, one of the copies of the contract must be filed with the labour inspectorate.

**Checklist**  
Section 06



ILS	Provisions	Covered by OSH law		Observations
		YES	NO	
C184, Art. 18	Protective measures for pregnant and breastfeeding women such as:			
C183, Art. 3 C136, Art. 11 C110, Art. 47(8) R191, Para. 6(4) R116, Para. 16	Specific works or duties that are prohibited or subject to limitations for women during pregnancy and breastfeeding			
C184, Art. 18 R192, Para. 11 R191, Para. 6(1)	Risk assessment			
R192, Para. 4(3)	Health surveillance			
R191, Para. 6(2) R157, Para. 50	Reassignment			
R191, Para. 9	Resting space for pregnant women and breastfeeding space for lactating women			
C183, Art. 10, R191, Para. 7	Time for breastfeeding			
- <sup>1</sup>	Right of pregnant women to refuse to perform dangerous duties?			
R164, Paras 4(g), 9	Protective measures for workers with disabilities ( <i>please specify</i> )			
	Protective measures for young workers such as:			
C182, Arts 1, 3(d) R190, Para. 3 C184, Art. 16(3), R175, Para. 29	A list with prohibited dangerous works			
R192, Para. 4(3) C077; C078; C124; R079, R102, Para. 16(1)	Protections			
	Other ( <i>please specify</i> )			
-1	Protective measures for mature-aged/ elderly workers ( <i>please specify</i> )			
<b>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, Art. 25</b> R197; R164; C143, Art. 10 R151, Para. 2(f)	Protective measures for migrant workers ( <i>please specify</i> )			
C189, Art. 13 C190, Art. 10(f) R201, Para. 19	Protective measures for domestic workers ( <i>please specify</i> )			

<sup>1</sup> General consideration taking into account country practices.



SECTION

07

## Occupational health services

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## Occupational health services

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### 1. Introduction

International recognition of the need for specialist occupational health (OH) services is not new. The global discussion on improving safety and health at work in the first half of the twentieth century acknowledged the need for **OH services** following the introduction of dangerous substances, tools and machinery that came into use with the industrial revolution. At the same time, there was a growing understanding that healthy individuals are better able to participate in and contribute to the overall social and economic development of their country.

#### International labour standards



- [Protection of Workers' Health Recommendation, 1953 \(No. 97\)](#)
- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)
- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)

At its first session, held in 1950, the Joint ILO/World Health Organization (WHO) Expert Committee on Occupational Health defined the boundaries of occupational health, declaring that it should “aim at the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations”. This statement became an underlying principle of Recommendation No. 97 and ultimately of Convention No. 161 and its accompanying Recommendation No. 171 (replacing Recommendation No. 112).

The International Programme for the Improvement of Working Conditions and Environment was launched by the ILO in 1976. Three years later, the third European Regional Conference of the ILO concerning the improvement of working conditions and the working environment in Europe adopted a resolution stressing that **the establishment of occupational health services and safety departments** should be promoted to advise all parties within the enterprise, in accordance with established procedures, on particular safety and health problems, and to supervise the application of safety and health protective measures.

The WHO has been also championing and actively promoting OH services. In 1987, the WHO launched a Programme of Action for Workers' Health; in 1995, the World Health Assembly the Global Strategy on Occupational Health for All was adopted by the World Health Assembly in 1996, emphasizing *the urgent need to strengthen occupational services* and urging member States *to devise national programmes* on occupational health for all, based on the Global Strategy, paying special attention to full OH services for the working population, including migrant workers, workers in small industries and in the informal sector, and other occupational groups at high risk and with special needs.

OSH is a multidisciplinary field that requires knowledge and specialization in chemistry, toxicology, biology, engineering, occupational medicine, ergonomics and psychology, to name only a few of the disciplines involved. Employers do not and cannot be expected to possess the knowledge and expertise that they need to ensure safety and health in the workplace. Therefore, employers may wish to engage OSH professionals (see section IX of this Support Kit), establish OSH units within the enterprise or contract external providers of OH services in order to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and do not pose risks to health.

In order to ensure the quality and effectiveness of OH services and the competence of practitioners that deliver them, the law should regulate the functions and composition of the entities providing OH services, as well as the qualifications required to enter an OH-related profession.

The availability of OH services is an important element of a successful national OSH system, as set out in Convention No. 187, Article 4, which contains requirements for Member States to include, where appropriate, OH services, in accordance with national law and practice.

Convention No. 161 requires in Article 6 the establishment of OH services by (a) laws or regulations; or (b) by collective agreements or as otherwise agreed upon by the employers and workers concerned; or (c) in any other manner approved by the competent authority after consultation with the representative organizations of employers and workers concerned.



### Country example 116

#### Regional instruments

*Regional instruments also call for the establishment of OH services.*

#### European Union

The EU OSH Framework Directive No. 89/391/EEC requires the employers who cannot organize protective and preventive measures due to lack of competent personnel in the undertaking, to enlist competent external services or persons (article 7(3)).

#### Mercosur

The Mercosur Socio Economic Declaration establishes that legislation and national practices shall foresee occupational safety and health services with the objective to advise employers and workers on the prevention of occupational accidents and diseases (article 25(13)).

## 2. Concept and scope of OH services



### International labour standards

- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Article 1(a) of Convention No. 161 on Occupational Health Services defines the term “occupational health services” as “services entrusted with essentially preventive functions and responsible for advising the employer, the workers and their representatives in the undertaking on-

- (i) the requirements for establishing and maintaining a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work;
- (ii) the adaptation of work to the capabilities of workers in the light of their state of physical and mental health.”

The Joint ILO/WHO Expert Committee on Occupational Health set out in 1995 the three main goals of occupational health as follows: (i) the maintenance and promotion of workers’ health and working capacity; (ii) the improvement of working environment and work to become conducive to safety and health; and (iii) development of work organizations and working cultures in a direction which supports health and safety at work and in doing so also promotes positive social climate and smooth operation and may enhance productivity of the undertakings.

The term “occupational health services” as used in Convention No. 161 and its accompanying Recommendation No. 171 refers to the structures or entities that provide such services.

Convention No. 161 and Recommendation No. 171 provide for the functions, organization and operational conditions of the structures or entities that provide OH services; however, they are inherently flexible and allow individual countries to develop legislative frameworks progressively and adopt various modalities that are most suited to their contextual needs.

This flexibility is based on two core principles that must be adhered to in the development of any system of OH services. First, the ultimate goal pursued by ILS is to provide access to OH services to **all workers** (Convention No. 161, Article 3). The provision of such services should be adequate and appropriate to the specific risks of the undertakings. At the same time, if OH services cannot be immediately established for all undertakings, each Member concerned shall draw up plans for the establishment of such services in consultation with the most representative organizations of employers and workers. Secondly, any legislative framework on OH services must be developed **in consultation and collaboration with representative organization of employers and workers** (Convention No. 161, Articles 2 and 4).

Article 9 of Convention No. 161 explicitly indicates that OH services should be multidisciplinary. This suggests that entities delivering OH services should tend to employ or offer sufficient technical personnel with specialized training and experience in several or all of the various OSH-related disciplines, including occupational medicine, occupational safety, hygiene, ergonomics and psychology. Convention No. 161 is flexible in this regard and clarifies that “the composition of the personnel shall be determined by the nature of the duties to be performed”. Paragraph 36(3) of Recommendation No. 171 also advises that OH services should have the necessary administrative personnel for their operation.

Although Convention No. 161 and Recommendation No. 171 refer only to OH services, these structures or entities may deliver both health and safety-related functions. This is clarified by Recommendation No. 171, which indicates that OH services and occupational safety services can be organized together (Para. 40(2)).

Similarly, already in the 1990s Rantanen and Fedotov<sup>1</sup> described legislative frameworks referring to OH service providers as follows:

“more recent laws reflecting international guidelines such as those contained in the ILO Convention on Occupational Health Services (No. 161) consider the occupational health service as an integrated, comprehensive, multidisciplinary team containing all the elements needed for the improvement of health at work, improvement of the working environment, promotion of workers’ health, and the overall development of the structural and managerial aspects of the workplace needed for health and safety” (*emphasis added*).

The same authors observed the following trends in OSH legislation in various countries:

- the scope of occupational health is expanding to include a consideration of not only physical health and safety but also psychological and social well-being, including the ability to conduct socially and economically productive life; and
- the full range of objectives of OSH legislative frameworks is beginning to extend beyond the scope of traditional OSH issues. The new principles go beyond the mere prevention and control of risks to the health and safety of workers to include the proactive promotion of health and the improvement of the working environment.

### 3. National policy on OH services

#### International labour standards



- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)
- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)

Convention No. 161 includes requirements for Member States to:

- formulate, implement and periodically review a coherent national policy on OH services (which should include general principles governing their functions, organization and operation according to **Recommendation No. 171**, Para. 1) in the light of national conditions and practice and in consultation with the most representative organizations of employers and workers, where they exist (Article 2); and
- progressively develop OH services for all workers, including those in the public sector and the members of production cooperatives, in all branches of economic activity and all undertakings; and if these services cannot be immediately established for all undertakings, each Member concerned shall draw up plans for their creation (Article 3).

Broadly speaking, the requirements in various national OSH laws refer to the requirement to establish an OSH policy that covers a broad range of OSH topics, including OH services, rather than a stand-alone national policy that specifically addresses the provision of OH services.

<sup>1</sup> Jorma Rantanen and Igor A. Fedotov, “Occupational Health Services”, in ILO, “Encyclopaedia of Occupational Health and Safety”, Chap. 16.

## 4. Organization of OH services

### 4.1 Modalities

OH services usually fall within the mandate of the ministry of labour or the ministry of health. In some instances, **these ministries may share** responsibility for regulating OH services. Whether a country chooses to assign the responsibility for OH services to the ministry of health, jointly to the ministry of health and the ministry of labour, or to a different ministry, careful prior consideration should be given on how to ensure effective collaboration among these ministries.



#### Useful tools and resources

For more information on governance and organization of OH services, see ICOH, "[Occupational Health Services: A Global Survey on OHS in Selected Countries of ICOH Members](#)"

According to Convention No. 161, Article 7.1, OH services may be organized as:

- ▶ a service for a single undertaking; or
- ▶ a service common to a number of undertakings.

According to Convention No. 161, Article 7.2, OH services may be organized by:

- ▶ the undertakings or groups of undertakings concerned;
- ▶ public authorities or official services (for example through the public health system and general medical services by integrating OH services in primary health care centres or hospital policlinics);
- ▶ social security institutions;
- ▶ any other bodies authorized by the competent authority (such as private OH services providers);
- ▶ a combination of any of the above.



#### Country example 117

##### Finland

*Section 3(3) of the Occupational Health Care Act No. 1383/2001* defines "occupational health care service provider" as the organization or person that performs the occupational health care. The Act stipulates that the employer may organize occupational health care services by, among others, acquiring these services from another unit or person entitled to provide occupational health care services.

##### North Macedonia

OH services are delivered through the following entities:

- specialist occupational health practices (private health care facility);
- polyclinic with OH services (private health care facility);
- OH services as part of the health centre (public health care facility);
- Occupational Health Department at the Sector for Ecological Health at the Institute of Public Health of North Macedonia;
- Institute of Occupational Health of North Macedonia, WHO Collaborative Centre – National Institute.

## Ensuring access to OH services in MSMEs and the informal economy

National legislation in a number of countries requires the employer to establish an internal OH service, either alone or together with another enterprise, or to engage an external OH service (see Section 4, subsection 3.12 Duty to ensure OSH competence and expertise at the workplace). Smaller undertakings, including owner-operators and MSMEs that do not operate in hazardous industries, may be exempted from this requirement. In such cases, the national OSH system should provide some other mechanism for those enterprises to access OH services in order to avoid leaving smaller enterprises without any coverage.

Strategies may include mandating publicly funded entities, such as a national OH institute and health care centres, to provide preventive services, or else shifting this responsibility to employment injury insurers (supported by the premiums of affiliated self-employed workers and MSMEs, further backed by a state subsidy if needed).



### Country example 118

#### Finland

Chapter 2, section 18 of the *Health Care Act No. 1326/2010* provides that local authorities shall, where applicable, provide *entrepreneurs* and other *self-employed individuals* based in their area with access to the occupational health care services.

Chapter 13, section 2 of the *Health Insurance Act No. 1224/2004* provides for the reimbursement of occupational health care services to employers and self-employed workers.

When it comes to developing countries with a large proportion of the workforce as self-employed workers in the informal economy, there are more people without access to OH services. This is because they neither work in a company that has the resources to provide for these services, nor do they usually have the awareness, baseline education or financial means to get affiliated with or contract the services of OH entities. In these cases, Member States should identify other channels to deliver OH services, such as through the public health care system.



### Mini case study

#### Colombia

Micro, small and medium companies, independent workers and workers in the informal economy have access to OSH-related services to a certain extent through affiliation to occupational risk-management entities, which provide the following services:

- medical, surgical, therapeutic and pharmaceutical assistance;
- hospitalization services;
- dental services;
- supply of medicines;
- auxiliary diagnostic and treatment services;
- prosthesis and orthotics, their repair, and their replacement only in cases of deterioration or maladjustment, when rehabilitation criteria are recommended;
- physical and professional rehabilitation; and
- transfer expenses, under normal conditions, that are necessary for the provision of these services.

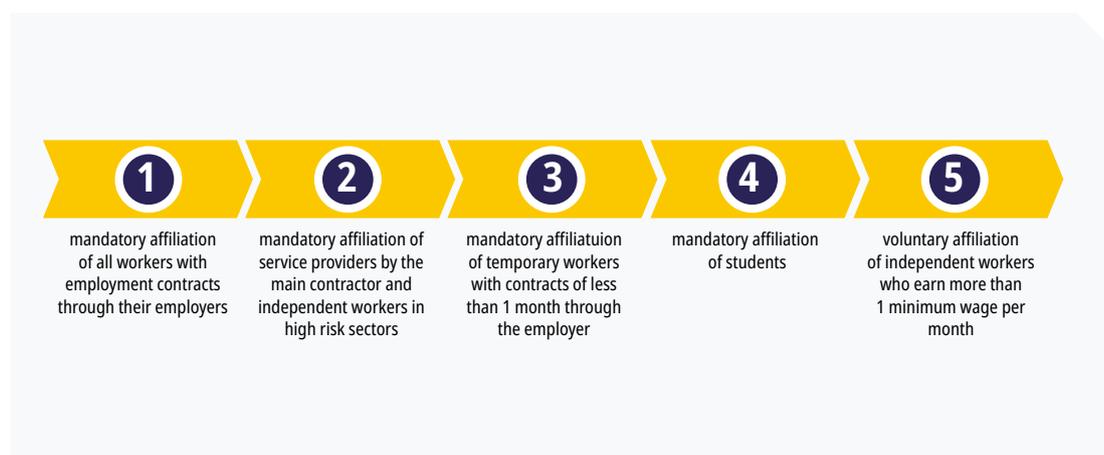
These services will be provided through the health centre to which the worker is affiliated within the general social security system, except for professional rehabilitation treatments and health services, which may be provided by occupational risk-management entities that cover the expenses triggered by occupational risks.

Also, every worker who suffers an occupational accident or disease will have the right to the payment of the following economic benefits:

- temporary disability allowance;
- compensation for partial permanent disability;
- disability pension;
- survivor pension; and
- funeral assistance.

The Government has on several occasions expanded the scope of coverage of these services and benefits by increasing the categories of workers that have the right to affiliate to occupational risk-management entities. Article 2 of [Law No. 1562 of 2012 modifying the system of occupational risks](#) (established by Law-Decree No 1295 of 1994) foresees two types of affiliation: mandatory and voluntary.

**Figure 13.** Gradually expanded coverage of workers by OH services in Colombia<sup>2</sup>



#### List of relevant laws

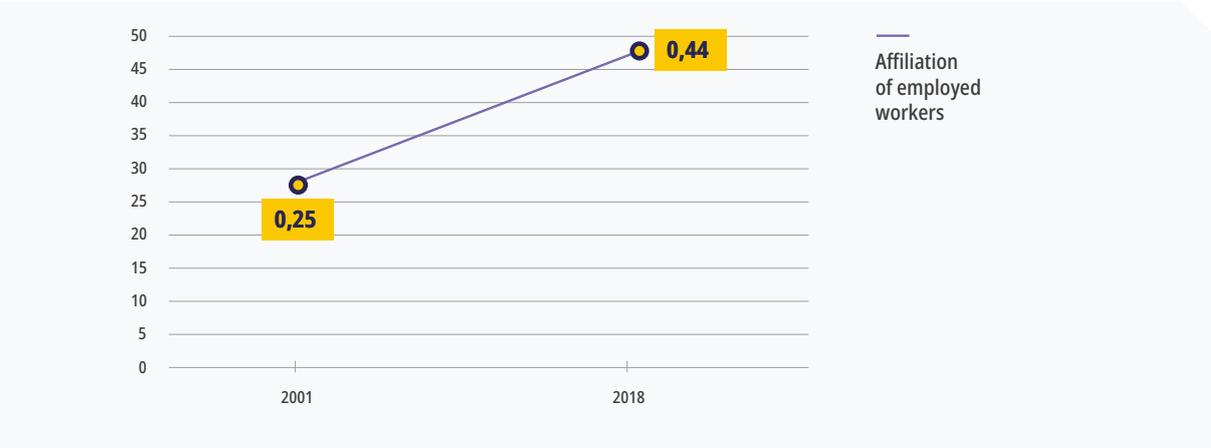
- Decree - Law 1295 of 1994 determining the organization and administration of the general system of occupational risks
  - [Decree 1072/2015](#) consolidates the following decrees that have extended the coverage of occupational safety and health services to a greater working population:
  - Decree 723 of 2013 regulating the affiliation to the general system of occupational risks of persons who have a formal contract of service with public or private entities and independent workers who work in high-risk sectors
  - Decree 2616 of 2013 regulating contributions to social security of dependent workers who have working periods of less than one month
  - Decree 55 of 2015 regulating the affiliation of students to the general system of occupational risks
  - Decree 1563 of 2016 regulating the voluntary affiliation to the general system of occupational risks of independent workers who earn more than one minimum wages per month

It is important to note that each of the laws that are listed above establishes various requirements that have to be met by workers in order to affiliate.

According to the Ministry of Health and Social Protection, in 2018 there were 9,984,636 affiliated workers and the rate of affiliation of employed workers increased from 24.72% in 2001 to 43.50% in 2018.<sup>3</sup>

<sup>3</sup> Colombia, Ministry of Health and Social Protection, "[Riesgos laborales / salud y ámbito laboral](#)".

**Figure 14.** Increase in the percentage of affiliated employed workers in Colombia



**Figure 15.** Current coverage of categories of workers by OH services in Colombia



Article 193 of [Law No. 1955 of 2019 that establishes the National Development Plan 2018–2022](#) creates a social security floor for workers who earn less than the minimum monthly wage. This has been further regulated by [Decree No. 1174 of 2020](#).<sup>4</sup>

<sup>4</sup> At the moment when this publication was produced, the regulation of the minimum social security floor was still under discussion with the social partners.

### Basic occupational health services

The 2003 Joint ILO/WHO Committee on Occupational Health discussed and supported the concept of basic occupational health services (BOHS) for all workers, including workers in the growing informal sector who are traditionally excluded from protection. Similarly, the WHO Global Plan of Action on Workers' Health 2008–2017 noted that "Basic occupational health services should be provided for all workers, including those in the informal economy, small enterprises, and agriculture".

#### Useful tools and resources

- ["Basic Guidelines on BOHS"](#)



The rationale behind the promotion of BOHS is an effort to provide access to OH services to those who are generally excluded from access to OH services by utilizing the country's existing primary health care infrastructure. The structure of a country's BOHS will depend on the existing structure and function of its primary health care system. The actual structure or organization of the BOHS is not material; rather, what is important is the availability and effectiveness of the services provided.

#### International labour standards

- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)



Paragraphs 34 and 35 indicate that:

the competent authority should determine the circumstances in which, in the absence of an OH service, appropriate existing services may, as an interim measure, be recognized as authorized bodies; in situations where the competent authority, after consulting the representative organizations of employers and workers concerned, where they exist, has determined that the establishment of an OH service, or access to such a service, is impracticable, undertakings should, as an interim measure, make arrangements, after consulting the workers' representatives in the undertaking or the safety and health committee, where they exist, with a local medical service for carrying out the health examinations prescribed by national laws or regulations, providing surveillance of the environmental health conditions in the undertaking and ensuring that first-aid and emergency treatment are properly organized.

#### Country example 119



##### Thailand

In this country, where 58 per cent of the workforce is involved in the informal economy, just over one third of all community-based primary health care units provide OH services (ICOH 2015).<sup>5</sup> They provide services such as health screenings, work-history interviews, treatment for occupational diseases and injury, record-keeping and training.

<sup>5</sup> ICOH, *Occupational Health Services: A Global Survey on OHS in Selected Countries of ICOH Members*, 2015.

## 4.2 Financing mechanism

Paragraph 46 of Recommendation No. 171 provides that, where OH services are established and regulated by law, the laws should also stipulate the manner in which the services are to be financed. The 2015 ICOH Global Survey revealed that a number of different funding methods were used by respondent countries, including the employer directly financing OH services, employer payment of insurance premiums, employment injury insurance and general social insurance. In the majority of cases (63 per cent), employers in respondent countries used a combination of these methods. In any case, the OH-related facilities provided by the OH services should not involve any expense to the worker according to Recommendation No. 171, Paragraph 45.

## 4.3 Location

Pursuant to Paragraph 32 of Recommendation No. 171, OH services should, as far as possible, be located within or near the place of employment, or should be organized in such a way as to ensure that their functions are carried out at the place of employment.

## 4.4 Workers' participation

The employer, the workers and their representatives, where they exist, should cooperate and participate in the implementation of the organizational and other measures relating to OH services on an equitable basis. Pursuant to Paragraph 33 of Recommendation No. 171, in conformity with national conditions and practice, employers and workers or their representatives in the undertaking or the safety and health committee, where they exist, should participate in decisions affecting the organization and operation of these services, including those relating to the employment of personnel and the planning of the service's programmes.

# 5. Functions of OH services



### International labour standards

- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Convention No. 161 provides countries with a certain degree of flexibility in deciding how to articulate OH functions in legislation. Article 5 states that “occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking:

- (a) identification and assessment of the risks from health hazards in the workplace;
- (b) surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer;
- (c) advice on planning and organization of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work;
- (d) participation in the development of programmes for the improvement of working practices as well as testing and evaluation of health aspects of new equipment;

- (e) advice on occupational health, safety and hygiene and on ergonomics and individual and collective protective equipment;
- (f) surveillance of workers' health in relation to work;
- (g) promoting the adaptation of work to the worker;
- (h) contribution to measures of vocational rehabilitation;
- (i) collaboration in providing information, training and education in the fields of occupational health and hygiene and ergonomics;
- (j) organizing of first aid and emergency treatment;
- (k) participation in analysis of occupational accidents and occupational diseases."

Recommendation No. 171 regroups the functions established under Convention No. 161 and provides further elaboration:

- (a) functions related to surveillance of the working environment;
- (b) functions related to surveillance of the workers' health;
- (c) functions related to information, education, training, advice;
- (d) functions related to first aid, treatment and health programmes; and
- (e) other functions.

## 5.1 Surveillance of the working environment

Pursuant to Article 5(a)–(b) of Convention No. 161, a function of OH services is to identify and assess the risks from health hazards in the workplace, as well as to monitor the factors in the working environment and working practices. In order to do that, **OH services should monitor the factors in the working environment and working practices** that may affect workers' health, including sanitary installations, canteens and housing, where these facilities are provided by the employer. OH services have the following tasks in relation to surveillance of the working environment:

identify and evaluate the environmental factors which may affect the workers' health (Recommendation No. 171, Para. 5(1)(a));

- assess the conditions of occupational hygiene and factors in the organization of work which may give rise to risks for the health of workers (Recommendation No. 171, Para. 5(1)(b));
- assess collective and personal protective equipment (Recommendation No. 171, Para. 5(1)(c));
- assess, where appropriate, of the exposure of workers to hazardous agents by valid and generally accepted monitoring methods (Recommendation No. 171, Para. 5(1)(d));
- assess the control systems designed to eliminate or reduce exposure (Recommendation No. 171, Para. 5(1)(e));
- carry out monitoring of workers' exposure to special health hazards, when necessary (Recommendation No. 171, Para. 8(a));
- supervise sanitary installations and other facilities for the workers, such as drinking water, canteens and living accommodation, when provided by the employer (Recommendation No. 171, Para. 8(b));
- advise on the possible impact on the workers' health of the use of technologies (Recommendation No. 171, Para. 8(c));
- participate in and advise on the selection of the equipment necessary for the personal protection of the workers against occupational hazards (Recommendation No. 171, Para. 8(d));
- collaborate in job analysis and in the study of organization and methods of work with a view to securing a better adaptation of work to the workers (Recommendation No. 171, Para. 8(e));

- ▶ participate in the analysis of occupational accidents and occupational diseases and in accident prevention programmes (Recommendation No. 171, Para. 8(f)); and
- ▶ be consulted about proposed modifications in the work processes or in the conditions of work liable to have an effect on the health or safety of workers (Recommendation No. 171, Para. 10).

This surveillance should be carried out in collaboration with the other technical services of the undertaking and in cooperation with the workers concerned and their representatives (Convention No. 161, Art. 9.2; Recommendation No. 171, Para. 5(2)).

## 5.2 Surveillance of workers' health

Article 5(f) of Convention No. 161 identifies surveillance of workers' health as a function of OH services. Such function may include the following tasks:

- ▶ assess workers' health before their assignment to specific tasks which may involve a danger to their health or that of others (Recommendation No. 171, Para. 11(a));
- ▶ assess workers' health at periodic intervals during employment which involves exposure to a particular hazard to health (Recommendation No. 171, Para. 11(b));
- ▶ assess workers' health on resumption of work after a prolonged absence for health reasons for the purpose of determining its possible occupational causes, of recommending appropriate action to protect the workers and of determining the worker's suitability for the job and needs for reassignment and rehabilitation (Recommendation No. 171, Para. 11(c));
- ▶ assess workers' health on and after the termination of assignments involving hazards which might cause or contribute to future health impairment (Recommendation No. 171, Para. 11(d));
- ▶ in the case of exposure of workers to specific occupational hazards, examine and investigate, as necessary, to detect exposure levels and early biological effects and responses (Recommendation No. 171, Para. 12);
- ▶ be informed of occurrences of ill health among workers and absences from work for health reasons, in order to be able to identify whether there is any relation between the reasons for ill health or absence and any health hazards which may be present at the workplace. Personnel providing OH services should not be required by the employer to verify the reasons for absence from work (Recommendation No. 171, Para. 13);
- ▶ on completing a prescribed medical examination for the purpose of determining fitness for work involving exposure to a particular hazard, communicate conclusions (containing no information of medical nature) in writing to both the worker and the employer, indicating the worker's fitness for the proposed assignment or specify the kinds of jobs and the conditions of work which are medically contra-indicated, either temporarily or permanently (Recommendation No. 171, Para. 16);
- ▶ where the continued employment of a worker in a particular job is contra-indicated for health reasons, collaborate in efforts to find alternative employment for this worker in the undertaking, or another appropriate solution (Recommendation No. 171, Para. 17); and
- ▶ notify occupational disease that has been detected through the surveillance of the worker's health to the competent authority (Recommendation No. 171, Para. 18).

Paragraph 34 of the HIV and AIDS Recommendation, 2010 (No. 200) also suggests that OH services and workplace mechanisms related to occupational safety and health should address HIV and AIDS, taking into account Convention No. 161 and Recommendation No. 171, the Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005, and any subsequent revision, and other relevant international instruments.

### 5.3 Provision of information, education, training, advice

Article 5(i) of Convention No. 161 states that OH services shall collaborate in providing information, training, and education in the fields of occupational health and hygiene and ergonomics. This may include the following tasks:

- ▶ designing and implementing programmes of information, education and training on health and hygiene in relation to work for the personnel of the undertaking (Recommendation No. 171, Para. 19);
- ▶ participating in the training and regular retraining of first-aid personnel and in the progressive and continuing training of all workers in the undertaking who contribute to occupational safety and health (Recommendation No. 171, Para. 20);
- ▶ acting as advisers on occupational health and hygiene and ergonomics to the employer, the workers and their representatives in the undertaking and the safety and health committee, where they exist, and collaborating with bodies already operating as advisers in this field, with a view to promoting the adaptation of work to the workers and improving the working conditions and environment (Recommendation No. 171, Para. 21);
- ▶ informing each worker in an adequate and appropriate manner of the health hazards involved in his/her work, of the results of the health examinations he/she has undergone and of the assessment of his/her health (Recommendation No. 171, Para. 22(1));
- ▶ correcting any data, which are erroneous or which might lead to error (Recommendation No. 171, Para. 22(2); and
- ▶ providing workers with personal advice concerning their health in relation to their work. (Recommendation No. 171, Para. 22(3));

### 5.4 First aid, treatment and health programmes

OH services have the function to organize first aid and emergency treatment as well as to contribute to measures of vocational rehabilitation (Convention No. 161, Article 5(h)–(j); Recommendation No. 171, Para. 23). More specific tasks connected to this function include:

- ▶ providing first-aid and emergency treatment in cases of accident or indisposition of workers at the workplace and collaborate in the organization of first aid (Recommendation No. 171, Para. 23);
- ▶ carrying out immunizations in respect of biological hazards in the working environment (Recommendation No. 171, Para. 24(a));
- ▶ taking part in campaigns for the protection of health (Recommendation No. 171, Para. 24(b));
- ▶ collaborating with the health authorities within the framework of public health programmes (Recommendation No. 171, Para. 24(c));
- ▶ providing treatment to workers who have not stopped work or who have resumed work after an absence (Recommendation No. 171, Para. 25(a));
- ▶ providing treatment to victims of occupational accidents (Recommendation No. 171, Para. 25(b));
- ▶ providing treatment of occupational diseases and of health impairment aggravated by work (Recommendation No. 171, Para. 25(c));
- ▶ participating in medical aspects of vocational re-education and rehabilitation (Recommendation No. 171, Para. 25(d)); and
- ▶ providing curative medical care for workers and their families (Recommendation No. 171, Para. 26).

OH services should cooperate with the other services concerned in the establishment of emergency plans for action in the case of major accidents (Recommendation No. 171, Para. 27)

Unhealthy behaviour, such as alcohol, tobacco or drug abuse, inadequate nutrition and a sedentary lifestyle, have an impact on workers' health. OH services may run health promotion and well-being programmes that address such unhealthy behaviour in order to improve workers' health.

### Useful tools and resources



The ILO has developed a training package<sup>a</sup> to provide guidance on how to integrate health promotion into workplace OSH policies. Health promotion activities may include supporting physical and mental well-being through training (such as on stress management, relaxation techniques, mindfulness); supporting physical activity (such as by setting up a sports area at the workplace or negotiating improved conditions for staff in external sports centres); and supporting healthy behaviour (such as by providing training on nutrition). OH services may be involved in delivering these activities.

<sup>a</sup> See ILO, "[The SOLVE Training Package: Integrating Health Promotion into Workplace OSH Policies](#)".

### Country example 120



#### Japan

Article 69 and 70 of the Industrial Safety and Health Act, 1972 indicate that: the employer shall make continuous and systematic efforts for the maintenance and promotion of workers' health by taking necessary measures such as providing health education, health counselling and other services to the workers; the employer shall also endeavour to take necessary measures for the maintenance and promotion of workers' health such as providing convenience for sports, recreation and other activities in addition to the above measures.

## 5.5 Other functions

Other functions of OH services include:

- analysing the results of the surveillance of workers' health and the working environment, as well as the results of biological monitoring and personal monitoring of workers' exposure to occupational hazards, where they exist, with a view to assessing possible connections between exposure to occupational hazards and health impairment and to proposing measures for improving the working conditions and environment (Recommendation No. 171, Para. 28);
- drawing up plans and reports at appropriate intervals concerning their activities and health conditions in the undertaking. These plans and reports should be made available to employers and workers' representatives in the undertaking or the safety and health committee, where they exist, and should be available to the competent authority (Recommendation No. 171, Para. 29); and
- contributing to research, within the limits of their resources, by participating in studies or inquiries in the undertaking or in the relevant branch of economic activity, for example, with a view to collecting data for epidemiological purposes and orienting their activities; The results of the measurements carried out in the working environment and of the assessments of the workers' health may be used for research purposes, subject to confidentiality rules (Recommendation No. 171, Paras 6(3), 11(2), 14(3) and 30).

## 6. Confidential use of data resulting from the OH services functions



### International labour standards

- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Protection of personal data is a well-established principle in modern regulatory frameworks. The protection needed is more accentuated when the issue at stake is sensitive data such as health data. Personal medical information should be more strictly protected since improper use of such data could lead to cases of discrimination based on a particular health condition (for example HIV).

Data produced from the surveillance of the working environment should be recorded in an appropriate manner and made available to the employer, the workers and their representatives (Recommendation No. 171, Para. 6(1)). However, health surveillance data specific to individuals should be used on a confidential basis and solely to provide guidance and advice on measures to improve the working environment and the health and safety of workers (Recommendation No. 171, Para. 6(2)).

The competent authority should have access to such data and it may only be communicated by the OH service to others with the agreement of the employer and the workers or their representatives (Recommendation No. 171, Para. 6(3)).

OH services should record data on workers' health in personal confidential health files. These files should also contain information on jobs held by the workers, on exposure to occupational hazards involved in their work, and on the results of any assessments of workers' exposure to these hazards (Recommendation No. 171, Para. 14(1)). Given the confidential nature of the information recorded in these files, these should be protected and should not be accessible by the employer under any circumstances.

The personnel providing OH services should have access to personal health files only to the extent that the information contained in the files is relevant to the performance of their duties. Where the files contain personal information covered by medical confidentiality, this access should be restricted to medical personnel (Recommendation No. 171, Para. 14(2)). Personal data relating to health assessments may be communicated to others only with the informed consent of the worker concerned (Recommendation No. 171, Para. 14(3)).

The conditions under which, and the time during which, personal health files should be kept, the conditions under which they may be communicated or transferred and the measures necessary to keep them confidential, in particular when the information they contain is placed on computer, should be prescribed by national laws or regulations or by the competent authority or, in accordance with national practice, governed by recognized ethical guidelines (Recommendation No. 171, Para. 15).

On the completion of a medical examination for the purpose of determining fitness for work involving exposure to a particular hazard, the physician who has carried out the examination should communicate his conclusions in writing to both the worker and the employer (Recommendation No. 171, Para. 16(1)). It is important that such conclusions should contain no information of a medical nature; they might, as appropriate, indicate fitness for the proposed assignment or specify the kinds of jobs and the conditions of work which are medically contraindicated, either temporarily or permanently (Recommendation No. 171, Para. 10006(2)).

### Useful tools and resources



- [ILO, Code of Practice on Protection of Workers' Personal Data, 1997.](#)
- [ICOH, "COH Code of Ethics", 2014.](#)

Each person who works in an OH service should be required to observe professional confidentiality regarding both medical and technical information which may come to his/her knowledge in connection with his functions and the activities of the service, subject to such exceptions as may be provided for by national laws or regulations (Recommendation No. 171, Para. 38).



### Country example 121

#### Finland

*Law No. 759/2004 on the Protection of Privacy in Working Life* is a stand-alone legal instrument addressing privacy of personal information including health related data.

## 7. Conditions of operation

The OH services of a national or multinational enterprise with more than one establishment should provide the highest standard of services, without discrimination, to the workers in all its establishments, regardless of the place or country in which they are situated (Recommendation No. 171, Para. 43). The quality of the services is paramount to fulfilling the very mission of the entities providing these services. The various requirements examined below contribute to achieving a high-quality OH service operation.

### 7.1 Powers enabling OH services to carry out their functions



#### International labour standards

- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Pursuant to Paragraph 9 of Recommendation No. 171, personnel providing OH services should, after informing the employer, workers and their representatives:

- have free access to all workplaces and to the installations the undertaking provides for the workers;
- have access to information concerning the processes, performance standards, products, materials and substances used or whose use is envisaged, subject to their preserving the confidentiality of any secret information they may learn which does not affect the health of workers; and
- be able to take for the purpose of analysis samples of products, materials and substances used or handled.

OH services should be informed of occurrences of ill health among workers and absences from work for health reasons in order to be able to identify whether there is any relation between the reasons for ill health or absence and any health hazards which may be present at the workplace.



### Country example 122

#### Netherlands

Article 15a of the Working Conditions Act establishes that OH service professionals must be provided with information regarding workplace accidents, as well as other information regarding workplace health and safety in order to carry out their functions.

## 7.2 Independence and protection from retaliation measures



### International labour standards

- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Occupational Health Services Recommendation, 1985 \(No. 171\)](#)

Convention No. 161 indicates in Article 10 that the personnel providing OH services shall enjoy full professional independence from employers, workers and their representatives.

Pursuant to ILS, including paragraph 37(1) of Recommendation No. 171, the professional independence of OH services should be safeguarded. In accordance with national law and practice, this can be done through laws or regulations and appropriate consultations between the employer, the workers and their representatives and the safety and health committees, where they exist.



### Country example 123

#### Netherlands

Article 13 (5)–(6) of the Working Conditions Act of the Netherlands states that “the experts retain their autonomy and independence vis à vis the employer when providing assistance... The employer shall give the employees the opportunity to give their assistance autonomously and independently.”

Personnel of OH services should not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks. This may prove particularly important in enterprises where the OH service is internal and the practitioners involved are employees.

Paragraph 37(2) of Recommendation No. 171 advises that the competent authority should, where appropriate and in accordance with national law and practice, specify the conditions for the engagement and termination of employment of the personnel of OH services in consultation with the representative organizations of employers and workers concerned.

## 7.3 Facilities

Paragraph 39 of Recommendation No. 171 requires that OH services should have access to appropriate facilities for carrying out the analyses and tests necessary for surveillance of the workers' health and of the working environment. The competent authority may prescribe standards for the premises and equipment necessary for OH services to exercise their functions. In any case, these facilities provided by should not involve any expense to the worker (Recommendation No. 171, Para. 45).



### Country example 124

#### Spain

*Article 15.2 of the Prevention Services Royal Decree No. 39, 1997 stipulates that prevention services shall have the facilities and the human and material resources necessary for carrying out the preventive activities that they will be in charge of in the company.*

#### Malaysia

*Regulation 15 of the Occupational Safety and Health (Safety and Health Officer) Regulations 1997 stipulates that an employer of a place of work shall provide the safety and health officer employed by him adequate facilities, including training equipment, and appropriate information to enable the safety and health officer to conduct his duties as required under the Act.*

## 7.4 Collaboration with internal and external stakeholders

Article 8 of Convention No. 161 emphasizes the need for the employer, the workers and their representatives to cooperate and participate in the implementation of the organizational and other measures relating to OH services on an equitable basis.

ILS requires that OH services should cooperate and coordinate with other services in the undertaking and other bodies that provide health services (Convention No. 161, Art. 9(2); Recommendation No. 171, Para. 27). Using a multidisciplinary approach, OH services should collaborate with-

- those services which are concerned with the safety of workers in the undertaking (Recommendation No. 171, Para. 40(1)(a));
- the various production units, or departments, in order to help them in formulating and implementing relevant preventive programmes (Recommendation No. 171, Para. 40(1)(b));
- the personnel department and other departments concerned (Recommendation No. 171, Para. 40(1)(c)); and
- the workers' representatives in the undertaking, workers' safety representatives and the safety and health committee, where they exist (Recommendation No. 171, Para. 40(1)(d)).

Where necessary, OH services should engage with external services and bodies dealing with questions of health, hygiene, safety, vocational rehabilitation, retraining and reassignment, working conditions and the welfare of workers, as well as with inspection services and with the national body which has been designated to take part in the International Occupational Safety and Health Hazard Alert System set up within the framework of the ILO (Recommendation No. 171, Para. 41). OH services should collaborate with the health authorities and with public health programmes (Recommendation No. 171, Para. 24(c)). They may also collaborate with rehabilitation centres, emergency response and first aid organizations, social security and health insurance institutions and professional associations.

The person in charge of an OH service should be able to consult the competent authority, after informing the employer and the workers' representatives, on the implementation of occupational safety and health standards in the undertaking (Recommendation No. 171, Para. 42).

## 7.5 Accreditation

Accreditation is a way for the competent authority to verify whether the personal employed in any given entity that provides OH services has the necessary qualifications required by law. In this regard, Article 11 of Convention No. 161 requires the competent authorities to determine such qualifications.

In order to ensure the competence and quality of a provider of OH services, the law may clearly specify the requirements and procedure for obtaining accreditation, including key elements of the latter such as:

- the form and content of the request to become an accredited entity, which would usually require evidence to prove that such an entity complies with all the accreditation requirements;
- the competent authority which provides such accreditation;
- coordination with other competent bodies; and
- the circumstances in which the accreditation may be denied and the corresponding appeal procedure.



### Country example 125

#### Spain

*Chapter IV of the Prevention Services Royal Decree No. 39/1997* establishes the process to follow by specialized entities that wish to be accredited as prevention services. These shall submit an application to the competent labour authority of the place where their main facilities are located, stating the following:

- name, company identification number and bank account used for premium payments to social security;
- description of the preventive activity to be developed;
- forecast of the sector or sectors in which it intends to act, as well as the number of companies and volume of workers to be targeted and material resources provided for this purpose;
- provision of staffing for the performance of the preventive activity;
- identification of the facilities, instrumental means and their respective location, both those owned by the entity and those that may be available under any other title;
- Commitment to having subscribed an insurance policy or equivalent financial guarantee that covers its liability; and
- contracts or agreements to be established, if necessary, with other entities to carry out activities requiring special knowledge or complex facilities.

The Government has established a specialized registry to record the registration of prevention entities, which shall be available to citizens and public authorities. In order to maintain their accreditation, prevention services shall ensure that they comply with all requirements at any time. The accreditation of the prevention service will be revoked if the service has committed a serious or a very serious infraction. The competent labour authority, after hearing the case, may decide to temporarily suspend or permanently revoke the accreditation of the prevention service.

**Figure 16.** Simplified representation of the OH services accreditation process in Spain



**Country example 126**

**Bulgaria**

Article 6 of the Occupational Health Services Ordinance No. 3, 2008 indicates that, in order to get an accreditation, an OH service must be comprised of:

- A person with a Master’s degree in medicine and specialization in “occupational medicine”;
- A person with higher technical education and three years of professional experience in safety and health at work (prevention of occupational risks; control of compliance with labour legislation and the legislation relating to health and safety; organization of labour and safety and health at the workplace; and training on safety and health at work, as certified by official documentation; and
- technical staff with at least secondary education.

The OH services may include specialists in toxicology, ergonomics, psychology, social medicine, engineering, law, economic sciences and so on.

In order to be registered, the owners of OH services should file an application and provide the information and documents requested in article 7.



### Country example 127

#### Norway

*Chapter 2, section 2-1 and 2-2 of the Administrative Arrangements Ordinance No. 1360/2011* establishes that the Labour Department must approve the OH services provided and that the Department may give regulations on the qualifications of the OH services.

In order to be approved, the OH service must:

- be capable, as a whole, of providing comprehensive preventive assistance to the systematic health, safety and environmental activities;
- have a quality assurance system that ensures that the OH service assists the employer in a satisfactory manner, and that ensures competence development for the OH service personnel;
- have an organization and professional personnel that are capable of providing advice in the following areas of expertise: occupational medicine/OH, occupational hygiene, ergonomics, psychosocial and organizational working environment; and
- have professional personnel corresponding to at least three full-time equivalents. Each area of professional expertise (occupational medicine, occupational hygiene, ergonomics and psychosocial-organizational) must be covered by at least 30% of a full-time equivalent. An OH service with professional personnel corresponding to two full-time equivalents may nonetheless be approved in special cases, provided that it is documented that the OH service cooperates with one or more relevant professional environments that cover any missing areas of expertise.



## Checklist

### Section 07

ILS	Provisions	Covered by OSH law		Observations
		YES	NO	
	Organization of OH services, including:			
<b>C161, Art. 7(1)</b>	(a) Modalities (if these are not clearly laid down in law, please explain how they are organized in practice)			
<b>R171, Paras 45, 46</b>	(b) Financing mechanisms			
<b>R171, Para. 32</b>	(c) Location			
<b>R171, Para.33</b>	(d) Workers' participation			
<b>C161, Art. 5 R171</b>	Functions including:			
<b>C161, Art. 5(a)(b) R171, Paras 5,8,10</b>	(a) Surveillance of the working environment			
<b>C161, Art. 5(f) R171, Paras 11-13</b>	(b) Surveillance of workers' health			
<b>C161, Art 5(i), R171, Paras 19-22</b>	(c) Provision of information, education, training, advice			
<b>C161, Art. 5(h)(j) R171, Paras 23-26</b>	(d) First aid, treatment and health programmes			
<b>R171, Paras 28-29</b>	(e) Other functions			
<b>R171, Paras 6, 16, 38</b>	Confidential use of data resulting from the OH services functions and confidential personal health files			
	Conditions of operation including:			
<b>R171, Para. 9</b>	(a) Powers enabling OH services to carry out their functions			
<b>C161, Art. 10, R171, Para.37</b>	(b) Independence and protection from retaliation measures			
<b>R171, Paras 39, 45</b>	(c) Facilities			
<b>C161, Art. 8, 9(2) R171, Paras 27, 40</b>	(d) Collaboration with internal and external stakeholders			
<b>C161, Art. 11</b>	(e) Accreditation			





SECTION

08

**OSH professionals**

Support Kit for Developing Occupational Safety and Health Legislation

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# 08

## OSH professionals

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### 1. Introduction

Although there is no international labour standard that reflects Member States' agreement on the regulation of OSH professionals,<sup>1</sup> the increase in the number of OSH professionals and OSH practitioners performing OSH-related functions in the workplace, in addition to the other factors discussed below, has seen countries increasingly choosing to regulate the profession.

The aim of this section is to discuss some of the key policy issues that arise in the context of regulating OSH professionals and to highlight some important factors that Member States may wish to consider in the process of developing and drafting their OSH legislation. It is in no way intended to be an exhaustive and comprehensive examination and analysis of these issues.

To provide the user with some background and context information to understand the complexity of regulating this topic, the following aspects are briefly discussed below:

- (1) Rationale: Why might countries want to regulate OSH professions?
- (2) Professionalization of OSH professionals
- (3) Multidisciplinary nature of OSH professions
- (4) Distinct employment modalities of OSH professionals
- (5) Key policy dimensions regulated by law
- (6) Rationale: Why might countries want to regulate OSH professions?



#### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Health Services Convention, 1985 \(No. 161\)](#)
- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)

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<sup>1</sup> This section of the Support Kit uses the generic term “OSH professionals” to refer to any professional with OSH-related qualifications.

Pursuant to Convention No. 155 and as discussed in earlier sections of this Support Kit, the overall duty to ensure that workplaces are safe and healthy and in compliance with OSH laws lies with employers. In order to comply with this duty, they may need to secure OSH competence in the workplace by engaging professionals who have expertise in OSH-related disciplines.

For example, under their overall duty, employers have to ensure workers' health surveillance (see section IV, subsection 3.10, of this Support Kit). This is a function reserved for entities providing occupational health services and competent medical professionals.

As discussed in section VII of this Support Kit, entities providing occupational health services must employ competent technical personnel with specialized training and experience in such fields as occupational medicine, occupational hygiene, ergonomics, occupational health nursing and other relevant fields.

Article 11 of Convention No. 161 stipulates that the competent authorities of Member States shall determine the qualifications required for the personnel providing occupational health services, according to the nature of the duties to be performed and in accordance with national law and practice.

Moreover, Article 5(c) of Convention No. 155 stipulates that "The policy referred to in Article 4 of this Convention shall take account of the following main spheres of action in so far as they affect occupational safety and health and the working environment ... training, including necessary further training, qualifications and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health.

Article 14 further establishes that "measures shall be taken with a view to promoting in a manner appropriate to national conditions and practice, the inclusion of questions of occupational safety and health and the working environment at all levels of education and training, including higher technical, medical and professional education, in a manner meeting the training needs of all workers". Along the same lines, Article 4.3(c) of Convention No. 187 stipulates that "the national system for occupational safety and health shall include, where appropriate the provision of occupational safety and health training".

The ILO-OSH 2001 Guidelines also suggest the need for OSH professionals. The Guidelines adopt the term "competent person" and define it as a person that has suitable training and sufficient knowledge, experience and skill for the performance of the specific work involved. The Guidelines advise that certain functions, such as risk assessment and accident investigation, should be conducted by competent persons.

Altogether, this indicates the need to form a corpus of trained professionals who are specialized in OSH-related disciplines. Regulating the education and training requirements required to access OSH professions and related specializations is a means to ensure that OSH professionals are competent and have sound knowledge to effectively carry out OSH-related functions and roles. Regulating the content of education and training programmes is a control mechanism to ensure their quality and robustness. This may be further reinforced by requirements for continuous professional development, certification schemes for OSH professionals, accreditation schemes for training providers and registration of OSH professionals.

## 1.2 Professionalization of OSH practitioners

The role of safety and health professionals has rapidly evolved in recent years into an increasingly professionalized occupation. Not all OSH-related occupations have become professionalized at the same pace. While medicine is a profession that has been regulated for centuries, related occupations such as those of safety professionals, occupational hygienists, ergonomists and organizational psychologists only began the process of professionalization in recent decades.

OSH practitioners from a variety of disciplines are increasingly organizing themselves into professional associations and groups at country and regional levels to promote and protect

their role. In some countries where there is an absence of legislative oversight, professional associations play a key role in regulating the OSH profession. The position and role of professional associations in national OSH management systems, as well as the extent to which industry self-regulation should co-exist with legislative regulation, is an important policy question that should be considered but is beyond the scope of this Support Kit.

Country example 128 (Hale & Harvey 2012<sup>2</sup>) lists some EU countries that have chosen to regulate various aspects of the OSH profession in legislation, as well as some that rely on other bodies such as professional associations for regulation and oversight.



**Country example 128**  
Legislation on the OSH profession in EU countries

Role required by regulation and training content specified by:		Role not required by law, training content specified by:
Government	Other bodies	Other bodies
Austria	Denmark	Czechia
Belgium	Estonia	Finland
Cyprus	Netherlands	France
Germany	Norway	Iceland
Greece	Poland	Ireland
Hungary		Lithuania
Italy		Malta
Latvia		Romania
Luxembourg		Sweden
Portugal		United Kingdom
Slovakia		
Slovenia		
Spain		
Switzerland		

### 1.3 Multidisciplinary nature of OSH professions

The OSH professions encompass many disciplines and job types. This diversity of roles and functions has made it historically difficult to develop a universally consistent definition of what a health and safety professional is. A number of factors that explain this diversity are discussed below.

There are enormous variations in the job titles for OSH-related professions, which can include titles such as occupational physicians, occupational nurses, occupational safety engineers, occupational hygienists, ergonomists, occupational psychologists, OSH technicians (OSH generalists that may be allowed to carry out a number of OSH functions), just to name a few.

Other variances within the definition of an OSH professional may include whether they are a generalist or specialist in a particular OSH area; technicians with vocational or “on the job” training, or professionals with tertiary qualifications; or whether they are managerial, technical (such as engineering) or health professionals. There may also be differences in the sectors of

2 Hale, A.R., Harvey, H. 2012, *Certification of safety professionals: Emerging trends of internationalisation*

economic activity in which OSH professionals perform the majority of their work, as well as the way the profession is organized.

The analysis of selected laws has shown that many countries tend to distinguish occupational *safety* professionals and occupational *health* professionals when regulating these different categories of OSH professionals. There can also be a differentiation made between safety professionals, occupational health professionals and those in “generalist” OSH roles that fulfil a variety of functions across various disciplines. This distinction is mainly based on the functions and education and training and competencies required to perform these functions.

Terms used by laws to refer to occupational health professionals include occupational physician, occupational health doctor, company doctor, occupational hygiene physician, occupational health nurse, ergonomist and so on. These professionals are generally medically qualified and certified and have undergone further specialist training as a practitioner in one or more fields related to OSH. The education, training, functions and duties of these professions are generally regulated by medical boards and regulations governing the medical profession. This section does not specifically deal with these types of OSH professionals and will instead focus on OSH professionals who have undergone non-medical training.

Many OSH professionals undergo generalist training in safety and health and have job titles such as safety technician, prevention adviser, expert in risk prevention, safety officer, safety and health officer and occupational safety specialist. While they may perform functions that are health-related (for example, health promotion activities), they are generally not medically trained and instead have received general training in a variety of OSH-related areas, with a focus on risk identification and management at the workplace.

OSH professionals may undertake specialized training in many different areas. The fields of ergonomics, industrial or occupational hygiene and psychology may also form part of the training curriculum for generalist OSH professionals, as a result of which they will have an understanding of the basic tenets of the subject but will not have obtained specialist qualifications.

## 1.4 Distinct employment modalities of OSH professionals

OSH professionals may be employed in a number of ways, including as:

- in-house OSH professionals (national legislation may refer to them as OSH managers, OSH technicians, *designated* workers with OSH qualifications);
- personnel within an internal or external OSH service; or
- independent practitioners providing OSH consultancy services.

Legislation that regulates OSH professionals, whether in the occupational safety category, occupational health category or others, does not usually distinguish between these different employment modalities.

## 1.5 Key policy dimensions regulated by law

An analysis of selected OSH laws from countries that have chosen to regulate the OSH profession has shown that a number of key policy dimensions are consistently addressed, including:

- ▶ roles, functions and tasks
- ▶ education and training, including minimum content and duration
- ▶ continuous professional development
- ▶ accreditation of training providers
- ▶ certification
- ▶ liability
- ▶ professional ethics

Each of these factors will be considered separately below. We note that, while most of the legislation dealing with these policy issues is from European countries, some examples have been also identified in countries from the American, Asian and African regions. This suggests that regulating OSH professionals is not unique to European countries but is a global trend.

## 2. Roles, functions, tasks<sup>3</sup>

The roles, functions and tasks of OSH professionals vary significantly among countries and there is little consistency across States to explain what it is that OSH professionals do. Closely linked to the need to carefully define which OSH professionals are regulated by the OSH law is the need to also carefully give boundaries to the roles, functions and tasks that the national legislation envisions them performing.



### Country example 128bis

OSH legislation has articulated the functions of OSH professionals in the following way. This list is illustrative and is by no means exhaustive. The functions of OSH professionals found in the examined sample of laws include:

- supervising compliance with OSH laws and regulations;
- evaluating the situation of the enterprise or establishment with regard to OSH;
- conducting hazard identification and risk assessments;
- advising the employer or any person in charge of workplace on the preventive measures to be taken;
- organizing, proposing, developing, coordinating and supervising preventive and protective measures to address occupational risks;
- defining a company strategy on OSH;
- supervising working methods and prevention-related measures;
- inspecting the workplace to determine whether any machinery, plant, equipment, substance, appliances or process used in the workplace has the potential to cause bodily injury to any person working in the workplace;
- investigating any accident, near-miss accident, dangerous occurrence, occupational poisoning or occupational disease that has occurred in the workplace;
- collecting, analysing and maintaining statistics on any accident, dangerous occurrence, occupational poisoning and occupational disease that has occurred at the workplace;
- reporting to the employer;
- managing the safety registers and maintaining records;

<sup>3</sup> General consideration taking into account country practices.

- developing and maintaining OSH and evacuation plans and informing co-workers about them;
- preparing, organizing and conducting evacuation drills;
- acting in case of emergency and first aid, managing the first interventions to that effect;
- maintaining relations with the inspection bodies and the occupational health service to which the enterprise is affiliated and with other supervisory authorities in matters of safety and health, as well as with emergency services in case of accident and fire;
- promoting safe behaviour and the correct use of work and protection equipment;
- encouraging workers' participation in OSH management;
- providing information and training on OSH to workers; and
- engaging with workplace OSH committees, including as a member or by providing assistance to committee members in their functions.

Another key function of OSH professionals, which may be considered as an intrinsic part of risk assessment and surveillance of the working environment, is to identify the presence and measure the levels of pollutants such as noise, vibrations, radiation, chemicals, bacteria, viruses and other hazardous organisms and substances that may endanger workers' safety and health.

### 3. Education and training<sup>3</sup>

A key characteristic of a recognized profession is the possession of a specialized body of knowledge and skills that allow those in possession of them to use their judgment to determine the appropriate approach for their clients. It is therefore important that the required core knowledge and skills are clearly defined for the OSH profession to progress into a recognized profession.

Thus, countries may wish to prescribe by law the content, length and structure of education needed for OSH professionals, including specialized training and corresponding educational degrees, to ensure that they have the necessary knowledge and competence to effectively carry out OSH-related functions.

When developing OSH professionals' qualification frameworks, it is important to engage with industries and other public authorities, in particular state authorities for health and for education. This is important to ensure that the content of the curriculum produces graduates with the skills and capabilities that are required to effectively perform the role of an OSH professional, and that the qualifications meet the standards set by different government authorities.

#### Policy options and country examples

There are various design options at the disposal of countries when choosing how to regulate education and training requirements



##### Policy options

###### Option 1.

Education and training requirements based on the nature of the functions to be carried out by the OSH professional

###### Option 2.

Education and training requirements based on the type of undertaking

###### Option 3.

Education and training requirements based on the type of discipline/area of specialization

###### Option 4.

Defining the minimum content and duration of OSH education and training.

### Option 1. Education and training requirements based on the nature of the functions to be carried out by the OSH professional

The analysed sample of legislation shows that in a number of countries, legislation differentiates between different roles, education and training (including course content and duration) and continuous professional development requirements, depending on the level and functions of the different category of OSH professionals.



#### Country example 129

##### Portugal

*Act No. 42/2012 regulating the access and exercise of the professions of senior technician of safety at work and technician of safety at work*

Article 5 establishes two levels of occupational safety technicians: occupational safety technician and senior occupational safety technician.

The required qualifications for a senior safety technician are:

- PhD, Master or “Licenciatura”<sup>4</sup> in the areas of OSH recognized by the member of Government responsible for the area of education; and
- other “Licenciatura” or Bachelor’s degree and completion of an initial training course of a senior safety technician;

The required qualification for a safety technician are:

- 12 years of schooling and having followed a training course for OSH technicians delivered by a training certified entity; and
- 9 years of schooling and having followed a training course for OSH technicians homologated by the competent authority as part of a training system that will lead to 12 years of schooling.

##### Spain

*Preventive Services Royal Decree 39/1997*

This law distinguishes between three levels of OSH functions - basic, intermediate and advanced – and establishes the required qualifications for each level (Arts 34–37).

- OSH technicians in charge of basic-level functions shall have completed a training featuring the content specified in Annex IV of the Royal Decree and lasting at least 30 or 50 hours, depending on the activities carried out by the company, or an equivalent professional or academic training enabling the person to carry out basic level functions, or at least two years of experience in a company, institution or public administration encompassing equivalent responsibilities to those in the basic level of functions.
- OSH technicians in charge of intermediate-level functions shall have completed a training featuring the content specified by Annex V of the Royal Decree and lasting at least 300 hours.
- OSH technicians in charge of high-level functions, corresponding to the preventive disciplines of occupational medicine, occupational safety, industrial hygiene, and ergonomics and applied psychosociology, shall have an official university degree and have completed training accredited by a university that includes the content specified by Annex VI of the law and lasts at least 600 hours.

<sup>4</sup> University degree below PhD level, which may be equivalent to a bachelor’s or a master’s degree, depending on the national education system.

## Option 2. Education and training requirements based on the type of undertaking

In **Luxembourg**, article 7 of the *Designated Workers Grand-Ducale Regulation, 2006* requires training cycles that consist of basic, specific and additional training courses of different lengths, depending on the category of enterprise in which the designated worker is hired, based on workforce size (see country example 130).



Country example 130					
Luxembourg					
Company category	Workforce size	Basic training	Specific training	Additional training	Documents proving completion of training
Group A	< 16 workers	4h	8h	4h	Certificate of participation
Group B	16–49 workers	8h	20h	8h	End of training essay
Group C1, C2, C3	50–449 workers	32h	56h	8h	Examination and end of training essay
C4 - financial and admin sector only	450–649	32h	56h	8h	Examination and end of training essay
C4 (other than financial and admin sector)	450–649	48h	88h	10h	Examination and end of training essay
C5, C6, C7	650–1599	48h	88h	10h	Examination and end of training essay
D, E, F, G	> 450 *varies depending on the economic sector (industry)	48h	118h	10h	Examination and end of training essay

In **Belgium**, the law provides for different qualification regimes depending on whether the OSH professionals are to be hired in an internal or external OSH service.

### Internal OSH service

In order to determine the level of training required in an **in-house service**, enterprises are classified into four groups (A, B, C or D) according to the number of workers employed and/or the risks workers are exposed to (art. II.1–2 of the Wellbeing at Work Code, 2017).

Undertakings classified in groups A and B are considered to be a high risk workplaces because of the industries they work in. Internal prevention advisers must undergo additional level I or level II training depending on which group (A or B) their employer belongs to.

Undertakings classified as groups C and D are lower risk workplaces, and so internal prevention advisers must have sufficient basic knowledge of well-being at work, including risk analysis, coordination of prevention activities, the functioning of the prevention committee and protection at work and so on, according to Article II.1-20 of the Code.

However, the national legislation in Belgium requires occupational health doctors to meet the training requirements imposed on prevention advisers from external services (Article II.1-21 of the Wellbeing at Work Code, 2017).



**Country example 131**

**Belgium: Minimum level of additional training required for prevention advisers responsible for internal service management.**

Undertaking Category	Workforce size	Complementary training
<b>A</b>	> 1,000 workers * The size is lower for certain high risk industries	Level II *if in charge of the service, Level I + 2 years of experience as prevention adviser in an internal service *Minimum content is defined by law (see below content and duration of specialized OSH trainings)
<b>B</b>	200-1,000 workers who do not fall under A *The size is lower for certain (dangerous) industries	Level II
<b>C</b>	< 200 workers who do not fall under A and B	Not required
<b>D</b>	< 20 workers	Not required

**External services**

Pursuant to Article II.3-30 of the Wellbeing at Work Code, 2017, **external prevention advisers** must be specialized in one of the following disciplines: occupational safety, occupational health, ergonomics, industrial hygiene or psychosocial aspects of work. For this, Article II.3-30 specifies the needed university education and for certain disciplines it also requires a number of years of practical experience: 3 years for ergonomics and occupational hygiene and 5 years for psychosocial aspects.

**Option 3. Education and training requirements based on the type of discipline/ area of specialization**

Education and training requirements can also be fixed depending on the area of specialization of the OSH professional. As mentioned in the introduction to this section, there are a variety of different specializations/professions related to OSH including occupational safety, occupational medicine, ergonomics, occupational hygiene and psychosocial aspects.

In **Belgium**, OSH professionals in external services are required by law to complete certain specialized training and sometimes to have accumulated a number of years of professional experience (*art. II.3-30 of the Well-being at Work Code, 2017*). The minimum content of the specialized training (basic and specialized modules) is set by law (see country example 136).



### Country example 132

#### Education and training requirements for OSH disciplines in external services in Belgium

Discipline	Diploma	Training	Experience
<b>Occupational safety</b>	(Industrial) engineer	+ Level I additional training	-
<b>Occupational medicine</b>	Physician	Specialization in Occupational medicine	-
<b>Ergonomics</b>	Master's	Basic module + specialization in ergonomics	3 years
<b>Occupational hygiene</b>	Master's	Basic module + specialization in occupational hygiene	3 years
<b>Psychosocial aspects</b>	Master's focused on psychology/sociology	Basic module + specialization in psychosocial aspects	5 years

In **Switzerland**, the *Qualifications of Occupational Safety Specialists Ordinance No. 822.116 of 1996* sets out qualification requirements for the following occupational specialists: occupational physicians, occupational hygienists, safety engineers and safety officers (*chargés de sécurité*).



### Country example 133

#### Switzerland

Discipline	Diploma	Complementary training	Professional experience
<b>Occupational physician</b>	federal specialist title or a foreign specialist qualification recognized in the field of occupational medicine according to the Ordinance of 17 October 2001	-	-
<b>Occupational hygienist</b>	technical or scientific diploma awarded by a Swiss university, a federal polytechnic or a Swiss technical college	2 years including a theoretical and practical parts The theoretical part lasts 100 days at least; the minimum content of complementary training is defined by law	> 2 years

<b>Safety engineer</b>	technical or science degree from a Swiss university, a federal polytechnic or a Swiss technical college	35 days + practical experience in conducting engineering activities + final examination; the minimum content of complementary training is defined by law	> 2 years
<b>Safety officer</b>	qualified and specialized vocational training in the branch concerned and certificate of recognized ability or a diploma	20 days; the minimum content of the complementary training is defined by law	> 3 years

In **Japan**, *article 13 of the Industrial Safety and Health Act No. 57 of 1972* requires that industrial physicians meet the requirements of the Ordinance of the Ministry of Health, Labour and Welfare concerning the knowledge of medicine required to provide health care for workers. The Regulation Concerning Restrictions on Placement and Qualifications lists the types of work that require qualifying licences and the types of work that require the completion of a training course.

#### Option 4. Defining the minimum content and duration of OSH education and training

OSH professionals, in particular those in charge of more complex functions, may be required to follow specialized OSH training at university level. There may be specialized university degrees in OSH at the first level (bachelor’s degrees) or at an advanced level (master’s degrees). Defining the minimum content and duration of qualifications for OSH professionals in legislation or regulations will help to ensure that the quality of training programmes is consistent and the qualifications of OSH professionals are uniform. Any such regulations should optimally be developed in consultation with the government, professional associations and academic institutions in order to increase collaboration between these stakeholders and ensure that academic qualifications meet the practical requirements of the OSH professional role.

OSH qualifications often include a combination of traditional management with risk management; in addition to safety and health principles, they focus on communication; change management; influence without authority; human behaviour; decision-making; negotiation; conflict management; and coaching and consulting. Laws may define the exact subjects that should be covered by training, as well as the amount of time that should be assigned to each subject. Training may feature both theory and practice, the latter consisting of an assignment of practical nature (such as by means of a temporary placement/internship in an enterprise, where the student engages in OSH functions such as conducting a risk analysis). In Spain for instance, the mandatory content for a Master’s in OSH includes a practical exercise.



### Country example 134

#### Spain

##### *Preventive Services Royal Decree 39/1997*

##### **OSH technicians in charge of basic-level functions: 30h/50h (Annex IV)**

- I. Basic concepts on occupational safety and health (7h/10h);
- II. General risks and their prevention (12h/25h);
- III. Specific risks and their prevention in the sector corresponding to the activity of the company (5h)
- IV. Basic elements of risk prevention management (4h/5h);
- V. First aid (2/5h).

##### **OSH technicians in charge of intermediate-level functions: 300h (Annex V)**

- I. Basic concepts of OSH (20h)
- II. Methodology of prevention I: General techniques for analysis, evaluation and control of risks (170h)
- III. Methodology of prevention II: Specific techniques for monitoring and control of risks (40h)
- I. Methodology of prevention III: Promotion of prevention (20h)

##### **OSH technicians in charge of high-level functions: 600h (Annex VI)**

- I. Compulsory and common (min 300h)
  - (a) Fundamentals of techniques for improving working conditions (20h)
  - (b) Techniques for prevention of occupational risks (70h)
    - (a) Industrial hygiene (70)
    - (b) Occupational medicine (20h)
    - (c) Ergonomics and applied psychosociology (40h)
  - (c) Other actions in the field of occupational risk prevention (30h)
  - (d) Management of the prevention of occupational risks (40h)
  - (e) Related techniques (20h)
  - (f) Legal scope of prevention (40h)
- II. Specialization to be chosen from the following options:
  - (a) Occupational safety (min 100h)
  - (b) Industrial hygiene (min 100h)
  - (c) Applied ergonomics and psychosociology (min 100h)
- III. Completion of a final project or preventive activities in a work centre according to the specialization chosen, with a minimum duration of 150 hours.



### Country example 135

#### Belgium

##### **Prevention advisers in internal OSH services**

##### *Well-being at Work Code, 2017*

<b>Complementary training</b>	Minimum content for the basic multidisciplinary module for level I and II (art. II.4-3 and Annex II.4-2)	Minimum content for the specialization module (level I: art. II.4-3 and Annex II.4-3 level II: Annex II.4-4)
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##### **Specialists in external OSH services**

\*The minimum content of the basic multidisciplinary module is the same as the basic multidisciplinary module for preventive advisers in internal OSH services (art. II.4--2 § 2).



## Country example 136

### OSH specialization in Belgium

Specialization	<i>Minimum content for the specialization module Wellbeing at Work Code, 2017</i>
<b>Ergonomics</b>  <b>(art. II.4-22 and Annex II.4-5)</b>	<p><b>Competence criteria</b></p> <ol style="list-style-type: none"> <li>1. Ability to investigate and analyse requests to ensure optimal adaptation of work, equipment and the environment with human capabilities.</li> <li>2. Ability to initiate and conduct an ergonomic study of work situations and to analyse and interpret the data collected.</li> <li>3. Ability to formulate and justify recommendations for design (or correction) ergonomic workstations that are usable for designers, engineers or technical staff.</li> <li>4. Ability to follow and successfully complete an ergonomic project.</li> </ol> <p><b>Specific areas</b></p> <ol style="list-style-type: none"> <li>1. Knowledge of the physical workload (design of posts and interfaces, anthropometry, adaptation to effort, biomechanics, gestures and postures, prevention of musculoskeletal problems ...).</li> <li>2. Knowledge of the physical load of the workstation (adaptation of physical influences to humans (noise, heat, vision, vibrations, non-ionizing radiation ...), methodologies diagnosis and criteria for preventing associated nuisances and so on.</li> <li>3. Knowledge of the mental workload (attention, vigilance, treatment of information, analysis of human error, information and communication technologies, ergonomics of software ...).</li> </ol>
<b>Occupational hygiene</b>  <b>(art. II.4-22 and Annex II.4-6)</b>	<p><b>Competence criteria</b></p> <ol style="list-style-type: none"> <li>1. Ability to recognize and document physical, chemical and chemical risk factors organic.</li> <li>2. Ability to conduct an assessment and if necessary, measurements of the conditions exposure to these risk factors.</li> <li>3. Ability to formulate and justify recommendations to avoid, eliminate, reduce or monitor risks in work situations.</li> <li>4. Ability to write specifications for external laboratories.</li> </ol> <p><b>Specific areas</b></p> <ol style="list-style-type: none"> <li>1. Knowledge of chemical agents (toxicology, principles of toxicokinetics and biomonitoring, safety in the chemical industry, prevention of accidents (explosion, fire ... and occupational diseases ...).</li> <li>2. Knowledge of physical agents (noise and vibrations, climate, non-ionizing radiation, ionizing radiation, lighting, electromagnetic fields, pressure: stress and comfort ...).</li> <li>3. Knowledge of biological hazards (infections and allergies, bacteria (endotoxins), viruses, moulds and their by-products ...).</li> <li>4. Measurement knowledge (measurement techniques, applied epidemiological statistics to measurements ...).</li> </ol>

<p><b>Psychosocial aspects</b></p> <p>(art. II.4–22 and Annex II.4–7)</p>	<p><b>Competence criteria</b></p> <ol style="list-style-type: none"> <li>1. Ability to detect, analyse, evaluate, advise and propose psychosocial solutions.</li> <li>2. Ability to intervene in the perspective not only of behavioural changes but also in the perspective of organizational changes, as well as structural measures.</li> <li>3. Ability to motivate the individuals concerned to actively participate in the development of structural solutions.</li> </ol> <p><b>Specific areas</b></p> <ol style="list-style-type: none"> <li>1. Knowledge of stress (quality of work in relation to content, working conditions, relationships and work environment, stress models, cooperation with specialized centres ...).</li> <li>2. Knowledge of workplace violence, bullying and sexual harassment (relationships authority, processing requests, special interview techniques for victims/perpetrators, reception, help and follow-up for victims/perpetrators, therapeutic actions to advise or disadvantage, trauma, person of trust, sanctions policy, cooperation with specialized centres ...).</li> <li>3. Knowledge of work organization (time management, management practice schedules, forms of work organization and their specific risks, management systems and so on).</li> </ol>
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## 4. Accreditation of entities providing professional OSH training<sup>3</sup>

Entities (such as universities, colleges or vocational training centres) delivering training for future OSH professionals may need to go through an accreditation or registration process to ensure that they have the necessary capacity and competence to provide education that meets a certain standard. This will also prevent any conflicts of interest arising and also ensures that there is a standardized level of quality in the qualifications of OSH professionals.

Ensuring the integrity of professional degree qualifications is critical to the ability of the OSH profession to continue to professionalize. Accreditation of degree programmes is one way to maintain oversight of OSH education providers and ensure that they are producing graduates that meet the industry's recognized competencies (where they exist) and helps prospective course applicants and employers to identify reputable programmes.



### Country example 137

#### North Macedonia

*Safety and Health at Work Act No. 1191, 2007*

Under article 18–b, the organizer of the training shall submit a written request to obtain approval for delivering training for professional development of safety officers to the Ministry of Labour and Social Policy. The request form and the necessary documentation shall be prescribed by the minister responsible for the issues in the field of education, in accordance with the minister of information society and administration. Upon the submitted request, the Ministry of Labour and Social Policy, within a period of 30 days, shall adopt a decision approving or rejecting the request.

#### Portugal

*Act No. 42/2012 regulating the access and exercise of the professions of senior technician of safety at work and technician of safety at work*

Pursuant to article 11, entities providing training for occupational safety technicians shall be certified by the agency of the Ministry of Labour with competence for the promotion of health

and safety at work. These entities shall submit to the certifying entity advance communication on each training action, indicating the elements provided for in the certification manual, namely:

- identification of training to be provided, with start date, duration, hours of operation and location;
- access to the training manuals to be used during the course;
- identification of trainers, accompanied by a curriculum vitae that shows the possession of skills appropriate to the subjects they will teach; and
- Identification of students and indication of their respective civil and fiscal identification numbers.

#### Switzerland

The *Qualifications of Occupational Safety Specialists Ordinance No. 822.116* regulates the accreditation of providers of complementary training. Article 9 stipulates that organizations wishing to gain official recognition of the courses they offer as complementary training courses shall submit a request in writing to the Federal Office of Public Health, enclosing documents related to:

- the study plan;
- the examination content and regulations; and
- the professional qualifications of the teaching staff.

The Federal Office and the State Secretariat for Economic Affairs periodically examine whether further training courses still meet the requirements for recognition (art. 9). Related decisions are subject to appeal in accordance with the general provisions of the federal procedure (art. 11). The Federal Office keeps a public list of recognized complementary training courses (art. 10).

## 5. Certification<sup>3</sup>

Broadly speaking, certification schemes set requirements such as minimum levels of education, training and experience, as well as demonstrated knowledge and skills (which is tested through examinations), and evaluate people against those standards. While in some countries (such as Spain) it is enough to obtain certain qualifications to be considered an OSH professional, in other countries (such as Portugal, Latvia, North Macedonia and Singapore; see country example 138) the law may require further steps in order for a person to officially become an OSH professional and be employed as such.

Certification is one method utilized by various countries to confirm the competence of OSH professionals— that is, it is a way of distinguishing an OSH professional from a non-professional. The state can play a role in restricting the practice of non-professionals by means of certification requirements laid down in law. Certification schemes can also serve as a control mechanism as applicants need to submit documentation, such as required qualifications, which is reviewed by the competent authority before certification is granted.

In some countries, such as the United Kingdom, the United States and Australia, certification is largely administered by industry or professional associations. In other countries, such as many countries in continental Europe, certification is regulated by governments (Hale 2012).



### Country example 138

#### Portugal

*Act No. 42/2012 regulating the access and exercise of the professions of senior technician of safety at work and technician of safety at work*

Article 4 indicates that the certification body shall prepare and disseminate on its website a certification manual describing the procedures for the submission and evaluation of applications, the issuance, suspension and revocation of their professional qualifications and the certification conditions of their training entities. The law stipulates that the issuance of professional titles shall be requested to the certifying body by the interested party. The application must contain the name, address and the civil and tax identification numbers of the interested party and must be accompanied by a qualification certificate or a certificate of professional training. The professional title is issued within 40 days after receipt by the certification body of the interested party's application.

#### Singapore

*Articles 2–4 of the Workplace Safety and Health (Workplace Safety and Health Officers) Regulations 2007* indicate that to be eligible to apply for certification as a workplace safety and health officer, the Commissioner must be satisfied that the applicant has (a) completed the necessary training requirements and (b) has at least two years of practical experience relevant to the work to be performed by a workplace safety and health officer. In the event that the applicant does not have the required length of experience, the Commissioner may still grant certification if he or she is satisfied that the applicant such sufficient experience or qualifications to render him or her competent to act as a workplace safety and health officer. Pursuant to article 4, certificates are valid for a period of two years and, pursuant to article 5, may be renewed at the Commissioner's discretion. Under article 7, the Commissioner may impose requirements to undertake continuous professional development training in the field of workplace health and safety.

#### North Macedonia

*Safety and Health at Work Act No. 1191, 2007*

Article 17–a indicates that a professional examination may be taken only by person who meets the following requirements:

- is a citizen of North Macedonia;
- has permanent residence in North Macedonia;
- holds a university degree in the field of safety at work, technical sciences or a degree from another department that corresponds to the activity of the employer (a degree of a completed four-year higher education course or a 300-credit degree under the European Credit Transfer System);
- has not been issued a current injunction banning him/her from exercising a profession, business or office for the period of duration the injunction; and
- has at least five years of work experience after graduation in the corresponding field for which the request for taking the professional examination is filed.

Article 17–u stipulates that the candidates who have passed the professional examination shall be issued a certificate within a period of 15 days after the day of completion of the professional examination.

Latvia	
<i>Article 11 to 43 of the Regulations No. 723 of 2018 Regarding the Requirements for Competent Authorities and Competent Specialists in Labour Protection Issues and the Procedures for Evaluating Competence sets out detail the certification process for OSH professionals.</i>	
<b>11–14</b>	<b>Process for a senior specialist in labour protection to apply to the national accreditation body to obtain a certificate of a competent specialist certifying a person’s competence in labour protection matters, including: documents required; and eligibility to sit the examination.</b>
<b>15–24</b>	Details of the certification examination, including: timing of the examination; powers and functions of the Certification Commission of Certified Professionals, which oversees the examinations; and structure, assessment and length of the examination.
<b>25–27</b>	Content of the certification examination
<b>28–30</b>	Notification of the results of the certification examination
<b>31–34</b>	Certificates, including details of the required content of the certificates and details on the timing of their issue
<b>35–38</b>	Revocation of certificates already issued
<b>39</b>	Expiration and renewal of certificates
<b>40–42</b>	Public notification of certificates that have been issued and cancelled and of professionals who have been prevented from applying for certification
<b>43</b>	Registration of certificates

In addition to certifying OSH professionals, the law may further require that certified OSH professionals should be recorded on a public registry.

## 6. Continuous professional development<sup>3</sup>

Continuous professional development (CPD) is necessary to ensure that OSH professionals maintain and refresh their knowledge. This is especially important in the OSH field, not only because acquired skills and knowledge may be gradually forgotten but also because science and technology consistently evolve.

The law may require the employer to ensure that CPD is provided for OSH professionals who are directly employed by the undertaking. The law may also require CPD in order to maintain/renew OSH professional certification.



### Country example 139

#### Thailand

*Ministerial Regulation Prescribing the Standard of Administration and Management of Occupational Safety, Hygiene and Environment No. B.E. 2549, 2006*

Clause 22 states that employers shall ensure that safety officers at all levels participate in additional training on OSH in accordance with the periods, regulations and procedures stipulated by the Director-General.

**North Macedonia**

*Safety and Health at Work Act No. 1191, 2007*

Article 18–a requires the safety officer to participate in training for professional development. According to article 18–c, for the purposes of providing continuous professional development within a period of five years, safety officers shall be obliged to acquire 100 points through participation in training for professional development. The participation in such training shall be active if the safety officer presents his/her own paper in capacity of a trainer at the training event and passive if the safety officer follows the training in the capacity of a trainee. The organizer shall issue a certificate for the points acquired from participation in the training.

**Malaysia**

*Occupational Safety and Health (Safety and Health Officer) Regulations, 1997*

Regulation 8 states that a person who is registered as a safety and health officer shall attend any continuous education programme at least once in a year for the purpose of renewal of registration. Regulation 16 requires employers to facilitate ongoing professional education and development by providing OSH officers time at least once in a year to attend any continuous education programme to enhance his knowledge of OSH.

**Singapore**

*Workplace Safety and Health (Workplace Safety and Health Officers) Regulations 2007*

Regulation 7 stipulates that the Commissioner may, in granting any person approval to act as a workplace safety and health officer, impose as a condition the requirement for the person to attend such training courses, which, in the opinion of the Commissioner, are relevant to the work of a workplace safety and health officer.

Where a workplace safety and health officer fails to comply, the Commissioner may —

- (a) cancel the approval of the person as a workplace safety and health officer; or
- (b) refuse the renewal application of a person as a workplace safety and health officer.

## 7. Ethical related requirements defined by law<sup>3</sup>

**Country example 140****Portugal**

*Act No. 42/2012 regulating the access and exercise of the professions of senior technician of safety at work and technician of safety at work*

Article 7(1) requires occupational safety technicians to carry out their duties in accordance with a number of deontological principles, as follows:

- (a) *consider the safety and health of workers as priority factors of their intervention;*
- (b) *base their activity on scientific knowledge and technical competence and propose the intervention of specialized experts, when necessary;*
- (c) *acquire and update the skills and knowledge necessary for the performance of their duties;*
- (d) *carry out their functions with technical autonomy, collaborating with employers in the fulfilment of their obligations;*
- (e) *inform employers, workers and their representatives on the OSH implications of particularly dangerous situations that require immediate action;*
- (f) *collaborate with workers and their representatives on OSH by developing their capacity to intervene on occupational risk factors and appropriate prevention measures;*
- (g) *refrain from disclosing information concerning the organization, production methods or business of which they are aware because of the performance of their duties;*

- (h) *protect the confidentiality of data that affect the privacy of workers; and*
- (i) *consult and cooperate with the bodies of the national professional risk prevention network.*

Subsection (2) nullifies any contract that requires the OSH professional to perform their duties in a manner inconsistent with these principles, while subsection (3) imposes a civil penalty of between €500 and €1000 in the event of infringement of subsections (1) and (2).

#### Latvia

*Regulations No. 723 of 2018 Regarding the Requirements for Competent Authorities and Competent Specialists in Labour Protection Issues and the Procedures for Evaluating Competence*

Article 6 indicates that a competent specialist and competent authority shall be responsible to ensure that the tasks entrusted to them shall be executed professionally and in good faith, are technically practicable and are in accordance with the requirements of the regulations for labour protection. Article 8 provides that the competent expert and the competent authority shall ensure that the results of the risk assessment and assessment of the work environment are objective and independent of any influence, in particular of a financial nature, which may unduly affect the results of the examination or evaluation.

A professional code of ethics (also referred to as a deontological code) is the hallmark of a recognized profession and plays a key role in setting standards for professional conduct for OSH professionals. A code of ethics can cover topics such as conflicts of interest, standards of behaviour and commitments to various ethical principles. Such a code can also be used in disciplinary proceedings if an OSH professional has failed to adhere to its standards. In many countries, the responsibility for the creation and promulgation of a code of ethics and the regulation of the profession pursuant to its terms lies solely with the professional association and is not regulated by OSH legislation. However, some countries have formalized the requirement for establishing an ethical code of practice for OSH professionals in their OSH law (see country example 140).

At the international level, the ICOH has developed the International Code of Ethics for Occupational Health Professionals<sup>5</sup> for its members, which sets out broad ethical principles designed to apply to the various disciplines and vocations that fall within the category of OSH professionals. The International Network of Safety and Health Professional Organizations has also developed a succinct set of “required minimum commitments” that it recommends to be featured in its members’ respective codes of ethics.

## 8. Responsibility/liability of OSH professionals<sup>3</sup>

As discussed elsewhere in this Support Kit, employers have the overall responsibility to ensure that workplaces are safe, healthy and free from hazards. From a policy perspective, extending liability to OSH professionals (working either as employees or external contractors) through legislative provisions may detract from this fundamental principle.

However, in some countries OSH professionals can be held liable in limited scenarios where their professional negligence or malpractice is found by a court to have contributed to the illness or injury of an employee.

In such cases, where liability is delegated to post-holders and individual employees, the risk may arise that responsibility is being assigned to individuals who do not have the power, resources or capacity to exercise effective control; in effect, that blame is transferred to those who are closer to the “front line” of the organization and that systemic factors are thereby being overlooked, allowing the organization itself to avoid liability (Almond and Gray 2017<sup>6</sup>).

<sup>5</sup> ICOH, *International Code of Ethics for Occupational Health Professionals*, 2012.

<sup>6</sup> *Frontline safety: understanding the workplace as a site of regulatory engagement*, P Almond, GC Gray, 2017,

This also has the potential for abuse, in that individuals may be deliberately exposed to risk-bearing roles in order to shield an organization from responsibility. As such, individual liability must be imposed with care and must be balanced with the overarching duties placed on employers and organizations.

EU 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 states that employers “have a duty to ensure the safety and health of workers in every aspect related to the work. (2) Where...an employer enlists competent external services or persons, this shall not discharge him from his responsibilities in this area. (3) The workers’ obligations in the field of safety and health at work shall not affect the principle of the responsibility of the employer”. Domestic laws that transpose this duty to Member States (such as the United Kingdom’s *Management of Health and Safety at Work Regulations 1999*) make clear that overall responsibility for OSH management cannot be delegated and always remains with the employer.

## Legislative responses

Below is a discussion of three legislative responses from the Australia, Latvia and the United Kingdom, which touch on the question of liability for OSH professionals, establishing the vicarious liability concept and requiring mandatory indemnity insurance.

### 1. Liability

One example of a legislative response to the potential liability of OSH professionals is indirect liability (also referred to as vicarious liability) and the extent to which an individual – either an employee or an external contractor, who is acting in the course of his or her duties – can be held indirectly liable for the accident or illness of an employee if they are found to have contributed to the accident or illness in some way.

It is important to note that such legislative provisions do not remove the responsibility for the commission of an offence pursuant to the law away from the employer, even when the latter has wholly relied upon the advice of an employee or external consultant. Rather, such a provision can make *both* the employer and the employee/external consultant liable and expose them to penalties such as fines and imprisonment. It is also important to note that these provisions have the potential to hold *anyone* vicariously liable for a contravention of the law, and therefore extends beyond the scope of OSH professionals alone.

Legislative schemes vary significantly from country to country (see country example 141).



#### Country example 141

##### Australia, New South Wales

*Work Health and Safety Act 2011 No. 10*

*Section 256. Involvement in contravention treated in same way as actual contravention*

- (1) A person who is involved in a contravention of a WHS civil penalty provision is taken to have contravened that provision.
- (2) A person is involved in a contravention of a civil penalty provision if, and only if, the person:
  - (a) has aided, abetted, counselled or procured the contravention, or
  - (b) has induced the contravention, whether by threats or promises or otherwise, or
  - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention, or
  - (d) has conspired with others to effect the contravention.

**United Kingdom**

*Health and Safety at Work etc. Act 1974*

*Section 36. Offences due to fault of other person*

Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

**2. Mandatory professional indemnity insurance**

One legislative response to potential exposure to civil proceedings is to create a legislative requirement that OSH professionals acquire professional liability or indemnity insurance as a condition of their certification or registration as an OSH professional.

**Country example 142****Latvia**

*Regulations No. 723 of 2018 Regarding the Requirements for Competent Authorities and Competent Specialists in Labour Protection Issues and the Procedures for Evaluating Competence*

Under article 4, prior to the commencement of practical activity, a competent specialist shall insure his civil liability to the extent that it would cover losses incurred by the recipient of the service which might result from his professional activities, but not less than in the amount of €14,230. The competent civilian liability of the competent specialist must be insured throughout his/her period of operation.

## Checklist

### Section 08



ILS	Provisions	Covered by OSH law		Observations
		YES	NO	
- <sup>1</sup>	Roles, functions and tasks of OSH professionals			
<b>C155, Arts. 5(c), 14</b> <b>C161, Art. 11</b> <b>C187, Art. 4(3)(c)</b>	Minimum education/training required for OSH professionals			
- <sup>1</sup>	Minimum content and duration of education/training programmes on OSH			
- <sup>1</sup>	Accreditation for training providers			
- <sup>1</sup>	Certification schemes for OSH professionals			
- <sup>1</sup>	Mandatory continuous professional development			
- <sup>1</sup>	Deontological code/code of ethics			

<sup>1</sup> General consideration taking into account country practices.



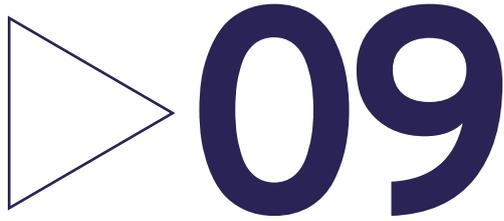


SECTION

09

**Data collection systems:  
Recording, notification  
and statistics**

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# 09

## Data collection systems: Recording, notification and statistics

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### 1. Introduction

Establishing effective OSH data collection systems is an essential tool for OSH governance both at the workplace and national levels. OSH data collection systems enable informed decision-making based on that data. In particular, collection of OSH data is needed for:

- ▶ developing and improving workplace OSH management;
- ▶ national governance of OSH, including:
  - ▶ elaborating a national profile;
  - ▶ setting priorities and embed them within a national OSH programme; and
  - ▶ measuring progress made towards national priorities; and
- ▶ reporting on progress made towards SDG targets.

### OSH data collection at the workplace

Collection of OSH data starts at the workplace and is the obligation of the employer (see section IV, subsection 3.11 of this Support Kit). Workplace OSH data enables the employer and the OSH professional(s) or services employed at that workplace to:

- ▶ do a risk assessment;
- ▶ take appropriate preventive and protective measures;
- ▶ evaluate the effectiveness of the preventive and protective measures that have been taken.

## OSH data collection systems and national OSH governance

OSH data provides the basis for setting priorities and measuring progress. Countries that have analysed the nature and prevalence of occupational accidents (involving fatal and non-fatal injuries), diseases, dangerous occurrences, commuting accidents and suspected cases of occupational diseases are better able to set priorities, design effective preventive OSH strategies and make informed policy decisions. OSH data can help to:

- describe the health status of the working population by age, sex, industry and socio-economic group;
- identify priority areas for OSH policies and strategies (including compensation and rehabilitation strategies and programmes), strategic compliance planning and training and education programmes;
- inform occupational epidemiological studies and identify possible areas for future research;
- evaluate the effectiveness of preventive policies and strategies; and
- estimate the consequences of occupational injuries and diseases, particularly in terms of work days lost or costs.

OSH data collection systems at the national level require a variety of data sources to ensure that they are complete and accurate. Data can be collected from:

- employers notifying relevant authorities about occupational accidents, injuries, diseases, dangerous occurrences, commuting accidents and suspected cases of occupational diseases;
- occupational and general health services, including physicians and nurses;
- labour inspectors and national surveys;
- reporting by workers and their representatives;
- public and private insurance carriers; and
- reporting to police and emergency services.

## OSH data collection systems and the SDGs

Countries that collect and utilize reliable OSH data are better able to fulfil their commitment to implementing and reporting on SDGs. In order for countries to accurately measure and report on their progress against SDG indicators, they will need reliable and detailed OSH data.

SDG target 8.8 requires countries to “protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”. In order to measure advancement towards this target, countries must report on progress against indicator 8.8.1, “Fatal and non-fatal occupational injuries per 100,000 workers, by sex and migrant status”.



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Protocol of 2002 to the Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

ILS require countries to establish OSH data collection systems. Convention No. 155 requires national authorities to establish procedures for the notification of occupational accidents and diseases by employers and, when appropriate, insurance institutions and others directly concerned. Competent authorities must publish annual statistics on occupational accidents and diseases. Articles 3 and 4 of the Protocol of 2002 to Convention No. 155 also set out requirements for the recording and notification of OSH data.



### Useful tools and resources

The ILO has produced a number of resources to guide Member States in the establishment of efficient data collection systems, including:

- [ILO, Code of Practice on Recording and Notification of Occupational Accidents and Diseases](#), 1996.
- [ILO, Improvement of National Reporting, Data Collection and Analysis of Occupational Accidents and Diseases](#), 2012.
- [ILO, National System for Recording and Notification of Occupational Diseases: Practical Guide](#), 2013.
- [ILO, "World Day for Safety and Health at Work 2017: Optimize the Collection and Use of OSH Data"](#), 2017.

This section of the Support Kit does not include further discussion about establishing data collection systems and instead aims to address the legal aspects of a data notification systems, that is, the factors that may be defined by law. These may be laid down in the primary overarching OSH law or an implementing regulation.

## 2. Legal aspects of recording and notification



### International labour standards

- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Protocol of 2002 to the Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Labour Inspection Convention, 1947 \(No. 81\)](#)

The employer has an obligation to record and notify the competent authority about occupational accidents, diseases and near misses, as required by the Protocol of 2002 to Convention No. 155 (see section IV, subsection 3.11 of this Support Kit). In addition to the employer, other persons may be required to record and notify, including physicians (any doctor who diagnoses or suspects an occupational disease or sees and treats a patient for an occupational injury); nurses; workers and their representatives; the police; and employment injury insurance entities.

To improve compliance with these obligations, the following key specifications should be defined in legislation:

- recording: the content, form and duration of the maintenance of the records to be kept; and
- notification: the content and form of notifications, the criteria according to which they should be made, the deadlines for submitting them and the competent authorities to which they should be sent.

These aspects are further discussed in the code of practice on recording and notification of occupational accidents and diseases.

### 2.1 Recording

National laws or regulations should prescribe what information must be recorded. Ideally, standard forms should be developed for this purpose to expedite compliance with the recording and reporting obligations of concerned persons (employers, physicians and so on) and facilitate their analysis. These forms are usually approved by means of regulations.

In principle, not every incident may need to be reported to the competent authority. However, national laws may still require employers to keep records of a range of incidents, even when they are not required to be reported. Such incidents may include those in which there is no personal injury, specified categories of dangerous occurrences and commuting accidents.

Incidents may be a clear sign of OSH management system's failures. Consequently, an internal registry of incidents helps the employer and the OSH management team to identify deficiencies in the prevention and protection measures put in place, correct them and therefore prevent occupational accidents and diseases.

The ILO's code of practice on recording and notification of occupational accidents and diseases advises that national laws or regulations should specify, in particular:

- (a) the content and format of such records;
- (b) the period of time within which records are to be established;
- (c) the period of time for which records are to be retained;
- (d) that such records are to be obtained and maintained in a way that respects the confidentiality of personal and medical data, in accordance with national laws and regulations, conditions and practice, and are consistent with Paragraph 6 of Recommendation No. 171;
- (e) that the employer should identify a competent person at the level of the enterprise to prepare and keep records; and
- (f) cooperation among recording procedures, wherever two or more employers engage in activities simultaneously at one worksite.

## 2.2 Notification

### Competent authorities to be notified

The code of practice on recording and notification of occupational accidents and diseases advises that national laws or regulations should specify which national authority employers (or other persons or entities) should notify about occupational accidents, occupational diseases, commuting accidents and dangerous occurrences. These authorities may be an individual authority or a combination of:

- (a) the relevant enforcement body (for example, the labour inspectorate should be notified under Article 14 of Convention No. 81);
- (b) the appropriate insurance institution;
- (c) the statistics-producing body; or
- (d) any other body.

Notification may be required to be made directly to the ministries of labour, health and social protection.

### Content of notifications

National laws or regulations should specify the information that must be included in the notification.

Article 5 of the Protocol of 2002 to Convention No. 155 requires the notification to include the following information:

- (a) the enterprise, establishment and employer;
- (b) if applicable, the injured persons and the nature of the injuries or disease; and

- (c) the workplace, the circumstances of the accident or the dangerous occurrence and, in the case of an occupational disease, the circumstances of the exposure to health hazards.

The code of practice on recording and notification of occupational accidents and diseases recommends that the following information should also be included in the notification:

- (a) enterprise, establishment and employer: contact details of the employer and enterprise, economic activity and number of workers;
- (b) name, address, employment status, occupation and length of service of the injured person or person affected by the occupational disease;
- (c) description of the injury or accident, including the nature and location of the injury, the geographical location, the date and time of occurrence and the circumstances leading up to the occurrence; and
- (d) if it is an occupational disease, the name and nature of the disease, the harmful agents, processes or exposure to which the occupational disease is attributable, the length of exposure to harmful agents and the date of diagnosis.

The recording and notification content may be aligned for practical reasons. The content of mandatory records should at least include the content of the notifications in order to ensure that all data required to be notified is also required to be recorded.

### Timing of notification

The code of practice on recording and notification of occupational accidents and diseases advises that national laws or regulations should specify that notifications should be made:

- (a) by the quickest possible means immediately after the reporting of an occupational accident causing loss of life; and
- (b) within a prescribed time for other occupational accidents and occupational diseases.

### Form of notification

The code of practice on recording and notification of occupational accidents and diseases advises that national laws or regulations should specify the prescribed standardized form of notification to be used for notifications to the competent authority, which may be:

- (a) an accident report for the labour inspectorate;
- (b) a compensation report for the insurance institution;
- (c) a report for the statistics-producing body; or
- (d) a single form that contains all essential data for all bodies.

### Notification of occupational diseases by persons other than employers

As mentioned above, a comprehensive and reliable national data system on OSH includes information from a number of stakeholders, in addition to employers.

Article 4(b) of the Protocol of 2002 establishes that “the requirements and procedures for the notification shall determine, where appropriate, arrangements for notification of occupational accidents and occupational diseases by insurance institutions, occupational health services, medical practitioners and other bodies directly concerned.

OSH legislation should include the obligation of other persons to report occupational diseases and injuries, in particular physicians.



**Country example 143**

**Dominica**

*Article 5 of the Accidents and Occupational Diseases (Notification) Act, 1951* establishes that: “(1) Every qualified medical practitioner attending on or called in to visit a patient whom he believes to be suffering from any occupational disease contracted in the course of his employment as a worker shall, unless such a notice has been previously sent, forthwith send a notice addressed to the Labour Commissioner stating the name and full postage address of the patient and the disease from which, in the opinion of the medical practitioner, the patient is suffering, and the name and address of the place at which, and of the employer by whom, he is or was last employed.

(2) If any qualified medical practitioner fails to send any notice in accordance with the requirements of this section, he is guilty of an offence and liable on summary conviction to a fine of one hundred dollars.”

**Morocco**

*Article 324 of the Labour Code* stipulates that “The occupational physician should report all occupational diseases/accidents.”

**Romania**

*Article 27(2) of the Safety and Health Law No. 319 of 2006* states that “Any physician, including the occupation physician employed in the enterprise, shall report any suspicion regarding occupational diseases to the local public health authorities.”

The CEACR noted that the requirement to notify the relevant authority of occupational diseases and accidents is included in the legislation of the majority of countries that have submitted reports.<sup>1</sup> It noted, however, that national practice varies and that unless this practice is harmonized, international comparisons concerning the evaluation of success in compliance, enforcement and preventive action may not be possible, or at least may be very difficult.<sup>2</sup> Thus, a greater consistency among member States in terms of definitions, data collection and statistical data is needed.



**Country example 144**

Country	Relevant Law
<b>Bahrain</b>	<i>Notification Procedures on Occupational Accidents and Diseases: Ministerial Order No. 12, 2013</i>
<b>Bulgaria</b>	<i>Ordinance on the identification, investigation, registration and notification of occupational accidents, 1999</i> <i>Ordinance on the procedure for notification, registration, verification, claims and reporting of occupational diseases, 2008</i>
<b>Cuba</b>	<i>Registry and investigation of occupational accidents, resolution No. 19/03</i>
<b>Grenada</b>	<i>Accidents and Occupational Diseases (Notification) Act, 1951</i>

1 ILO, *Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, ILC.98/III(1B)*, 2009. para. 230.  
 2 ILO, *General Survey*, 2009, para. 223.

## 2.3 Recording and notification requirements for self-employed persons

Self-employed persons often do not have the infrastructure, resources and expertise to manage their own safety and health, including any related obligations, such as recording and notification of occupational accidents and diseases. Also, the self-employed may be unable to record and report due to the seriousness of the accident suffered or disease contracted. Therefore, it is important to designate this responsibility to an appropriate person, in addition to the self-employed. This appropriate person may be, for example, the person who has contracted the services of the self-employer if he/she is present when the accident happens or the occupier of the workplace where the accident occurs.

The code of practice on recording and notification of occupational accidents and diseases advises that national laws or regulations on the reporting, recording and notification of occupational accidents, occupational diseases, dangerous occurrences and incidents should also apply to self-employed persons.

The code of practice suggests that national laws or regulations should specify that notifications to the competent authorities of occupational accidents, occupational diseases and dangerous occurrences involving **self-employed persons in their own enterprise** should be submitted as follows:

- (a) in the case of death or a non-fatal occupational accident, occupational disease or dangerous occurrence that renders the self-employed person incapable of submitting a notification, the notification should be submitted by the person in control of the establishment or as prescribed by the competent authority; and
- (b) in other cases, the notification should be submitted by self-employed persons themselves.

The code of practice also suggests that national laws or regulations should specify that notification to the competent authority of occupational accidents, occupational diseases and dangerous occurrences involving **self-employed persons in other than their own enterprise** should be:

- (a) recorded and notified by the employer of the enterprise in which the self-employed person is working; and
- (b) notified by the self-employed person to his or her insurance institution.

Laws that regulate emergency services, health providers and police may include notification requirements for occupational accidents and diseases in relation to all workers, including self-employed workers.



### Country example 144bis

#### Singapore

*Workplace Safety and Health (Incident Reporting) Regulations, 2006*  
Articles 4, 6

Where any accident at a workplace occurs which leads to the death of any person who is not at work or the death of any self-employed person, the occupier of the workplace shall, as soon as is reasonably practicable, notify the Commissioner of the accident.

Where any person who is not at work or any self-employed person meets with an accident at a workplace which requires him to be taken to a hospital for treatment in respect of that injury, the occupier of the workplace shall, as soon as is reasonably practicable, notify the Commissioner of the accident.

### 3. Criteria for recording and notification: Definitions



#### International labour standards

- [Protocol of 2002 to the Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Employment Injury Benefits Convention, 1964 \(No. 121 \)](#)

Relevant terms such as “occupational accidents”, “occupational diseases” and “dangerous occurrences” “commuting accidents” must be clearly defined by national legislation to ensure that all concerned persons (workers, employers, civil servant and so on) have a clear understanding of what needs to be reported, recorded and notified.

Article 7 of Convention No. 121 requires Member States to “prescribe a definition of ‘industrial accident’, including the conditions under which a commuting accident is considered to be an industrial accident, and shall specify the terms of such definition in its reports upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation”.

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#### Definition

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##### Definitions contained in international labour standards (Protocol of 2002 to Convention No. 155)

An “**occupational accident**” covers an occurrence arising out of, or in the course of, work which results in fatal or non-fatal injury.

An “**occupational disease**” covers any disease contracted as a result of an exposure to risk factors arising from work activity”.

A “**dangerous occurrence**” covers a readily identifiable event as defined under national laws and regulations, with potential to cause an injury or disease to persons at work or to the public. Dangerous occurrence is often referred to as “near-miss” or “incident”.

A “**Commuting accident**” covers an accident resulting in death or personal injury occurring on the direct way between the place of work and:

- (i) the worker’s principal or secondary residence; or
- (ii) the place where the worker usually takes a meal; or
- (iii) the place where the worker usually receives his or her remuneration.

### 4. List of occupational diseases

Taking stock of health outcomes that are well known to be caused by certain working conditions, agents (usually in the form of a *list of occupational diseases*), substances and factors facilitates the identification and diagnosis of diseases that are of occupational nature. Determining which diseases are caused by work is important for recording and notification purposes as well as to set up a compensation mechanism. Usually, the law adopts the presumption that any disease recorded on a list of occupational diseases is of an occupational nature if the person who has contracted it has been exposed to the working conditions, agents, substances or factors that cause such diseases.



**International labour standards**

- [List of Occupational Diseases Recommendation, 2002 \(No. 194\)](#)
- [Employment Injury Benefits Convention, 1964 \(No. 121\)](#)
- [Employment Injury Benefits Recommendation, 1964 \(No. 121\)](#)

Article 8 of Convention No. 121 states that “Each Member shall -

- (a) prescribe a list of diseases, comprising at least the diseases enumerated in Schedule I to this Convention, which shall be regarded as occupational diseases under prescribed conditions; or
- (b) include in its legislation a general definition of occupational diseases broad enough to cover at least the diseases enumerated in Schedule I to this Convention; or
- (c) prescribe a list of diseases in conformity with clause (a), complemented by a general definition of occupational diseases or by other provisions for establishing the occupational origin of diseases not so listed or manifesting themselves under conditions different from those prescribed.”

The approach given in Article 8(a) is generally referred to as the “list system”; that in Article 8(b) as the “general definition system” or overall coverage system; and that given in Article 8(c) as the “mixed system”.



**Policy options**

Various policy options			
	(a) List system	(b) General definition system	(c) Mixed system
Advantages	<ul style="list-style-type: none"> <li>- Lists diseases for which there is a presumption that they are of occupational origin</li> <li>- Makes compensation determination easier</li> <li>- Provides a focus for targeting prevention activities</li> </ul>	<ul style="list-style-type: none"> <li>- Theoretically covers all occupational diseases: it affords the widest and most flexible protection</li> </ul>	<ul style="list-style-type: none"> <li>- Combines the advantages of options (a) and (b) and reduces their disadvantages</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>- Is limited to a certain number of occupational diseases</li> <li>- Has to be regularly reviewed and updated.</li> </ul>	<ul style="list-style-type: none"> <li>- Leaves it to the victim to prove the occupational origin of the disease</li> <li>- Often implies that arbitration on individual cases is necessary</li> <li>- May not provide a focus for prevention activities</li> </ul>	

Recommendation No. 194 specifies that the competent authority should develop a national list of occupational diseases for the purposes of prevention, recording, notification and, if applicable, compensation. This should be done in consultation with the most representative organizations of employers and workers using methods appropriate to national conditions and practice (Para. 2).

Recommendation No. 194 recommends the “mixed system” by encouraging national authorities to include the following in the national list of occupational diseases:

- at the least the diseases enumerated in Schedule I of the Employment Injury Benefits Convention, 1964 (No.121), as amended in 1980;
- other diseases contained in the list of occupational diseases as annexed to this Recommendation (last updated in 2010); and
- a section entitled “suspected occupational diseases”.

#### 4.1 Structure of the list of occupational diseases

The ILO List of Occupational Diseases has been structured around the following criteria:

1. Occupational diseases caused by exposure to agents arising from work activities
  - 1.1. Diseases caused by chemical agents
  - 1.2. Diseases caused by physical agents
  - 1.3. Biological agents and infectious or parasitic diseases
2. Occupational diseases by target organ systems
  - 2.1. Respiratory diseases
  - 2.2. Skin diseases
  - 2.3. Musculoskeletal disorders
  - 2.4. Mental and behavioural disorders
3. Occupational cancer
4. Other diseases

This is of course a logical classification to follow; however, it is not the only possible classification. Other countries have opted for slightly different types of structures.



#### Country example 145

##### European Union

The [EU schedule of occupational diseases](#) groups around the following headings:

1. Diseases caused by chemical agents
2. Skin diseases caused by substances and agents not included under other headings
3. Diseases caused by the inhalation of substances and agents not included under other headings
4. Infectious and parasitic diseases (basically referring to biological hazards)
5. Diseases caused by physical agents

The EU has also elaborated a list of diseases suspected of being occupational in origin which should be subject to notification and which may be considered at a later stage for inclusion in the EU schedule of occupational diseases mentioned above. The EU clusters suspected occupational diseases similarly to the EU schedule of occupational diseases.

In any case, the top priority is to set up a national list of occupational diseases that includes at least the occupational diseases that have been included in the ILO List of Occupational Diseases, as well as any other diseases for which scientific evidence proves that they have an occupational origin when the required causation relation between the risk factors and the disease exist.

## 4.2 Need for regular review of the list of occupational diseases

The list of occupational diseases should be updated regularly, in line with scientific developments in the field. The ILO List of Occupational Diseases is a reference for keeping national lists up to date; it was last reviewed and updated in 2010 at a tripartite meeting of experts convened by the Governing Body of the International Labour Office.

The list of occupational diseases should be easy to review. Therefore, it is often annexed to a statutory order covering occupational diseases (for example in Algeria, China, Monaco and the United Kingdom) or forms part of a separate law (for example in Colombia). In Finland, it is part of an order issued under the law on occupational diseases. In France, the list of occupational diseases is set out in the form of separate tables for each category of disease, appended to the Social Security Code. The lists can therefore be amended without requiring fresh legislative confirmation of the entire list.

Laws may also include criteria or require authorities to set out the criteria for determining whether a disease should be considered occupational and thus included in the list of occupational diseases.



### Country example 146

#### Denmark

*Section 1 of the Administrative Order on the List of Occupational Diseases Reported in or after January 1, 2005*

A disease shall qualify for recognition as an occupational disease, according to section 7(1)(i) of the Act on Work Injury Insurance, where the following conditions are met:

- (i) The harmful exposure shall have such severity and duration as, according to medical documentation, is able to cause the disease;
- (ii) According to medical documentation, the pathological picture shall correspond to the harmful exposure and the disease;
- (iii) There shall be no factors making it probable beyond reasonable doubt that the disease was brought about by non-occupational circumstances (section 8(1) of the Act).

(2) Furthermore the special conditions set out under the individual items of the List of Occupational Diseases shall be met (Appendix 1 and Appendix 2, index).

## 4.3 Diseases of an occupational nature that are not on the list of occupational diseases

In order to avoid unnecessary complexities and create a burden for institutions and workers, the list of occupational diseases and compensation mechanisms should be aligned so that the law provides compensation for all occupational diseases without exception.

Countries should establish procedures for diseases to be recognized as occupational and therefore eligible to be compensated. The criteria for diagnosing a disease as an occupational disease has two principal elements:

- (a) the causal relationship between exposure to a certain risk factor at a workplace and a health outcome, and
- (b) the inclusion of the disease in the list of occupational diseases.

Policymakers may also legally envisage the possibility for diseases that are not included in the list of occupational diseases to be declared and compensated as such when a causal relationship is established. This is usually regulated in employment injury insurance-related

legislation and may not therefore be included in OSH law. However, a legal reform of OSH legislation may be an opportune moment to discuss this specific aspect. Some examples are provided in country example 147.

It is of critical importance to establish by law the precise process that should be followed for a disease to be recognized as being of an occupational nature if it is not included in the list of occupational diseases. Placing the burden of the proof on the worker exclusively (see country example 147, “Eritrea”) may make it impracticable to extend compensation to diseases other than those described in the list of occupational disease. This is because a worker usually would not have the knowledge and the means to identify a disease and prove its occupational origin. Therefore, the assessment of a cause–effect relationship should be carried out by qualified personnel, namely a physician and/or a scientific committee with whom the worker should collaborate as needed (see country example 147, “France”).

The principle of compensating diseases of occupational origin that are not included in the list of occupational diseases may be embedded directly in the list itself (see country example 147, “Uganda”). Another option for the purpose of compensation is to treat diseases that are not listed in the list of occupational diseases, but have an occupational nature, as occupational accidents and to compensate them as such (see country example 147, “Singapore”).



### Country example 147 Provisions and observations

Country		Provision
<b>Central African Republic</b>	<i>Decree No. 09.116 of 2009 implementing Law No. 06.035 of 2006 on Social Security, art. 84</i>	A disease which is not on the list of occupational diseases is presumed to be occupational when it is established that the latter is essentially and directly caused by the usual job of the victim.
<b>Eritrea</b>	<i>Labour proclamation No. 118/2001, art. 72(4)</i>	An employee shall be entitled to compensation if the employee establishes the occupational origin of the contracted disease.
<b>Uganda</b>	<i>Workers' Compensation Act No. 8, 2000, third schedule, part viii, No. 54</i>	Any other disease (not indicated in the Act) that can be scientifically proven to be of occupational origin is considered to be an occupational disease.
<b>Paraguay</b>	<i>Decree No. 5.649/2010, Adoption of list of occupational diseases, art. 4.2</i>	Other occupational diseases not mentioned in the list, shall be recognized and therefore compensated as occupational diseases when the direct link between the tasks performed and the occupational disease is established scientifically by appropriate methods and according to the national practice.
<b>France</b>	<i>Social Security Code, art. L461-1</i>	In the case of employees who are victims of occupational diseases that are not on the list of occupational diseases and who as a result of contracting them suffer a partial disability of at least 25 per cent or die, they are compensated when the Regional Committees for Recognition of Occupational Diseases recognizes those diseases as occupational.
<b>Singapore</b>	<i>Work Injury Compensation Act, 2008, art. 4 (1A), Second Schedule</i>	If an employee contracts a disease which is not specified in the first column of the Second Schedule but which is directly attributable to an exposure, arising out of and in the course of his employment, to a chemical or biological agent and the incapacity or death of the employee results from that disease, compensation shall be payable as if the disease were a personal injury by accident arising out of and in the course of that employment and all the other provisions of this Act shall apply accordingly, subject to this section.

## 5. Publishing national OSH statistics

The Protocol of 2002 to Convention No. 155 requires Member States to annually publish national OSH statistics and analysis on occupational accidents; occupational diseases; and, as appropriate, dangerous occurrences and commuting accidents. These statistics should be published using classification schemes drawn from the most up-to-date international schemes established under the auspices of the ILO or other competent international organizations. Convention No. 81 also provides that the labour inspectorate's annual report should include data on industrial accidents and occupational diseases.

All collected data, regardless of the source, should be compiled using the same indicators as those used in the national notification system of occupational accidents and diseases.

### Useful tools and resources



The ILO has published a number of resources to guide member States in producing their national OSH statistics, including:

- Resolution concerning statistics of occupational injuries (resulting from occupational accidents), 1998;
- Occupational injuries statistics from household surveys and establishment surveys, an ILO Manual of Methods, 2008; and
- Guide on the Harmonization of Labour Inspection Statistics and Collection and Use of Labour Inspection Statistics, a short guide, 2016.

The code of practice on recording and notification of occupational accidents and diseases advises that the statistics of occupational accidents, occupational diseases and dangerous occurrences should be classified at least according to the branch of economic activity in which they occur and as far as possible according to:

- (a) significant characteristics of workers, such as status in employment, sex, age or age group; and
- (b) significant characteristics of the enterprise.

The code of practice also suggest that the period covered by the statistics of occupational accidents and diseases should not exceed a calendar year and that statistics on occupational diseases for self-employed persons should be shown separately.

Elaborating national statistics may be required by law or through other means, such as internal circulars within ministries. Workers' compensation schemes play a key role in gathering relevant statistics and therefore a cooperation and collaboration mechanism should be put in place between the authority administrating workers compensation schemes and the authority in charge of statistics.

### 5.1 Statistics for occupational accidents

The code of practice on recording and notification of occupational accidents and diseases advises that the minimum statistics that should be published for occupational accidents are:

- (a) total number of victims, divided into:
  - (i) accidents resulting in death; and
  - (ii) non-fatal injuries resulting in incapacity for work of at least three consecutive days, excluding the day of the accident;
- (b) total days lost, including the first three days, for non-fatal injuries.

If the necessary information is available, the above could be further disaggregated by:

- (a) total number of victims of:
  - (i) accidents resulting in death, divided into deaths which occurred within 30 days of the accident, and those which occurred between 31 and 365 days of the accident;
  - (ii) non-fatal accidents, divided into the following categories: no lost time or absence from work (as specified under the national definition); or lost time (excluding the day of the accident) of up to three days and more than three days;
- (b) total days lost for non-fatal injuries, divided into the following categories: lost time of up to three days and more than three days.

Where possible, statistics of occupational accidents produced by the competent authority may indicate the total and the breakdowns. The competent authority would ideally make clear whether lost time shown in statistics of occupational accidents is measured in calendar days, weekdays, working days or work shifts.

## 5.2 Statistics for occupational diseases

The code of practice on recording and notification of occupational accidents and diseases advises that the competent authority should publish statistics of occupational diseases, including the total number of cases reported for each of the diseases on the list of occupational diseases prescribed by the competent authorities.

## 5.3 Statistics for dangerous occurrences

The code of practice on recording and notification of occupational accidents and diseases advises that the competent authority should publish statistics of the numbers and types of dangerous occurrence that have been notified.



**Checklist**  
Section 09

Relevant ILS	Question	YES	NO	Observations
R194	Is there a regulation on recording and notification?			
P155, Arts 2, 3	Is recording required for:			
	(a) occupational accidents;			
	(b) commuting accidents;			
	(c) dangerous occurrences; and			
Code of practice on recording and notification of occupational accidents and diseases (ILO, 1996)	(d) occupational diseases?			
	In relation to recording, do regulations include:			
	(a) the content and format of records;			
	(b) the period of time within which records are to be established;			
	(c) the period of time for which records are to be retained;			
	(d) a requirement that records are to be obtained and maintained in a way that respects the confidentiality of personal and medical data;			
P155, Arts 2, 4, 5	(e) identification of a competent person at the level of the enterprise to prepare and keep records; and			
	(f) cooperation in recording procedures where two or more employers engage in activities simultaneously at one worksite?			
	Is notification required for:			
	(a) occupational accidents;			
Code of practice on recording and notification of occupational accidents and diseases (ILO, 1996)	(b) commuting accidents;			
	(c) dangerous occurrences; and			
	(d) occupational diseases?			
	In relation to notification, do regulations include:			
Code of practice on recording and notification of occupational accidents and diseases (ILO, 1996)	(a) authorities to which the notification should be sent;			
	(b) content of the notification;			
	(c) timing of the notification; and			
	(d) form of the notification?			
Code of practice on recording and notification of occupational accidents and diseases (ILO, 1996)	Do recording and notification requirements extend to self-employed workers?			

Relevant ILS	Question	YES	NO	Observations
P155, Art. 1	Does OSH leg. contain definitions of:			
	(a) occupational accidents;			
	(b) commuting accidents;			
	(c) dangerous occurrences; and			
	(d) occupational diseases?			

ILS	Does the OSH legislation in your country require:	YES	NO	Observations
C121, Art. 8 R194	A list of occupational diseases?			
R194, Para. 4	Regular review of the list of occupational diseases?			
R194, Para. 2	Compensation of occupational diseases, including:			
	(a) those which are recognized in a list of occupational diseases; or			
	(b) those which, without being on the list of occupational diseases, present a causality relationship between the working conditions and the health outcome?			

ILS	Statistics	YES	NO	Observations
	<b>Question</b>			
P155, Arts 6, 7, C081	Does OSH law require the competent authorities to do national statistics on occupational accidents and diseases?			
<b>Code of practice on recording and notification of occupational accidents and diseases (ILO, 1996)</b>	In relation to accidents, are national statistics required to cover the number of victims, divided into:			
	(i) accidents resulting in death;			
	(ii) non-fatal injuries resulting in incapacity for work for at least three consecutive days, excluding the day of the accident; and			
	(iii) total days lost, including the first three days, for non-fatal injuries?			
<b>Code of practice on recording and notification of occupational accidents and diseases (ILO, 1996)</b>	Are statistics disaggregated by sex, age and migrant status?			





SECTION

10

**Enforcement  
of OSH legislation**

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## Enforcement of OSH legislation

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### 1. Introduction

Inspection systems are a fundamental pillar of national OSH systems as they are essential for securing compliance with duties under OSH legislation, including through the enforcement of legislation; the provision of information and advice; the inspection of workplaces; the investigation of occupational accidents and diseases; and the imposition of sanctions when breaches of legislation occur.

The establishment of an inspection system is required by international labour standards on both labour inspection and OSH.



#### International labour standards

- [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)
- [Occupational Safety and Health Recommendation, 1981 \(No. 164\)](#)
- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)
- [Safety and Health in Construction Convention, 1988 \(No. 167\)](#)
- [Safety and Health in Mines Convention, 1995 \(No. 176\)](#)
- [Safety and Health in Mines Recommendation, 1995 \(No. 183\)](#)



### Useful tools and resources

The following ILO resources contain detailed description of the labour inspection systems in various countries.

- ILO, [A Guide to Selected Labour Inspection Systems \(with Special Reference to OSH\)](#), 2011.
- ILO, [Building Modern and Effective Labour Inspection Systems](#), 2010.
- ILO, [“Labour Inspection Country Profiles”](#).

At the national level, labour inspection may be regulated by means of administrative laws, the labour code/law, a specific labour inspection statute and the OSH law.

The detail and number of provisions on labour inspection incorporated in the OSH law will depend on the legal tradition of the country and the architecture of its labour inspectorate(s).

In civil law countries, where labour inspectorates are integrated (that is, they enforce labour law at large and not exclusively OSH legislation), labour inspection is mainly regulated in the labour code/law and/or in a specific law on labour inspection. In the latter case, when these countries have developed an OSH law, it also may feature a number of provisions related to labour inspection to explicitly embed duties related to OSH legislation (for example to provide advice, investigate occupational accidents and diseases, act in case of imminent and serious risks and so on). This is the case for example in the Plurinational State of Bolivia, Nicaragua, Peru and Spain.

In common law countries, where there are inspectorates that focus sometimes exclusively on OSH law enforcement (in addition to other inspectorates that are responsible for the enforcement of other branches of labour law), the OSH law tends to legislate inspection more comprehensively (compared to the OSH laws in civil law countries). This is the case in the United Kingdom for example.

This section of the Support Kit explains the functions and powers related to the mandate of labour inspectors in the field of OSH, as well as their protection, along with applicable duties and prohibitions, that may be embedded in OSH laws. Although the hiring process is generally detailed in other regulations and policies, this section will briefly address some issues related to the appointment of labour inspectors.

## 2. Appointment of labour inspectors



### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 6 of Convention No. 81 and Article 8 of Convention No. 129 stipulate that “the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences”.

These Conventions set out further requirements for recruitment, including the qualifications required.

The appointment of labour inspectors to enforce OSH legislation is regulated by the law on labour inspection (in countries where such a law exists); by laws governing the selection and working conditions of civil servants; or by the OSH law (usually in common law countries with specialized OSH inspectorates).



### Country example 148

#### United Kingdom

*Safety and Health at Work etc. Act 1974, section 19*

- (1) Every enforcing authority may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this section.
- (2) Every appointment of a person as an inspector under this section shall be made by an instrument in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this section—
  - (a) be entitled to exercise only such of those powers as are so specified; and
  - (b) be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.
- (3) So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him.
- (4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy thereof.

#### Kenya

*Occupational Safety and Health Act No. 15, 2007, section 26*

- (1) There shall be such senior deputy directors, deputy directors, assistant directors and occupational safety and health officers and such other officers as may be necessary, for the purposes of this Act.
- (2) No person shall be appointed under subsection (1) unless that person is the holder of a degree in science, medicine, engineering, chemistry, physics, biochemistry, nursing, zoology, computer science, occupational safety and health or industrial hygiene.
- (3) Notice of the appointment of an occupational safety and health officer shall be published in the Gazette.
- (4) The Director shall issue to every officer appointed under this section a certificate of authorization, which shall be produced on demand to the occupier or any person in charge of a workplace, which the officer intends to enter pursuant to this Act.

## 3. Functions of labour inspectors

Legislation shall lay down the functions of labour inspectors. Although the functions of most labour inspectors relate to any branch of labour law, some target OSH more specifically.

In civil law countries general labour inspection functions tend to be regulated in a general labour law/code or labour inspection statutes, while in common law countries these are also found in OSH laws. Functions that more specifically address OSH are recurrently found in OSH laws in both common law and civil law countries.



#### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection Recommendation, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)
- [Labour Inspection \(Agriculture\) Recommendation, 1969 \(No. 133\)](#)

### 3.1 Core labour inspection functions

#### Attention



Any other duties assigned to labour inspectors shall not interfere with the effective discharge of their primary duties, and their authority and impartiality.

Convention No. 81 and Recommendation No. 81 list the core functions of labour inspectors, which should be included in national legislation. These main functions, as provided in Convention No. 81, are:

- (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors (Article 3(1)(a));
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions (Article 3(1)(b)); and
- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. (Article 3(1)(c)).

The CEACR has noted that if labour inspectors' interventions are to be effective, it is essential for employers and workers to be fully aware of the need to know and exercise their respective rights and obligations and that Article 3, paragraph 1(b), of Convention No. 81 and Article 6, paragraph 1(b), of Convention No. 129 give the same importance to information and advice to employers and workers concerning the most effective means of complying with the legal provisions as to enforcement.<sup>1</sup> Subsequently, the CEACR has indicated that an appropriate balance must be struck between advisory functions and enforcement functions.<sup>2</sup>

Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129 stipulate that "any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers". The CEACR has accentuated the importance of this safeguard.<sup>3</sup> In line with this, Paragraph 8 of Recommendation No. 81 advises that "the functions of labour inspectors should not include acting as conciliator or arbitrator in proceedings concerning labour disputes".

1 ILO, *Labour Inspection: General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*, ILC.95/III(1B), 2006, para. 85.

2 ILO, *Promoting a Safe and Healthy Working Environment: General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981*, ILC.98/III(1B), 2009, para. 99.

3 ILO, *General Survey*, 2006, para. 69.



### Country example 149

#### Spain

##### *Prevention of Occupational Risks Act 31/1995, article 9*

The Labour and Social Security Inspectorate has the duty to carry out surveillance and control of the legislation on prevention of occupational risks. It shall carry out the following functions:

- (a) Ensure the fulfilment of the legislation on prevention of occupational risks, and also of the legal-technical provisions related to prevention of occupational risks, although they may not have the direct status of labour legislation, proposing to the competent labour authority the adequate penalty, where a breach of the legislation on prevention of occupational risks is found ...
- (b) Advise and inform enterprises and workers about the most effective way of complying with the provisions whose surveillance it has been entrusted with.

## 3.2 Additional specific safety and health functions

In addition to the above core functions performed by labour inspectors, the law may require them to perform also the following duties:

- (a) to assess plans for new establishments, plants or processes of production (that are submitted by undertakings) so as to determine whether the said plans would render difficult or impossible compliance with the laws and regulations concerning industrial health and safety or would be likely to constitute a threat to the health or safety of the workers (Recommendation No. 81, Para. 2; Recommendation No. 133, Para. 11)).
- (b) to collaborate with employers and workers regarding health and safety, namely:
  - (i) when investigations and, in particular, enquiries into industrial accidents or occupational diseases are carried out (Recommendation No. 81, Para. 5); and
  - (ii) through the organization of conferences or joint committees or similar bodies to discuss questions concerning the enforcement of labour legislation and the health and safety of the workers (Recommendation No. 81, Para. 6; Recommendation No. 133, Para. 10); and
- (c) to cooperate with and other government services and public or private institutions engaged in similar activities (Convention No. 81, Article 5(a)); Convention No. 155, (Article 15(1)); such institutions may include social security and social insurance institutions, the police, judicial bodies, tax authorities and ministries responsible for the sectors covered by inspection, national human rights mechanism, immigration authorities, social research institutions and universities.<sup>4</sup>
- (d) to participate in workers' education programmes intended to inform them about the applicable legal provisions and the need to apply them strictly, as well as of the dangers to the life or health of persons working in agricultural undertakings and of the most appropriate means of avoiding them (Recommendation No. 133, Para. 14 (2)(g)).

The CEACR also noted that in some countries, labour inspectors perform other functions including contributing to the development of OSH policies and strategies (for example in Bulgaria).<sup>5</sup>

<sup>4</sup> ILO, *General Survey*, 2006, paras 154–162.

<sup>5</sup> ILO, *General Survey*, 2009, para. 98.



### Country example 150

#### Registration of new establishments, plants, or processes of production

##### Mauritius

*Occupational Safety and Health Act No 28 of 2005, section 87*

Every person who intends to construct **a factory or a building appurtenant to a factory** shall, at least 30 days before commencing construction, apply in writing to the Permanent Secretary for a factory building permit and submit to the Permanent Secretary proper site and location plans together with detailed drawings showing elevation, sections and plans of each floor of the factory or building, drawn to scale, with proposed layouts of machinery intended to be placed therein, and the welfare facilities to be provided for the employees.

On receipt of an application under subsection (1), the Permanent Secretary shall, after making such enquiries as he thinks fit, by written notice–

- (a) grant the permit on payment of the prescribed fee and subject to such conditions as he thinks fit; or
- (b) refuse to grant the permit and specify the ground of his refusal.

Every person who constructs a factory or a building appurtenant to a factory without a factory building permit issued under subsection (2) shall commit an offence.

##### Collaboration with employers and workers

##### Malaysia

*Occupational Safety and Health Act No. 514, 1994, section 43(2)*

Upon concluding an inspection, an officer shall give to the employer and the safety and health committee information with respect to his observations and any action he proposes to take in relation to the place of work.

##### Collaboration with authorities

##### Spain

*Prevention of Occupational Risks Act 31/1995, article 11*

The development of preventive regulations and the control of compliance with them, as well as the promotion of the prevention of, research into and epidemiological surveillance of occupational risks, occupational accidents and diseases, determine the need to coordinate the actions of the Administrations responsible for labour, health and industry for a more efficient protection of the safety and health of workers.

In the framework of that coordination, the Administration responsible for labour conditions shall ensure, in particular, that the information obtained by the Labour and Social Security Inspectorate in the exercise of the powers conferred on it by Article 9(1) of this Act is brought to the attention of the competent health authority for the purposes set out in Article 10 of this Act and Article 21 of the General Health Act 14/1986, and also of the Administration responsible for industry for the purposes set out in Act 21/1992 on Industry.

##### Various

##### Nicaragua

*General Law on Health and Safety at Work No. 618, 2007, article 304*

The Law embeds the following functions among others:

- promoting sectoral participation in the development of safety and health activities;
- conducting studies and research on identifying the causes of occupational diseases and accidents;
- developing national policies on occupational safety and health; and
- establishing collaboration and assistance with universities;

## 4. Powers of labour inspectors

Labour inspectors must be provided with powers that enable them to carry out their functions without hindrance or delay. OSH laws may embed these powers and prescribe how and when inspectors may exercise them when performing their functions. Almost all national legislation gives labour inspectors powers related to the monitoring of safety and health conditions.<sup>6</sup>

As is the case for the functions of labour inspectors, in civil law countries the powers of labour inspectors tend to be regulated in a general labour law/code or labour inspection statutes, while in common law countries these are also found in OSH laws. Analysis of laws also shows that civil law countries may also feature inspectors' powers in their OSH laws, in particular those most relevant to OSH.

To facilitate the analysis of labour inspectors' powers in this subsection, they are divided into the following subcategories:

1. Power to freely enter workplaces;
2. Powers to inspect and investigate;
3. Power to make orders and issue notices, including the power to stop work;
4. Power to propose issuance of financial penalties or fines; and
5. Power to initiate and conduct prosecutions.

### 4.1 Power to freely enter workplaces

Provisions that give the power to inspectors to freely enter workplaces are key components of OSH laws which ensure that inspectors can fulfil the functions discussed above.



#### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)
- [Labour Inspection \(Agriculture\) Recommendation, 1969 \(No. 133\)](#)

Article 12 of Convention No. 81 and Article 16 of Convention No. 129 establish the powers of labour inspectors with proper credentials "to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection; and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection".

The main elements of the power of entry are examined below.

#### (a) The power of entry shall be allowed without previous notice

The importance of allowing unannounced visits (visits without previous notice) by inspectors to workplaces has been underscored by the CEACR. Such visits overcome attempts to conceal a violation, for example, by changing the usual conditions of work, preventing a witness from being present or making it impossible to carry out an inspection.<sup>7</sup>

<sup>6</sup> ILO, *General Survey*, 2006, para.105.

<sup>7</sup> ILO, *General Survey*, 2006, para.263.



### Country example 151

#### Eswatini

*Occupational Safety and Health Act No. 9, 2001, section 5(1)(a)*

During normal working hours and without previous notice inspectors have the right to enter any workplace which the inspector has reasonable cause to believe is subject to this Act, and make any inspection and enquiry as the inspector deems necessary.

### Notification of presence at the workplace

According to Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129, once inspectors have accessed any workplace on the occasion of an inspection visit, they shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.



### Country example 152

#### Kenya

*Occupational Safety and Health Act No. 15, 2007, section 32(1)(a)(i)–(ii)*

An occupational safety and health officer shall, whenever it is practicable so to do and will not in his opinion defeat the object of his inspection, notify the occupier or some other person in authority at a workplace of his arrival at the workplace for the purpose of inspecting it; when an occupational safety and health officer has inspected a workplace without having first given the notification ... he shall, within a reasonable time after such inspection, inform the occupier and the Director in writing of the reason why no notification was given.

### (b) The power of entry shall be exercisable at any hour of the day or night

While some countries literally reproduce this articulation, others restrict this prerogative by using wording such as “at any reasonable time” or “during working hours”.

Paragraph 9 of Recommendation No. 133 suggests that “the activity of labour inspectors in agriculture during the night should be limited to those matters which cannot be effectively controlled during the day”.

The CEACR has expressed its opinion that the protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped. It has clarified that it should be for the inspector to decide whether a visit is *reasonable* and that inspections should only be carried out at night or outside working hours where this is warranted.<sup>8</sup>



### Country example 153

#### Belarus

*Occupational Safety Act No. 356–Z, 2008, article 36*

The labour inspectors, officials of the Department of the State Labour Inspectorate of the Ministry of Labour and Social Protection of the Republic of Belarus, have the right, upon presentation of proper credentials, to enter freely, **at any hour of the day or night**, any spaces, facilities and premises of the employer to examine compliance with the legislation on occupational safety and health.

8 ILO, *General Survey*, 2006, para. 270.

**(c) The power of entry at any hour by day or night shall be applicable to workplaces liable to inspection**

However, inspectors shall also have the right to enter freely and without previous notice by day any **premises which they may have reasonable cause to believe to be liable to inspection.**

**Power to enter residential premises**

Although residential premises may be workplaces when domestic workers are employed in them, they are usually protected by privacy laws and cannot be entered freely by labour inspectors against the will of the owner or without the necessary judicial authorization.

Article 16(2) of Convention No. 129 establishes that labour inspectors “shall not enter the private home of the operator of the undertaking ... except with the consent of the operator or with a special authorisation issued by the competent authority”.

The CEACR has noted that in many countries, inspectors are also allowed to enter premises other than workplaces liable to inspection where labour inspectors have reason to believe that paid employment covered by their remit occurs. In the case of a private home, the consent of the employer, the occupant or a judicial authority, as the case may be, is generally required.<sup>9</sup>



**Country example 154**

**Australia**

*Work Health and Safety Act, 2011*

*Section 163: Powers of entry*

- (1) An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace.
- (2) An entry may be made under subsection (1) with, or without, the consent of the person with management or control of the workplace.
- (3) If an inspector enters a place under subsection (1) and it is not a workplace, the inspector must leave the place immediately.
- (4) An inspector may enter any place if the entry is authorized by a search warrant.

*Section 170: Places used for residential purposes*

Despite anything else in this Division, the powers of an inspector under this Division in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes except:

- (a) with the consent of the person with management or control of the place; or (b) under the authority conferred by a search warrant; or
- (b) for the purpose only of gaining access to a suspected workplace, but only:
  - (i) if the inspector reasonably believes that no reasonable alternative access is available; and
  - (ii) at a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

**4.2 Powers to inspect and investigate**

Legislation shall embed labour inspectors’ powers to conduct inspections and investigations. The table below features the main powers related to inspection and investigation, the international labour standards in which these are recognized and any relevant comments of the CEACR.

9 ILO, *General Survey*, 2006, para.264.

Powers of inspectors to inspect and investigate		ILS	CEACR
<b>Examination, test or enquiry</b>	Carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed.	C81, Art. 12.1(c) C129, Art. 16.1(c)	
<b>Analysis of materials and substances</b>	Take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.	C81, Art.12.1(c) (iv) C129, Art.16.1(c)(iii)	The CEACR indicated that it appears that many countries have legislation empowering inspectors to take samples <sup>10</sup> .
<b>Interview</b>	Interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions.	C81, Art. 12.1(c)(i) C129, Art. 16.1(c)(i)	The CEACR has indicated that legislation of most countries vests labour inspectors with these powers, extending them to include interviews with any person whose evidence could be useful for the purposes of the inspection. The CEACR indicates that it is essential for labour inspectors to exercise their own judgement as to whether to carry out confidential interviews. <sup>11</sup>
<b>Production of books, registers and documents</b>	Require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them.	C81, Art. 12.1(c)(ii) C129, Art. 16.1(c)(ii)	The CEACR noted that most countries have included provisions to this effect in their legislation. <sup>12</sup>
<b>Collaboration of employers and workers</b>	Request representatives of the workers and the management, and more particularly members of the OSH committees to collaborate directly with officials of the labour inspectorate, in a manner and within limits fixed by the competent authority, when investigations and, in particular, enquiries into industrial accidents or occupational diseases are carried out.	R81, Para. 5	
<b>Investigation of occupational accidents and diseases</b>	As far as possible, inspectors shall be associated with any inquiry on the spot into the causes of the most serious occupational accidents or diseases, particularly of those which affect a number of workers or have fatal consequences.	C129, Art. 19(2)	The CEACR indicates that Convention No. 129 encourages inspectors to investigate only serious or fatal accidents and diseases and those affecting a certain number of workers. It clarifies that there is nothing in the Convention to prohibit a greater degree of involvement by labour inspectors in inquiries and to investigate less serious accidents and diseases. However, the CEACR stresses that this should not be done unless adequate resources are available to allow the inspectors to carry out their primary functions properly. <sup>13</sup>

<sup>10</sup> ILO, *General Survey*, 2006, para. 278.

<sup>11</sup> ILO, *General Survey*, 2006, para. 275.

<sup>12</sup> ILO, *General Survey*, 2006, para.276.

<sup>13</sup> ILO, *General Survey*, 2006, para.130.



**Country example 155**

**Labour inspection powers embedded in OSH legislation**

Powers	Countries embedding these powers
<p><b>Examination, test or enquiry</b></p>	<p><b>Barbados</b>  <i>Safety and Health at Work Act 2005, article 97(f)</i>                      An inspector may, for the purpose of carrying out his duties, carry out any examination and inquiry necessary to ascertain whether the provisions of the (OSH) Act and any enactment for the time being in force relating to public health are complied with in so far as they apply to a workplace or to any person employed in a workplace.</p> <p><b>Singapore</b>  <i>Workplace Safety and Health Act 2009, section 41(j)</i>                      An inspector has the power to require any hospital, medical clinic or mortuary to provide any information (including the medical records) of any person who is or had been working in a workplace who is injured in an accident in a workplace or who is suspected of suffering from an occupational disease contracted from a workplace and is receiving treatment at the hospital or medical clinic.</p> <p><b>Republic of Korea</b>  <i>Labour Standards Act No. 5309, 1997, article 102(2)</i>                      A labour inspector who is a medical doctor or a medical doctor designated by a labour inspector has the authority to conduct medical examinations of workers who appear to suffer from a disease which precludes his/her continuous employment.</p>
<p><b>Analysis of materials and substances</b></p>	<p><b>Kenya</b>  <i>Occupational Safety and Health Act No. 15, 2007, sections 32(1)(c),(d) and (e) and 34(1)</i>                      Powers of an occupational safety and health officer shall have the following powers:</p> <ul style="list-style-type: none"> <li>- take such measurements and photographs and making such recordings as he may consider necessary for the purposes of any examinations or investigation under this Act;</li> <li>- develop and print photographs of scenes of occupational accidents;</li> <li>- take and remove samples of any articles or substances found at any place of work which he has power to enter and of the atmosphere in or in the vicinity of such a place of work subject to the employer being notified of any sample so taken;</li> <li>- ...take for analysis sufficient samples of any substance used or intended to be used in a workplace, being a substance in respect of which he suspects a contravention of any rule made under this Part, or which he thinks may prove on analysis to be likely to cause bodily injury to the persons employed.</li> </ul>
<p><b>Interviews</b></p>	<p><b>South Africa</b>  <i>Occupational Health and Safety Act 85 of 1993, section 29(1)(b)</i>                      An inspector may, for the purposes of this Act, question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates.</p>
<p><b>Production of books, registers and documents</b></p>	<p><b>Benin</b>  <i>Labour Code No. 98-004, 1998, article 274</i>                      Labour inspectors have the power to require the reproduction of any books, records or documents.</p> <p><b>Finland</b>  <i>Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces Act No. 44, 2006, section 4(1)(5)</i>                      Inspectors have the right to receive from employers for inspection an agreement on the provision of occupational health care concluded between the employer and an occupational health care service provider or the employer's description of occupational health care services it has provided, as well as an occupational health care action plan, workplace analysis and any other description of occupational health care activities necessary for enforcement purposes.</p>

<p><b>Collaboration with employers and workers</b></p>	<p><b>Peru</b>  <i>Safety and Health at Work Law No. 29783, 2011, article 96(a)</i>                      Labour inspectors have the faculty to include in the inspection visits the workers, their representatives, the experts and technicians, and the representatives of the joint committees or those officially designated that they deem necessary for the best development of the inspection of OSH.</p> <p><b>New Zealand</b>  <i>Health and Safety at Work Act No. 2015, NO. 70, Schedule 2, Part 1(8)</i>                      A health and safety representative may consult the regulator or an inspector about any work health and safety issue.</p> <p><b>Spain</b>  <i>Prevention of Occupational Risks Act 31/1995, article 36.2(a)</i>                      The Prevention Representatives, in the exercise of the competencies conferred on them, shall be empowered to accompany experts in assessments of the working environment, as well as, in accordance with the provisions of article 40 of this Act, to accompany the Labour and Social Security Inspectors in the inspections and checks which they carry out in workplaces in order to check compliance with the law on occupational risk prevention, and shall be able to make any remarks which they deem appropriate.</p>
<p><b>Investigation of occupational accidents and diseases</b></p>	<p><b>Finland</b>  <i>Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces Act No. 44, 2006, sections 6</i>                      Investigation of an occupational accident causing death or severe injury that comes to the notice of occupational safety and health authorities shall be carried out urgently. In the investigation, the course of events and the causes of the accident, and the possibility of preventing similar accidents, shall be analysed.</p>



**Country example 156**

**Additional labour inspection powers embedded in OSH legislation**

Power	Example
<p><b>Request assistance from other public authorities or experts</b></p>	<p><b>Trinidad and Tobago</b>  <i>Occupational Safety and Health Act, 2004, No.1, art. 72(1)(b)</i>                      An inspector has the power to request the presence and assistance of a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty.</p> <p><b>Finland</b>  <i>Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces Act No. 44, 2006</i>  <i>Section 12(1)</i>                      Occupational safety and health authorities may have recourse to outside experts in order to investigate circumstances significant for enforcement purposes.  <i>Section 52</i>                      On the request of occupational safety and health authorities, the police shall give executive assistance for carrying out enforcement.</p>

### 4.3 Power to make orders and issue notices, including the power to stop work

The power of labour inspectors to issue notices plays a key role in preventing accidents and diseases as the notice may require an employer to cease or correct non-compliant behaviour.

There are two main types of notices: improvement and prohibition. The differences between these are essentially that:

- improvement notices require the duty-holder to undertake an action(s) while prohibition notices mandate the duty-holder to refrain from certain action(s); and
- improvement notices may be served with a time limit while prohibition notices usually have immediate effect.

When labour inspectors discover a risk to the safety and health of workers, they may need to issue an order requiring the employer to undertake an action to eliminate or control such a risk in a given time frame. However, if such a risk is of an imminent and serious nature, inspectors will need to serve an order with immediate executory force to stop the work that creates the risk. In parallel, labour inspectors may be required to initiate the sanctioning process. However, if the risk is minor, labour inspectors may decide to only advise and warn the employer instead of issuing a notice.

The power to order stoppage of work in case of imminent and serious risk is of specific importance given the immediate nature of the danger and the high likelihood of a harm to occur. Labour inspectors should have the power to take urgent action when they identify situations of “imminent danger” during a workplace inspection. In such circumstances, inspectors may be authorized to suspend work, direct that immediate action be taken to rectify the problem and prohibit the continuation of work until the non-complying conditions that place workers in imminent danger have been remedied or eliminated.

Issuing orders related to safety and health is a key prerogative of labour inspectors that is required by international labour standards and should be explicitly embedded in legislation.

#### International labour standards



- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 12(1)(c)(iii) of Convention No. 81 stipulates that “labour inspectors provided with proper credentials shall be empowered to enforce the posting of notices required by the legal provisions”.

Under Article 13(1) of Convention No. 81 provides that “labour inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers”.

#### Attention



#### Imminent dangers to the safety and health of workers

Ordering work stoppage in case of *imminent dangers to the safety and health of workers* is a key prerogative of labour inspectors. Any related appeal shall not have suspensive effect on such order.

Article 13(2) of Convention No. 81 further stipulates that “in order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a judicial or administrative authority which may be provided by law, to make or to have made orders requiring -

- (a) such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the health or safety of the workers; or
- (b) measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

Article 18 of Convention No. 129 makes similar provision in relation to agricultural undertakings and furthers that power to explicitly authorize inspectors to make orders requiring: (a) alterations to premises, tools, equipment or machines (in addition to installation and plants); and

- (b) measures with immediate executory force, which can go as far as halting the work, in the event of imminent danger to health or safety.

The CEACR has urged countries to implement legislative provisions that authorize labour inspectors to take action with immediate executory force in cases of imminent danger to workers’ safety and health, without subjecting the execution of such actions to a confirmation by a judge or suspending their execution in case of an appeal.<sup>14</sup>

Both Conventions clarify that where the procedure for inspectors to make orders that they prescribe is not compatible with the administrative or judicial practice of a member State, inspectors shall have the right to apply to the competent authority for the issuance of orders or for the initiation of measures with immediate executory force (Article 13(3) of Convention No. 81 and Article 18(3) of Convention No. 129).

Article 18(4) of Convention No. 129 further prescribes that the defects noted by the inspector when visiting an undertaking and the orders the inspector is making or having made shall be immediately made known to the employer and the representatives of the workers.

The CEACR noted with interest that the scope of inspection has been extended in many national legislations to cover all the factors that could pose a threat to safety and health in establishments liable to labour inspection where hazardous work is carried out. The CEACR also observed that in cases where defects do not pose an imminent danger, labour inspectors may grant a period of grace within which the prescribed modifications must be made and that the notice deadline is sometimes fixed by legislation but that more often is left to the labour inspector to determine in the light of individual circumstances and the complexity of the measures proposed.<sup>15</sup>

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<sup>14</sup> ILO, *General Survey*, 2006, para. 117.

<sup>15</sup> ILO, *General Survey*, 2006, para. 110.



**Country example 157**

**Power of notification and work stoppage embedded in legislation**

Country & Law	Provision
<p><b>Kenya</b>  <i>Occupational Safety and Health Act No. 15, 2007 section 39</i></p>	<p>(1) In this section “a notice” means an improvement notice or prohibition notice.</p> <p>(2) A notice may but need not, include directions as to the measures to be taken to remedy any contravention or matters to which the notice relates, and any such directions may be framed to -</p> <p>(a) any extent by reference to any code of practice approved by the Director; and</p> <p>(b) afford the person on which the notice is served a choice between ways of remedying the contravention or matter.</p> <p>(3) Where any of the provisions of this Act or the rules made thereunder apply to a building or any matter connected with a building, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to requirements of any building rules to which the building or matter would be required to conform.</p> <p>(4) Before an occupational safety and health officer serves a notice in connection with any premises used or about to be used as a workplace, requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he shall consult the fire authority of the area in which the premises are located.</p> <p>(5) Where an improvement notice or prohibition notice, which is to take immediate effect, has been served—</p> <p>(a) the notice may be withdrawn by an occupational safety and health officer at any time before the end of the period specified therein in pursuance of section 36 or section 37, as the case may be; and</p> <p>(b) the period so specified may be extended by an occupational safety and health officer at any time when an appeal against the notice is not pending.</p>
<p><b>Denmark</b>  <i>Working Environment Act No. 1072 of 2010, section 77</i></p>	<p>(1) The Working Environment Authority may decide matters which are in contravention of this Act, or in contravention of regulations or decisions in pursuance of this Act, and in this respect order that matters be remedied immediately or within a specified period.</p> <p>(2) Where the Working Environment Authority finds it necessary in order to avert an imminent, serious risk to the safety or health of the employees or any other persons, it may order that the risk be addressed immediately, including</p> <ol style="list-style-type: none"> <li>1. that those present shall leave the danger zone immediately,</li> <li>2. that the use of a machine, machine part, container, prefabricated construction, appliance, tool, or other technical equipment or a substance or material be discontinued, or</li> <li>3. that work as such be discontinued.</li> </ol> <p>(3) The Director General of the Working Environment Authority may order that, any person who has supplied or placed on the market technical equipment or personal protective equipment or a substance or material which presents a risk to health and safety, despite being utilized in accordance with its relevant instructions, shall take the necessary measures to remedy the matter. In this connection the Director General may order:</p> <ol style="list-style-type: none"> <li>1. the technical equipment, by virtue of its technical characteristics, presents the same risk as technical equipment where placing on the market is prohibited or restricted or where the technical equipment is subject to special conditions, or</li> </ol>

	<p>2. the technical equipment has technical characteristics presenting a risk due to shortcomings of a harmonised standard.</p> <p>(4) At the request of the European Commission, the Working Environment Authority may order that placing on the market of technical equipment be prohibited or restricted, or that the technical equipment be made subject to special conditions, if</p> <ol style="list-style-type: none"> <li>1. the technical equipment, by virtue of its technical characteristics, presents the same risk as technical equipment where placing on the market is prohibited or restricted or where the technical equipment is subject to special conditions, or</li> <li>2. the technical equipment has technical characteristics presenting a risk due to shortcomings of a harmonised standard.</li> </ol> <p>(5) The Working Environment Authority may</p> <ol style="list-style-type: none"> <li>1. prohibit placing on the market of technical equipment or personal protective equipment marked in contravention of the regulations on CE marking,</li> <li>2. order that technical equipment or personal protective equipment marked in contravention of the regulations on CE marking be withdrawn from the market, or</li> <li>3. order that placing on the market of technical equipment or personal protective equipment marked in contravention of the regulations on CE marking be restricted.</li> </ol> <p>(6) The Working Environment Authority may order the person who has supplied or placed on the market technical equipment, personal protective equipment, or a substance or material to destroy this in an appropriate manner, if the technical equipment, personal protective equipment, or substance or material poses a serious risk to health and safety”.</p>
<p><b>Thailand</b> <i>Safety, Occupational Hygiene and Workplace Environment Act B.E. 2554, 2011, section 36</i></p>	<p>Whereas an OSH inspector found that an employer, an employee or any concerned person has violated or failed to comply with the OSH Act 2011 or any Ministerial Regulations issued under this Act or found that the working conditions, buildings, premises, machinery or equipment used by the employee may be dangerous to the employee, the OSH inspector shall have the power to order such person to stop such violating actions, or to correct, improve or conform properly within 30 days. If there is necessary cause which prevents such operation to be able to be completed within such period, the OSH inspector may extend such period not more than twice, each with 30 days from the due date of such period.</p> <p>If necessary, upon permission of the Director-General of the Department of Labour Protection and Welfare (or designated person), the OSH inspector shall have the power to order the employer to stop the usage of machinery or equipment, building, premise or to bind and stamp on material which may cause severe danger to the employee, in whole or in part, until corrective actions have been made to conform correctly to such order.</p>
<p><b>Peru</b> <i>Law on Safety and Health at Work No. 29783, 2011 article 96, (f) and (h)</i></p>	<p>Labour inspectors have the power to:</p> <ul style="list-style-type: none"> <li>- require the subject inspected to carry out, within a certain period of time, the modifications that are necessary in the facilities, in the work equipment or in the working methods that ensure compliance with the provisions relating to the health or safety of workers ... and to:</li> <li>- order the suspension or immediate prohibition of work or tasks due to non-observance of the regulations on the prevention of occupational risks, when there is a serious and imminent risk for the safety or health of workers, with the support of the police force.</li> </ul>
<p><b>United Kingdom</b> <i>Health and Safety at Work etc. Act 1974, section 20(2)(e)</i></p>	<p>Issue a non-disturbance order to preserve the accident scene and protect evidence An inspector may direct that premises which the inspector may enter under the Act be left undisturbed for as long as is reasonably necessary for the purpose of an examination or investigation under the Act.</p>

### 4.4 Power to propose issuance of financial penalties or fines

In some countries, laws give inspectors the discretion to issue infringement notices or initiate procedures for the labour inspectorate or a court to impose fines for OSH contraventions. In other countries, laws allow labour inspectors to impose sanctions themselves. The disadvantage of the latter is that it may increase the possibility of corruption.



Country example 158 Financial penalization powers embedded in OSH legislation	
Country and law	Provision
<b>Ireland</b> <i>Safety, Health and Welfare at Work Act No. 10, 2005, section 79</i>	If an inspector has reasonable grounds for believing that a person is committing or has committed a prescribed offence under the relevant statutory provisions, he or she may serve the person with a notice in the prescribed form stating that— (a) the person is alleged to have committed the offence, and (b) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
<b>Cuba</b> <i>Infractions of Legislation on Labour, Hygiene at Work and Social Security Decree–Law No. 246, 2007, art. 36</i>	In the event that the inspector verifies an infraction during the inspection procedure, the inspector imposes a fine and other corresponding administrative measures.
<b>Peru</b> <i>Law on Safety and Health at Work No. 29783, 2011 art. 96 (i)</i>	Inspectors can propose sanctioning measures to the Entity which is tasked with managing the social insurance when there are social security infringements.
<b>United Republic of Tanzania</b> <i>Occupational Health and Safety Act No. 5, 2003, section 88(1)</i>	The Chief Inspector may, if satisfied that any person has committed an offence under this Act or under any regulations made under this Act, by order, compound such offences by requiring such person to make payment of a sum of money ...
<b>Burkina Faso</b> <i>Labour Code, Law No. 028–2008/AN, art. 396</i>	Labour inspectors impose, in accordance with the present law, fines for minor offences to be paid by the offenders to the Public Treasury.

#### Non-monetary sanctions

There are a number of non-financial sanctions that can be used by regulators to enforce compliance with OSH laws. These sanctions are generally not available to inspectors directly, but may be triggered by their observations or recommendations or evidence gathered in the course of their investigations.

One example is an OSH regulator (or another appropriate body) suspending or revoking a company’s licence to undertake certain activities or perform certain tasks (for example operating a major hazard facility, operating certain types of plant or machinery or storing certain dangerous substances).<sup>16</sup> Other non-monetary sanctions could include the publication of “shame list”, community service or exclusion from public procurement (see also section XI of this Support Kit).

<sup>16</sup> ILO, *General Survey*, 2006, para. 301.



### Country example 159

Country	Provision
<b>Barbados</b> <i>Safety and Health at Work Act 2005, section 53(2)</i>	Where the Chief Labour Officer certifies as unsuitable any room that is in actual use, he shall suspend the operation of the certificate for such period as he considers reasonable with a view to enabling the occupier to render the room suitable or to obtain other premises.

## 4.5 Power to initiate and conduct prosecutions

Legislation should provide for prosecution in cases of non-compliance that leads to adequate sanctions. Lawmakers should consider whether labour inspectorates are to be mandated to initiate and conduct prosecutions upon a finding of non-compliance or whether this prerogative should be assigned to another competent authority (such as the office of the public prosecutor). Labour inspectors may appear in court as witnesses.

National laws or regulations may require that labour inspectors issue duty holders an improvement notice to carry out remedial or preventive measures or prohibition notice to abstain from a conduct that constitutes a violation of the OSH law, prior to initiating prosecution.



### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 17(1) of Convention No. 81 and Article 22(1) of Convention No. 129 establishes that “persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given”.

According to Article 17(2) of Convention No. 81 and Article 22(2) of Convention No. 129 “it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings”.

Article 23 of Convention No. 129 indicates that “if labour inspectors in agriculture are not themselves authorised to institute proceedings, they shall be empowered to refer reports of infringements of the legal provisions directly to an authority competent to institute such proceedings”.



**Country example 160**  
**Power to prosecute embedded in OSH legislation**

Country	Provision
<p><b>Peru</b>  <i>Safety and Health at Work Law No. 29783, 2011, article 96(g)</i></p>	<p>Labour inspectors have the power to initiate a sanctioning procedure by issuing a notice of infringement due to non-compliance with safety and health at work rules.</p>
<p><b>Kenya</b>  <i>Occupational Safety and Health Act No. 15, 2007, section 33</i></p>	<p>An occupational safety and health officer may, although he is not an advocate, prosecute, conduct or defend before a magistrate's court any charge, information, complaint or other proceeding arising under this Act, or in the discharge of his duty as occupational safety and health officer.</p> <p>It shall not be an objection to the competency of an occupational safety and health officer to give evidence as a witness in any prosecution for an offence under this Act that the prosecution is brought at his instances or conducted by him.</p>
<p><b>Malaysia</b>  <i>Occupational Safety and Health Act No. 514, 1994, section 61</i></p>	<p>Prosecutions in respect of offences committed under this Act or any regulation made thereunder may, with the prior written consent of the Public Prosecutor, be instituted and conducted by an occupational safety and health officer or by an officer specially authorized in writing by the Director General subject to the provisions of the Criminal Procedure Code.</p>
<p><b>Spain</b>  <i>Labour and Social Security Inspection System Act 23/2015, art. 22(14)</i></p>	<p>Inspectors have powers to recommend their superiors to initiate a proceeding before the Labour Courts.</p>
<p><b>United Kingdom</b>  <i>Health and Safety at Work etc. Act of 1974, section 39</i></p>	<p>An inspector, if authorized in that behalf by the enforcing authority which appointed him, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under any of the relevant statutory provisions.</p>



**Questions for discussion**

**The concept of enforceable undertakings under Australian law**

The Australian OSH law creates the concept of *enforceable undertaking*. An enforceable undertaking is a written, legally-binding document that sets out various commitments from a duty-holder who has been found by the regulator to have contravened provisions of the OSH law, to take various actions such as remedying non-compliant practices, undertaking training, or any other actions to increase compliance with OSH laws. The acceptance of an undertaking is an alternative to court proceedings. A breach of the undertaking may allow the regulator to institute court proceedings seeking pecuniary penalties for a breach of the undertaking, and may also allow them to institute proceedings in relation to the original breach. See, for example, Part 11 of the Queensland Work Health and Safety Act 2011.

## 5. Protection of labour inspectors in the exercise of their functions and powers<sup>17</sup>

In order to ensure that labour inspectors can conduct their functions and exercise their powers without fear of reprisals, legislation may exclude the possibility of labour inspectors incurring civil and criminal liability, as is the case in Kenya and South Africa. Alternatives include assigning the civil and criminal liability that would otherwise apply to a labour inspector or other officer to the state, as is the case in Australia, or providing for indemnification for the labour inspector as is the case in the United Kingdom.



### Country example 161

#### Protection of labour inspectors in OSH legislation

##### Australia

*Work Health and Safety Act 2011, section 270*

An inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act; it stipulates in subsection 2 that a civil liability that would, but for subsection 1, attach to a person, attaches instead to the Commonwealth.

##### South Africa

#### Occupational Health and Safety Act 85 of 1993

*Section 31(4)*

An inspector holding an investigation shall not incur any civil liability by virtue of anything contained in the (investigation) report referred to in subsection (2).

*Section 32(13)*

An inspector presiding at any formal inquiry shall not incur any civil liability by virtue of anything contained in the (formal inquiry) report compiled in terms of subsection (9).

##### Kenya

*Occupational Safety and Health Act No. 15, 2007, section 41*

No matter or thing done by an occupational safety and health officer shall if the matter or thing is done bona fide for the executing of the functions, powers or duties under this Act, render the officer personally liable for any action, claim or demand whatsoever.

##### United Kingdom

*Safety and Health at Work etc. Act, 1974, section 26*

Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

## 6. Duties and prohibitions applicable to labour inspectors

In addition to powers, labour inspectors are subject to a number of duties and prohibitions to ensure that they discharge their functions with independence and fairness, to a high professional standard and without causing any unlawful detriments.

<sup>17</sup> General consideration taking into account country practices.

## 6.1 Prohibition of conflicts of interest

Legislation should include a prohibition of conflict of interest and require an inspector to disclose any pecuniary or other personal interest in a business or workplace that the inspector has to inspect. This disclosure should be made to the head (or delegate) of the department or agency of which the inspector is an officer.

The rationale behind the prohibition and disclosure of possible conflicts of interest is to avoid any inappropriate and unfair actions taken by labour inspectors that are detrimental to the rights of inspected undertakings and employers as well as to prevent corruption.



### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 15(a) of Convention No. 81 and Article 20(a) of Convention No. 129 stipulate that “labour inspectors shall be prohibited from having any direct or indirect interest in the undertakings under their supervision”.

The CEACR considers that the concept of “interest” should be defined in national legislation and include interests such as participation in the management of the enterprise, either directly, or through an intermediary; the purchase of shares or financial involvement; or an interest in the use of a patent or brand name. This is not only to prevent situations of clear conflict of interest but also to allow the identification of any other situation which could be reasonably perceived as likely to have an undue influence on the discharge of the inspector’s functions.<sup>18</sup>



### Country example 162

#### Guyana

*Occupational Safety and Health Act No. 32 of 1997, article 12(5)*

No person who is the occupier of any industrial establishment or is directly or indirectly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about such establishment shall be appointed an inspector or act as such.

#### Australia

*Work Health and Safety Act, 2011, section 158*

(1) An inspector must give written notice to the regulator of all interests, pecuniary or otherwise, that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector’s functions.

(2) The regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.

18 ILO, *General Survey*, 2006, para. 227.

## 6.2 Duty of confidentiality

Confidential information is that obtained by inspectors in the course of their official duties or in connection with the administration or enforcement of OSH legislation, in particular:

- the source of complaints;
- business, manufacturing and other commercial secrets; and
- information about the personal affairs of a person (for example, the state of someone's physical or mental health).



### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 15(b) of Convention No. 81, and Article 20(b) of Convention No. 129 states that “labour inspectors shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties”.

Article 15(c) of Convention No. 81 and Article 20(c) of Convention No. 129 states that “labour inspectors shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint”.

Exceptions may be provided in some cases, in particular when information is required by the police or judicial authorities to prosecute a violation.<sup>19</sup>



### Country example 163

#### Botswana

*Factories Act No. 31, 1973, section 68(6) and (7)*

No inspector, except insofar as is necessary for the purposes of a prosecution for an offence under this Act, shall publish or disclose to any person the details of any manufacturing or commercial or working process which may come to his knowledge in the course of his duties. An inspector shall treat as absolutely confidential the source of any complaint bringing to his notice a contravention of the provisions of this Act, and shall give no intimation to the occupier or his representative that a visit of such inspector was made in consequence of such complaint.

#### South Africa

*Occupational Health and Safety Act 85 of 1993, section 36*

No person shall disclose any information concerning the affairs of any other person obtained by him in carrying out his functions in terms of this Act, except-

- (a) to the extent to which it may be necessary for the proper administration of a provision of this Act;
- (b) for the purposes of the administration of justice; or
- (c) at the request of a health and safety representative or a health and safety committee entitled thereto.

<sup>19</sup> ILO, *General Survey*, 2006, para. 231.

### 6.3 Duty to avoid damaging property<sup>17</sup>

Inspectors should attempt to avoid disturbance or damage to property during the exercise of their functions and powers. Legislation may include relevant provisions.



#### Country example 164

##### Australia

*Work Health and Safety Act, 2011, section 182*

In the exercise, or purported exercise, of a compliance power, an inspector must take all reasonable steps to ensure that the inspector, and any assistant to the inspector, cause as little inconvenience, detriment and damage as is practicable.

### 6.4 Duty of labour inspectors to submit reports

The duty to submit reports may have various aims, including as a means of accountability; as a tool to gather relevant information to inform decision-making and strategic planning and allocation of resources; to facilitate the elaboration of annual reports of labour inspectorates; and also as means of documenting evidence gathered through inspection and investigations that may lead to or be used in legal proceedings.

As public officials, inspectors are generally subject to statutory public sector requirements about professionalism, honesty, impartiality, competence and overall accountability. If so, those standards do not need to be repeated in OSH legislation, however, otherwise it may be appropriate to include them in the OSH law.



#### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 19 of Convention No. 81 and Article 25 of Convention No. 129 state that "Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year."



#### Country example 165

##### South Africa

*Occupational Health and Safety Act 85 of 1993*

*Section 31*

(2) After completing the investigation in terms of subsection (1) the inspector shall submit a written report thereon, together with all relevant statements, documents and information gathered by him, to the attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector.

(3) Upon receipt of a report referred to in subsection (2), the attorney-general shall deal therewith in accordance with the provisions of the Inquests Act No. 58, 1959, or the Criminal Procedure Act No. 51, 1977 as the case may be.

*Section 32*

(9) At the conclusion of an inquiry under this section the presiding inspector shall compile a written report thereon.

(10) The evidence given at any inquiry under this section shall be recorded and a copy thereof shall be submitted by the presiding inspector together with his report to the chief inspector, and in the case of an incident in which or as a result of which any person died or was seriously injured or became ill, the inspector shall submit a copy of the said evidence and the report to the attorney-general within whose area of jurisdiction such incident occurred.

(12) Upon receipt of a report referred to in subsection (10), the attorney-general shall deal therewith in accordance with the provisions of the Inquests Act, No. 58, 1959, or the Criminal Procedure Act No. 51, 1977, as the case may be.

**Trinidad and Tobago***Occupational Safety and Health Act, 2004, No. 1, section 70(2)*

It shall be the duty of a Chief Inspector to report to the Executive Director on such matters concerning the administration, enforcement and furtherance of the purposes of this Act as the Executive Director may request and to carry out any directions given to him by the Executive Director.

## 6.5 Duty of labour inspection authorities to elaborate annual reports

The elaboration of annual reports is paramount to gathering all relevant data that is needed for the inspectorate to measure its performance as well as to plan strategically its interventions. Legislation should require the publication of an annual report from the labour inspectorate that contains, among other things, information about inspections, their outcomes and statistics. Annual reporting requirements for government agencies is usually covered by administrative laws; however, OSH-related reporting may also be the subject of OSH legislation.



### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)
- [Occupational Safety and Health Convention, 1981 \(No. 155\)](#)

Articles 20 and 21 of Convention No. 81, Articles 26 and 27 of Convention No. 129 and Article 11(e) of Convention No. 155 require annual reports and specify the information that must, at a minimum be published in those reports.

Article 20 of Convention No. 81 and Article 26 of Convention No. 129 furthermore stipulate that annual reports shall be published not later than 12 months as from the expiration of the year to which they relate and shall be transmitted to the Director-General of the International Labour Office within three months of their publication.

Article 21 of Convention No. 81 and Article 27 of Convention No. 129 list the matters that shall be covered in the annual report as follows:

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) statistics of workplaces liable to inspection and the number of workers employed therein;
- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;
- (f) statistics of industrial accidents; and
- (g) statistics of occupational diseases.

Paragraph 9 of Recommendation No. 81 further details the content of the annual reports due by labour inspectorates.



### Country example 166

#### Australia

*Work Health and Safety Act, 2011, section 152(a)*

The regulator has the function to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act.

#### United States

*Occupational Safety and Health Act No. 91-596, 1970, section 8(g)(1)*

The Secretary and Secretary of Health and Human Services are authorized to compile, analyse, and publish, either in summary or detailed form, all reports or information obtained under this section (related to inspection, investigation and record-keeping).



## Checklist

### Section 10

Question	Covered by OSH law		Observations
	YES	NO	
	Does the law list the functions of labour inspectors, including:		
<b>C81, Art. 3(1)(a)</b>	(a) secure the enforcement of OSH legislation;		
<b>C81, Art. 3(1)(b)</b>	(b) supply technical information and advice;		
<b>C81, Art. 3(1)(c)</b>	(c) inform the competent authority about defects or abuses not specifically covered by the law;		
<b>R81, Para. 2</b> <b>R133, Para. 11</b>	(d) assess safety and health dimension of plans for new establishments, plants, or processes of production; and		
<b>R133, Para. 14(2)(g)</b>	(e) participate in workers' education programmes?		
	Does the law require labour inspectors/inspectorate to coordinate with other competent authorities and stakeholders, such as:		
<b>C81, Art. 5(a) C155, Art. 15(1)</b>	(a) other governmental officials;		
<b>R81, Paras 5-6</b>	(b) workers' and employers' representatives; and		
	(c) other?		
	Does the law recognize the following powers of labour inspectors:		
<b>C81, Art. 12 C129, Art. 16</b>	(a) power to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;		
<b>C81, Art. 12.1(c)</b>	(b) power to inspect and investigate, including:		
<b>C129, Art. 16.1(c)</b> <b>C81, Art. 12.1(c)(iv)</b>	(i) power to carry out any examination, test or enquiry;		
<b>C129, Art. 16.1(c)(iii)</b> <b>C81, Art. 12.1(c)(i)</b>	(ii) power to take or remove for purposes of analysis samples of materials and substances;		
<b>C129, Art. 16.1(c)(i)</b> <b>C81, Art. 12.1(c)(ii)</b>	(iii) power to interrogate the employer or the staff of the undertaking;		
<b>C129, Art. 16.1(c)(ii)</b> <b>C129, Art. 19(2)R81, Para. 5</b>	(iv) power to require the production of any books, registers or other documents;		
	(v) power to investigate occupational accidents and diseases;		
	(vi) power to request the collaboration of employers and workers;		
<b>C81, Arts 12-13, C129, Art. 18</b>	(vii) power to make orders and issue notices including power to stop work;		
<sup>-1</sup>	(viii) power to propose issuance of financial penalties or fines; and		
<b>C81, Art. 17 C129, Arts 22, 23</b>	(ix) power to initiate and/or conduct prosecutions?		

<sup>1</sup> General consideration taking into account country practices.

Question		Covered by OSH law		Observations
		YES	NO	
<b>C81, Art. 6 C129, Art. 8</b>	Does the law provide for the appointment of labour inspectors?			
- <sup>1</sup>	Does the law provide for protections of labour inspectors in the exercise of their duties?			
	Does the law provide for duties and prohibitions applicable to labour inspectors, including:			
<b>C81, Art. 15(a) C129, Art. 20(a)</b>	(a) prohibition of conflicts of interest;			
<b>C81, Art. 15(b)(c) C129 Art. 20(b)(c)</b>	(b) duty of confidentiality;			
- <sup>1</sup>	(c) duty to avoid damaging property; and			
<b>C81, Art. 19 C129, Art. 25</b>	(d) duty of labour inspectors to submit reports?			
<b>C81, Art. 20-21, C129, Arts. 26-27, R81, 9</b>	(e) duty of labour inspection authorities to elaborate annual reports			



SECTION

11

**OSH-related  
violations and  
penalties**

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# ▶ 11

## OSH-related violations and penalties

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### 1. Introduction

OSH legal standards exist to establish a minimum code of conduct and practice to which duty holders must align their behaviour. The contravention of these standards should be deterred, including through penalties. Violations of OSH legislation and the corresponding penalties must be clearly defined by the law.

#### Definition

##### What are violations and penalties for the purpose of this Support Kit?

**Violation:** instance of non-compliance, contravention, offence, infraction or breach of legal provisions to which lawmakers usually attach penalties.

**Penalty:** coercive and punitive measure that lawmakers foresee for non-compliance with legislation, also referred to as **sanction**.

#### International labour standards

- [Labour Inspection Convention 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 18 of Convention No. 81 and Article 24 of Convention No. 129 acknowledge the key role of enforceable sanctions in making regulatory systems effective and require Member States to include appropriate penalties in national laws or regulations and to enforce them effectively.

The various types of duty holders, their OSH responsibilities and liabilities are covered in sections II and IV of this Support Kit.

As is the case for OSH legal requirements, related violations can be defined in a range of different types of legal instruments or a combination of them, including the OSH law or labour law, subordinate instruments and in the criminal law. Minor infractions usually give rise to reprimands and smaller monetary penalties and may be covered in secondary legal instruments such as regulations and decrees. More serious violations are often set out in the OSH law or labour law. These may be sanctioned with more important monetary penalties and may result in tougher consequences for the employer, such as a temporary suspension of operations or even a suspension of licence to do business. The most serious violations are included in the criminal law/code when the legislator decides to punish them with criminal penalties such as imprisonment.

## 2. Violations: Non-compliance with OSH law provisions<sup>1</sup>

### 2.1 Introduction

When creating a system of OSH violations, regulators need to determine how to configure these violations. In order for regulators to do this, they need to have a fair understanding of the following questions that this subsection discusses:

- What are the constitutive elements of violations?
- What are the various levels of culpable mind (also known as *mens rea*) that can be required for each violation?
- What are the various types of aggravating factors that can be attached to each violation?
- What are the different typologies of violations that exist?

### 2.2 Constitutive elements of violations

Violations are composed of two main constitutive elements:

- The objective element (also known as *actus reus*): an action or an omission that contravenes an obligation laid down in a law;
- The subjective element (also known as *mens rea*): guilty or culpable mind (see subsection 2.3 below); and
- The connection between the objective and the subjective elements: these elements should be linked, that is the culpable mind should be related to the action or non-action.

These constitutive elements are present in both a *conduct violation* and an *outcome violation* (see definitions opposite). However, in an outcome violation there are two additional constitutive elements:

- the outcome or result of the action or non-action: this outcome is a negative result that translates into a harm; and
- causation: there should be a direct linkage between the action or non-action and culpable mind, and the result.

#### Definition

A **conduct violation** is one in which the duty holder has not fulfilled a required action without it resulting in a harm.

An **outcome violation** is one in which the non-fulfilment of a required action has resulted in a specific harm (e.g. workers' death, injury, illness).

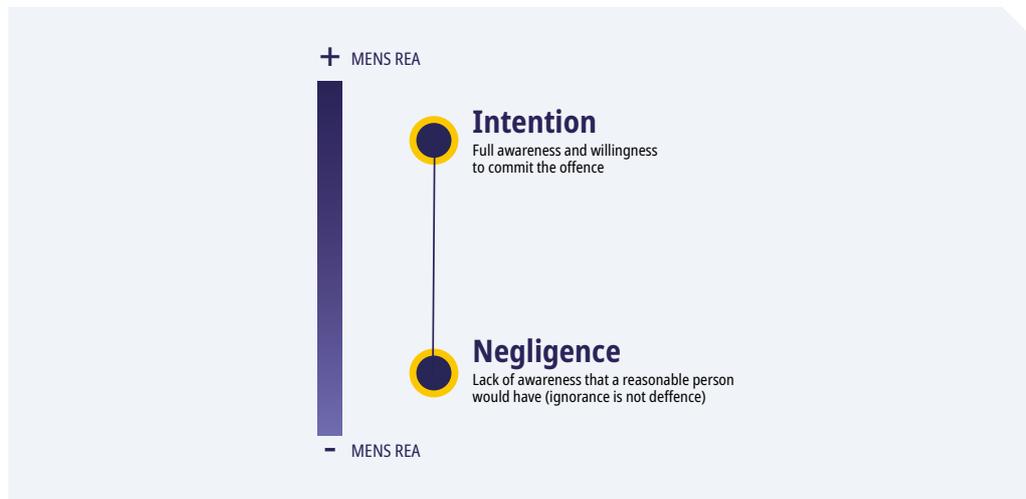
<sup>1</sup> General consideration taking into account country practices.

### 2.3 The subjective element in violations: culpable mind (mens rea)

The subjective element is particularly relevant in criminal law, which requires a culpable mind in order to qualify an action or omission as a crime. Violations carrying more significant punishments tend to require a higher degree of *culpability*. It is also relevant in civil law, especially when it comes to establishing compensation for any damages caused to workers.

Being culpable or exhibiting a guilty mind (mens rea) means having some degree of awareness that the action or omission in question constitutes a wrongdoing. Countries may legislate different degrees of culpability. At a minimum, countries tend to make a distinction between intention and negligence but they may also legislate additional intermediate degrees. It is to be noted that the accused party cannot generally claim ignorance of the law as justification for an action or omission.

Figure 17: Types of culpability



#### Country example 167

##### Levels of culpability

##### Culpable mind (mens rea) required at intentional, recklessness or negligence level

South Africa	Saint Lucia	Switzerland
<i>Occupational Health and Safety Act No. 85, 1993, section 38(p)</i>	<i>Criminal Code, No. 9 of 2004, article 92</i>	<i>Federal law of 20 March 1981 on accident insurance, article 113</i>
Any person who...wilfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the health or safety of any person, shall be guilty of an offence.	Death caused by <b>gross negligence or recklessness</b> : "A person upon whom the law imposes a duty or who has taken upon himself or herself any duty tending to preserve life and: a) who regardless of the life, safety, welfare and health of others, neglects to perform in that duty or performs it <b>negligently</b> and thereby causes the death of another person; or b) who acts <b>recklessly</b> in such a manner as to create an obvious and serious risk of causing physical injury to some other person who thereby causes the death of that other person; is guilty of manslaughter."	The person who in violation of the obligation to inform provided inaccurate information or refused to provide information, did not meet the prescribed forms or the worker who infringed the provisions on prevention of accidents and occupational diseases without endangering other people, if acted <b>intentionally</b> , shall be punished with a detention or a fine. If the person has acted <b>negligently</b> he/she shall be liable to a fine.

## 2.4 Strict liability violations

In OSH law, the subjective element or culpable mind is not always required in order to qualify an action or omission that breaches the law as a “violation”. This is known as “strict liability”. In fact, violations of the OSH law are treated in some countries mostly as strict liability violations. This may be clarified in the OSH law or by means of jurisprudence. Some OSH laws make an explicit reference to *strict liability*.



Country example 168 Strict liability provisions		
Common law jurisdiction	Relevant legislation	Example of strict liability enforcement provisions (not exhaustive)
<b>Australia</b>	Work Health and Safety Act 2011, section 12F(2)	<b>Strict liability</b> applies to each physical element of each offence under this Act, unless otherwise stated.
<b>Canada<sup>2</sup></b>	Canada Labour Code, Part II on OSH, section 148	Subject to this section, every person who contravenes a provision of this Part is guilty of an offence and liable ....
<b>New Zealand<sup>3</sup></b>	Health and Safety at Work Act 2015, sections 48 and 49	<i>Offence of failing to comply with duty that exposes individual to risk of death or serious injury or serious illness</i> (1) A person commits an offence against this section if— (a) the person has a duty under subpart 2 or 3; and (b) the person fails to comply with that duty; and (c) that failure exposes any individual to a risk of death or serious injury or serious illness. <i>Offence of failing to comply with duty</i> (1) A person commits an offence against this section if the person— (a) has a duty under subpart 2 or 3; and (b) fails to comply with that duty.
<b>South Africa</b>	Occupational Health and Safety Act 1993, section 38(e)	Any person who hinders or obstructs an inspector in the performance of his functions shall be guilty of an offence.
<b>Spain<sup>4</sup></b>	The Labour Infractions and Sanctions Law, approved by Royal Legislative Decree No. 5/2000	This Law includes OSH-related infractions and sanctions. Strict liability applies in relation to the administrative sanctions contained in this Law.
<b>Bolivarian Republic of Venezuela</b>	Organic Law of Labour and Workers (State Gazette N° 6.076 of 7 May 2012)	Article 43 <b>Objective responsibility</b> of the employer Every employer shall guarantee workers conditions of safety, hygiene and an adequate work environment and is responsible for occupational accidents and occupational illnesses suffered by workers, apprentices, interns, scholarship holders at the workplace or as a result of work-related causes. The responsibility of the employer will be established, whether or not there is fault or negligence on his/her part or that of workers, apprentices, interns or scholarship holders ...

2 OSG, “The OSHA and Strict Liability Offences”, 2017.

3 New Zealand Law Society, “Payment of a Fine Takes Priority over Payments to Shareholders and Directors”, 2019.

4 Mutual Universal, *Prevención de riesgos laborales para PYME: Responsabilidades legales en PRL*, 2017.

## 2.5 Aggravating factors

Aggravating factors are facts or circumstances that increase the degree of culpability of a given duty holder and the gravity of the violation that is charged – and therefore also increase the severity of the penalty that can be levied.

**Figure 18.** Aggravating factors lead to increased penalties for violations of OSH laws



Aggravating factors include:

- ▶ a pattern of repeated violations of different or same nature (known as *recidivism*, *recurrence*, *systemic failure to comply*);
- ▶ a pattern of persistency (such as a significant duration of the violation);
- ▶ vulnerability of victims exposed to the violation (such as workers under 18);
- ▶ particularly serious outcome or conduct (such as a fatal accident);
- ▶ number of workers affected by the violations;
- ▶ high degree of culpable mind (*mens rea*)(that is, the violation was intentional or involved gross negligence);
- ▶ specific work context or type of work (such as high-risk industries and assignments);
- ▶ infringement of previous orders and citations;
- ▶ failure to implement preventive and protective measures that should have been implemented; and
- ▶ disregard of the recommendations made by the OSH professional, the OSH services , the workers’ representatives on OSH or the workplace OSH committee



### Country example 169

Laws that integrate some of the above aggravating factors

#### Denmark

*Section 82(2) of the Working Environment Act No. 1072, 2010* states that penalties may increase to imprisonment for up to 2 years if the violation has resulted in an accident involving serious personal injury or death, while *section 82(3)* adds that it shall be regarded as an aggravating circumstance that employees intentionally or grossly negligently violate the law’s requirements for (1)the use of personal protective equipment; (2) application of extraction measures; (3) the use of protective equipment or safeguards; (4) the use of safe working methods; or (5) certificates for cranes or forklifts.

<b>Germany</b>
<i>Section 26(1) of the Act on the Implementation of Measures of Occupational Safety and Health 1996</i> states that a term of imprisonment of no more than one year or a fine shall be imposed as a penalty on anyone who ... persistently repeats an act described in section 25(1) [contravening an enforceable order in their capacity as employer].
<b>New Zealand</b>
The <i>Health and Safety at Work Act 2015</i> provides for a penalty of up to \$3 million for an <i>offence of reckless conduct in respect of duty</i> (under section 47) and a penalty of up to \$500 000 for an <i>offence of strict liability</i> (under section 49).
<b>Spain</b>
<i>Article 39 of the Labour Infractions and Sanctions Law, approved by Royal Legislative Decree No. 5/2000</i> , establishes the following criteria that will be taken into account in order to graduate the sanctions of OSH-related infringements:
<ul style="list-style-type: none"> <li>(a) The degree of danger of the activities carried out in the company or workplace.</li> <li>(b) The permanent or transitory nature of the risks inherent to these activities.</li> <li>(c) The seriousness of the damage produced or that could have occurred due to the absence or deficiency of the necessary preventive measures.</li> <li>(d) The number of affected workers.</li> <li>(e) The individual or collective protection measures adopted by the employer and the instructions given in order to prevent risks.</li> <li>(f) Failure to comply with previous warnings or requirements ...</li> <li>(g) Failure to comply with the proposals made by the prevention services, the prevention delegates or the company's OSH committee to correct existing legal deficiencies.</li> <li>(h) The general conduct of the employer in respect of the strict observance of the rules on the prevention of occupational hazards.</li> </ul>
<b>Togo</b>
<i>Article 293 of the Labour Code, Act No. 2006-010</i> imposes imprisonment in cases of repeat offending (recidivism), while <i>article 294</i> states that other sanctions are to be doubled in cases of recidivism.

## 2.6 Typology of OSH violations

OSH violations may be codified in different categories and for each category there may be differences in terms of how violations are classified; what is required of investigation/inspection processes; who is the competent authority responsible for handling the violation; and the range of penalties that may follow the violation. These categorizations are based on two main variables: whether the offence is based on a defendant's *conduct* or the *outcome* of their conduct; and whether the offence is of a lower or higher degree of *gravity and seriousness*, based on its particulars.



<b>Policy options</b>	
<b>Overview of different types of violations</b>	
OSH violations by conduct or outcome	OSH violations by gravity or seriousness
(a) Conduct violations	(a) OSH violations based on severity of conduct
(b) Outcome violations	(b) OSH violations based on severity of outcome

## 2.6.1 OSH violations by conduct or outcome

### (a) Conduct violations

These involve breaches of OSH legal standards established under civil, labour, administrative or criminal law. Conduct violations are based on the factual finding that the action or inaction of a duty holder violated OSH legal standards. They are also referred to by “process standards” since they require duty holders to operate in a way that meets certain standards.



#### Country example 170

##### United Kingdom

*Section 33(1) of the Health and Safety at Work etc. Act 1974* includes a number of conduct violations. For example it stipulates that it is an offence for a person -

- (a) to fail to discharge a duty to which he is subject by virtue of sections 2 to 7;
- (b) to contravene section 8 or 9;
- (c) to contravene any health and safety regulations or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of or any condition or restriction attached to any licence, approval, exemption or other authority issued, given or granted under the regulations);
- (...)

##### Poland

*Article 220 of the Polish Criminal Code* states that whoever, being responsible for OSH, does not fulfil the duties involved and as a result exposes an employee to an immediate danger of loss of life or a serious detriment to health, shall be subject to the penalty of deprivation of liberty for up to three years.

##### Republic of Korea

*Article 10(1) of the Occupational Safety and Health Act No. 13096, 2016* states that for industrial accidents regulated by order of the Ministry of Labour ... an employer shall report their background, causes, date of report, plans to prevent a recurrence, etc., to the Minister of Labour under the conditions prescribed by order of the Ministry of Labour. Failure to do so is an offence under *article 72(3)*.

### (b) Outcome violations

These are based on factual findings that OSH legal standards were breached by a duty holder, the duty holder had a culpable state of mind (*mens rea*) and the breach resulted in a specific outcome. Criminal outcome violations require proof of the violation of an OSH legal standard which resulted in a specified harm, usually a degree of injury.



#### Country example 171

##### Spain

*Article 142 of Organic Law 10/1995 of the Penal Code*, states that a person who through gross negligence causes the death of another shall be punished for reckless homicide, and specifies that this offence can be committed through professional negligence, meaning that employers and others with OSH responsibilities may be prosecuted if they cause a death as a result of serious negligence in the exercise of their tasks.

**Canada**

*Section 221 of the Criminal Code* states that every person who by criminal negligence causes bodily harm to another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

**United Republic of Tanzania**

*Article 81 of the Occupational Health and Safety Act No. 5, 2003* states that where any person is killed, or suffers serious bodily injury, in consequence of the occupier or owner of a factory or workplace having contravened any provision of this Act or of any regulation ... the occupier or owner of the factory or workplace shall without prejudice to any other penalty, be liable to a fine of not less than 10 million Tanzanian shillings or to imprisonment for a term not exceeding two years ...

**2.6.2 OSH violations by gravity or seriousness****(a) OSH violations based on severity of outcome**

Violations falling into this category and their penalty will be determined by the specific harm that is inflicted (violation outcome).

**Country example 172****Burkina Faso**

*Article 354 of the Criminal Code* states that the responsible person is punished with imprisonment between two months and one year and with a fine between 50, 000 and 3 million CFA francs ... when the failure to addressing or take precautions for injuries, accidents and diseases **results in the total incapacity of workers to perform for more than three months.**

**Cuba**

*Article 296 of the Penal Code, Act No. 62, 1987* stipulates that:

1. When the infringement of OSH protective measures **results in the death of a worker**, the person responsible for the implementation and enforcement of these measures will be subject to imprisonment from two to five years.
2. In the event that the infringement of OSH protective measures **results in serious injuries or damage to the health of a worker**, the responsible person will be subject to imprisonment from six months to two years or a fine from two to five hundred quotas.
3. In the event that the person responsible to implement the OSH protective measures did not implement them **causing the death of a worker**, the responsible person will be subject to imprisonment from one to three years or a fine from 300 to 1,000 instalments.
4. In the event that the person responsible for implementing OSH protective measures did not implement them, **causing serious injury or damage to the health of a worker**, the responsible person will be subject to imprisonment from three months to one year or a fine of 100 to 300 instalments.

**(b) OSH violations based on severity of conduct**

Alternatively, the gravity of violations may be systematically placed into formal classifications based on **the risk of harm** and the importance of the neglected action in terms of its relevance for preventive purposes. These classifications not only distinguish the gravity of the violation but often what penalties may be imposed.



### Country example 173

#### Spain

*The Labour Infractions and Sanctions Law, approved by Royal Legislative Decree No. 5/2000* classifies OSH violations into three categories of seriousness:

*Minor violations* include breaches of norms of occupational risk prevention which do not directly pose risks to the physical integrity and health of workers (art.11).

*Serious violations* include failures to carry out risk assessments or preventive activities, as well as breaches of norms for the prevention of occupational risks that create serious risks to the physical integrity and health of workers (art.12).

*Very serious (severe) violations* include failures to suspend operations that are deemed to pose a serious and imminent risk to the safety and health of workers (art.13).

#### Netherlands

The *Decree of the Minister of Social Affairs and Employment of 27 November 2012 setting out the Policy Rule on the imposition of a fine on working conditions legislation (G&VW/AA/2012/16953)* defines three classes of violation:

*serious violations (ZO)* incur immediate fines; they involve work activities that give rise to serious risks to persons (such as "Exposure of workers ... to concentrations of substances in the individual respiratory zone of an employee to more than twice the (legal or employer's) limit"; *direct debit violations (ODB)* incur administrative penalties; they involve issues of a lack of professional competence or the neglect of risk mitigation (such as "*The lack of adequate expert supervision of young workers*"); and

*second offence violations (OO)* result in fine settlements, where a warning has previously been given for other less serious violations and shortcomings have not been addressed.

## 2.7 Violations not of an OSH nature that are relevant to the effectiveness of OSH legislation

In addition to violations related to OSH performance and governance, it is necessary to include in the law a number of key specific violations that are not of an OSH nature but are essential in ensuring the effectiveness of OSH laws. This subsection discusses some of these, with examples.



### Policy options

#### Selected violations of non-OSH nature at a glance

- (a) Obstruction of labour inspectors
- (b) Obstruction of workers' representatives
- (c) Illicit appropriation of labour inspectors' identities
- (d) Bribery of inspectors
- (e) Retaliatory conduct against whistle-blowers
- (f) False statements or representations
- (g) Failure to respond to requests made by the Labour Inspectorate
- (h) Leaking information about inspections
- (i) Unacceptable conducts
- (j) Non-compliance with labour inspectors' orders

#### (a) Obstruction of labour inspectors

Many jurisdictions legislate various violations in relation to the obstruction of labour inspectors in the performance of their duties, such as refusing entry to premises, withholding information or not complying with inspection requests.



### International labour standards

- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Article 18 of Convention No. 81 and Article 24 of Convention No. 129 establish that “adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced”.



### Country example 173bis

#### Australia

*Work Health and Safety Act 2011*

*188 Offence to hinder or obstruct inspector*

A person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so.

*Section 189 Offence to impersonate inspector*

A person who is not an inspector must not, in any way, recklessly hold himself or herself out to be an inspector.

*Section 190 Offence to assault, threaten or intimidate inspector*

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the person intends, by engaging in that conduct, to directly or indirectly assault, threaten or intimidate another person; and
- (c) the other person is an inspector or a person assisting an inspector.

#### Barbados

*Safety and Health at Work Act 2005, section 100*

(1) The occupier of every workplace, his agents and servants, shall at all times furnish the means required by an inspector as being necessary for an entry, examination, inspection, inquiry, the taking of samples or otherwise for the exercise of his powers under this Act in relation to such workplace.

(2) Any person who

- (a) wilfully and without reasonable cause delays, hinders or interferes with an inspector or a member of the Fire Service in the exercise of his powers or functions, as the case may be under this Act;
- (b) fails to produce any register, certificate or document that he is required to produce in pursuance of this Act or the regulations;
- (c) wilfully withholds any information as to who is the occupier of a workplace;
- (d) conceals or attempts to conceal any person from an inspector or prevents or attempts to prevent any person from appearing before or being examined by an inspector;
- (e) fails to comply with a requisition of an inspector in pursuance of this Act;
- (f) assaults, resists, obstructs or intimidates an inspector or a member of the Fire Service in the execution of his duty under this Act or the regulations;
- (g) uses any indecent, abusive or insulting language to an inspector or a member of the Fire Service in the execution of his duty;
- (h) by the offer of any gratuity, bribe, promise or other inducement prevents or attempts to prevent an inspector or a member of the Fire Service from carrying out his duty under this Act or the regulations; or
- (i) contravenes any provision of this Act, the regulations or any Order made under this Act; is guilty of an offence.

**South Africa**

*Section 38 (e) and (f) of the Occupational Health and Safety Act No.85, 1993* states that any person who hinders or obstructs an inspector in the performance of his functions ... [or] refuses or fails to comply to the best of his ability with any requirement or request made by an inspector in the performance of his functions shall be guilty of an offence and on conviction be liable to a fine not exceeding R50,000 or to imprisonment for a period not exceeding one year.

**(b) Obstruction of workers' representatives**

In addition to defining as a violation the obstruction of inspectors, some jurisdictions also make it an offence to obstruct workers' representatives in the exercise of their OSH-related functions.

**Country example 174****Australia**

South Australia's *Work Health and Safety Act, 2012* sets out a series of offences relating to the obstruction of WHS permit-holders (union officials with powers to inquire into OSH violations, inspect premises and consult with workers). *Section 144* states that a person must not, without reasonable excuse, refuse or unduly delay entry into a workplace by a WHS entry permit holder who is entitled to enter the workplace under this Part and can be subject to a civil penalty of \$50,000 if they breach this requirement.

**Cote d'Ivoire**

*Article 100.5 of the Labour Code, Act No. 95-15* imposes penalties, including fines and the possibility of 2 to 12 months' imprisonment, for those who obstruct the appointment of OSH committee members or obstruct them in the course of their duties.

**(c) Illicit appropriation of labour inspectors' identifies**

OSH legislation may regard impersonating a labour inspector as a violation (if not otherwise prohibited under the criminal law).

**Country example 175****New Zealand**

*Section 180 of the Health and Safety at Work Act No. 70 2015* states that a person who is not an inspector must not, in any way, hold himself or herself out to be an inspector and that a person contravening this prohibition is liable on conviction to a fine not exceeding \$10,000.

**(d) Bribery of inspectors**

Some OSH laws and labour codes make specific mention of violations for the bribery of inspectors in order to receive preferential treatment. In other jurisdictions, general anti-bribery laws apply to OSH Inspectors, as to other public servants.

**Country example 176****Japan**

*Article 115(3) of the Industrial Safety and Health Act No. 57, 1972* states that when a person who was an executive official or personnel of a special agency that conducts the special service accepted, required or made a promise of bribes for some request related to the duty during the person's time in office, and committed fraud or failed to carry out the person's duty in relation to the bribes, the person shall be punished with penal servitude not exceeding five years.

**(e) Retaliatory conduct against whistle-blowers**

Many countries make it an offence for employers to engage in retaliatory conduct against whistle-blowers or other workers who have taken action to remedy OSH violations at the workplace, such as notifying the competent authorities. Protection usually extends to workers' representatives at a minimum. For instance, in some countries workers' representatives cannot be dismissed without the approval of the labour inspectorate.

**Country example 177****Finland**

Chapter 47, section 4, of the Criminal Code of Finland No. 39/1889 indicates that an employer, or a representative thereof, who without a justification based on law or a collective employment or civil service agreement dismisses, otherwise discharges or puts on compulsory unpaid leave an employee representative ... or a work safety trustee ... or puts him or her on part time, shall be sentenced, unless the act is punishable as work discrimination, for violation of the rights of an employee representative, to a fine.

**(f) False statements or representations**

It may be a separate violation to make false statements or representations in OSH-related records and submissions to labour inspectors or regulators.

**Country example 178****United Kingdom**

Section 33(1)(l) of the *Health and Safety at Work etc. Act 1974* states that it is an offence for a person intentionally to make a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, to make use of any such entry which he knows to be false.

**(g) Failure to respond to requests made by the labour inspectorate**

Failure to address requests made by the labour inspectorate following an inspection may be defined as specific violations too.

**Country example 179****Mozambique**

*Article 267(d) of the Labour Law No. 23, 2007* states that failure, without justification, of employers or their representatives to appear before the labour inspectorate services when called upon to make statements, provide information or deliver or exhibit documents, following the finding of an act that requires such procedures, constitutes a transgression punishable by a fine of between five and ten times the minimum wage.

**(h) Leaking information about inspections****International labour standards**

- [Labour Inspection Convention, 1947 \(No. 81\)](#)

There is a shared understanding that effective inspections are unannounced. This is reflected in Article 12(1)(a) of Convention No. 81, which stipulates that labour inspectors shall be entitled to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. Providing information related to plan inspection visits may seriously undermine their effectiveness. This can be set as a specific violation.



### Country example 180

#### Puerto Rico

*Article 25(f) of the Law on Safety and Health at Work* states that any person who gives advance notice of any inspection to be conducted under this Act, without the authorization of the Secretary or persons designated by the latter, shall, upon conviction, be punished by a fine of not more than five thousand (5,000) dollars or by a term of imprisonment of not more than six (6) months, or both penalties.

### (i) Unacceptable conduct

Lastly, it may be that a national jurisdiction wishes to introduce specific violations relating to responsibility for unacceptable conduct, either in the form of **harassment and bullying** or in the form of **suicide**. Workplace harassment, bullying offences (particularly relating to “mobbing”, coordinated bullying by co-workers) and sexual harassment have come to be recognized as significant psychosocial risks in many jurisdictions.



### Country example 181

#### Japan

The law recognizes two different work-related suicide issues – *karoshi* (death from overwork), and *karojisatsu* (suicide induced by overwork). These concepts gave rise to the introduction of the *Death from Overwork etc. Prevention and Promotion Law (Law No. 100 of June 27, 2014)* and provides a basis for civil liability (failing to discharge the duty to organize work so that mental and physical illness does not result from the accumulation of excessive fatigue or stress), and recently also provided the basis of regulatory OSH violations.

#### France

*Article L.1152-1 of the French Labour Code* states that employees shall not be subjected to repeated actions constituting moral harassment, which intentionally or unintentionally deteriorate their working conditions and are likely to violate their rights and dignity, impair their physical or mental health or jeopardize their professional future. The *French Penal Code Section 222-33-2* establishes a sanction of two years imprisonment and €30,000 fine for this offence. *Article L.412 1-1 of the French Labour Code* extends the employer’s general obligation to take the necessary measures to ensure safety and to protect the physical **and mental** health of workers.

#### Spain

Article 184 of Organic Law No. 10/1995 of the Penal Code states that any person requesting favours of a sexual nature, for him/herself or for a third party, in the context of an employment relationship ... and with such behaviour places the victim in an objective and seriously intimidating, hostile or humiliating situation, shall be punished as a perpetrator of sexual harassment, with three to five months of imprisonment or a fine of six to ten months.

### (j) Non-compliance with labour inspectors’ orders

Non-compliance with labour inspectors’ orders is another type of violation, which although not in itself an OSH offence, may still be an OSH-related offence when the order is connected with the violation of an OSH law or provision.



### Country example 181bis

#### Barbados

*Section 118 of the Safety and Health at Work Act, 2005* stipulates that any person who fails to comply with the requirements of a notice issued under sections 112 (improvement notice) or 113 (prohibition notice) shall be liable, on summary conviction to a fine of \$1,000 and \$100 for every day the offence continues.

## 3. Penalties for OSH violations<sup>5</sup>

### 3.1 Introduction

When creating a system of OSH penalties, regulators need to determine how to configure them. In order for regulators to do this, they need to have a good understanding of the following questions, which will be discussed in this subsection:

- What kind of penalties should be used in order to meet the broader goals of the OSH system?
- Who should bear responsibility for imposing and collecting penalties?
- What are the different types of penalties?
- How to determine the appropriate level of penalties?
- How should the levels of monetary penalties (fines) be calculated? What factors should be taken into consideration?
- What alternatives to monetary penalties should be provided for under OSH laws? What purposes and effects are they intended to have?

### 3.2 Bodies that have the power to impose penalties

Penalties are usually applied by administrative or labour law enforcement agencies, typically a labour inspectorate, following the finding of a violation, and may be subject to adjudicative processes. They may also be imposed by courts following a prosecution of the OSH violation and it is the role of the court to decide the appropriate penalties. Different adjudicators may have different sentencing powers and ranges of penalty they can apply.



### Country example 182

#### Sweden

*The Work Environment Act, No. 1977:1160, Chapter 7, section 7* stipulates that the Swedish Work Environment Authority may issue, to a person with safety responsibility such orders or prohibitions as are needed to secure compliance ... [and] a decision to issue an order or prohibition may be accompanied by a conditional financial penalty.

<sup>5</sup> General consideration taking into account country practices.

### 3.3 Principles underpinning penalties

Legal penalties reinforce the legal norms to which they apply by deterring violations and incentivizing compliance with OSH legal standards. They are also a form of “negative reward”, in that the sanctioning of violators reassures those who comply that doing so does not place them at a competitive disadvantage. Penalties for OSH violations should be:

- **Proportionate to the gravity of the harm and the wrong involved in the violation.** Less serious violations are punished with smaller penalties, while violations that are more serious are associated with bigger penalties. Also, law and policymakers should assess the nature and importance – the weight – of the public interest or good that they seek to protect when defining violations and their corresponding penalties. Such assessment may entail tacking stock of violations and penalties established in other branches of law and making sure that the levels of penalties to be established for OSH violations are comparable to those of penalties established to protect rights or interests that have a similar weight.
- **Effective in altering the behaviour of duty holders to dissuade them from wrongdoing.** This can be achieved for example by establishing monetary penalties that are sufficiently high to make it cheaper to comply with the law than to breach it. Non-monetary penalties are effective when for example they limit substantially the economic profit that duty holders may make.
- **Predictable and non-arbitrary.** This means that the law should clearly define the applicable penalties and indicate which violations they concern. A person can only be prosecuted and imposed a penalty for a violation that is set out in the law – this is known as the principle of legality (or *nulla poena sine lege*).

### 3.4 Types of penalties



<b>Policy options</b>
<b>Types of penalties</b>
(a) Monetary penalties (b) Non-monetary penalties

#### (a) Monetary penalties

In order to make a decision on how to adjust monetary penalties and determine their amount, policymakers should understand the various mechanisms for setting the rate of monetary penalties.

As a general principle, it is recommended to legislate a mechanism for adjusting the rates of monetary penalties, when needed, to keep up with inflation. When updating the rate, the social partners should be consulted to set the new amount. The decision should be based on objective criteria and discussed with independent experts.



<b>Policy options</b>
<b>Mechanisms to set the rate of monetary sanctions</b>
Option 1: Establishing a fixed amount for each type of violation Option 2: Providing for flexibility in determining the penalty's amount for each type of violation Option 3 Systematizing monetary penalties for OSH violations through use of criteria for the calculation of monetary sanctions Option 4: Defining the amount of penalty by reference to another external measure, such as the national minimum or average wage

### Option 1: Establishing a fixed amount for each type of violation

The advantage of this option is increased legal certainty: duty holders and enforcement bodies know the exact amount that should be levied. In turn, the disadvantage is that this option is rigid and does not allow for flexibility to appreciate aggravating factors and culpable mind (*mens rea* – as explained above) that have not been captured in the definition of the violation and consequently it does not allow the penalty's amount to be adjusted accordingly. Another disadvantage is that a fixed amount is not adaptable to economic fluctuations. If policymakers opt to define the monetary penalties that can be imposed in the form of fixed or concrete figures or amounts, it may be easier and more desirable to do this in secondary sources (such as regulations or decrees) rather than in primary sources (labour codes or penal codes), so that they may be more easily updated in response to changing social and economic circumstances.



#### Country example 183

##### Seychelles

*Section 39 of the Occupational Safety and Health Decree, 1978* states that an employer who, without reasonable excuse, fails to comply with any of these Regulations is guilty of an offence and liable to a fine of 20,000 Seychelles rupees. In this example, the amount of the sanction cannot be increased due to recidivism for instance, unless there is another provision that explicitly provides for it. However, the fact that the amount has been fixed in a decree makes it easier for the regulator to update it.

### Option 2: Providing for flexibility in determining the penalty's amount for each type of violation

Such flexibility can be achieved by establishing a range within which the penalty's amount should be fixed (for example a fine of "up to" a maximum amount).

The advantage of this option, as opposed to the first one, is that it allows the enforcement body to adjust the amount of the penalty depending on the existence of aggravating factors and the degree of culpable mind (*mens rea*) that is present. Moreover if the law establishes a fixed amount penalty, this could lead to a situation where the competent authority decides not to impose such penalty when it is considered disproportionate. For example, a situation in which a micro or a small undertaking has committed numerous violations and the sum of penalties corresponding to violation result in an extremely high fine, which is not realistically payable by the undertaking without going bankrupted. The possibility to adjust such penalty(ies) eliminates the risk of similar situations taking place.

The disadvantage is that it can give raise to disparities of the penalty's amounts applied for similar violations and situations if there is not a set of clear criteria to be followed in calculating the amounts of the penalties. This disadvantage can be addressed through the mechanism explained in the following option 3. A couple of examples that illustrate the amount fixing technique hereby discussed are provided below.



#### Country example 184

##### Spain

*Article 142(2) of Organic Law No. 10/1995 of the Penal Code* states that a person who, through less grave negligence, causes the death of another, will be punished with a penalty of a fine of three to eighteen months.

The sanction imposed runs for a time period, within the specified range, for each day of which the convicted person must pay a fine.

**Option 3: Systematizing monetary penalties for OSH violations through use of criteria for the calculation of monetary penalties**

Criteria for the calculation of monetary penalties could be established through law or guidelines. It offers a means of ensuring flexibility and consistency when civil, administrative and criminal law enforcement agencies and adjudicators impose penalties. Other legal sources may also specify the spectrum of aggravating factors, relating to the violation (such as the gravity of the harm) and the offender (their size, their offending record), to be considered in determining the amount of the penalty (previously discussed in this section). A couple of examples are offered below.



**Country example 185**

**United Kingdom**

The main offences within the *Health and Safety at Work etc. Act 1974 (Schedule 3A)* carry penalties of “unlimited fines” when prosecuted. A set of **Sentencing Council Guidelines** were published in 2015 to systematize the setting of fines for OSH breaches. Organizational fines are calculated via reference to several factors:

- (a) The offence category, based on culpability (very high, high, medium, low);
- (b) The seriousness and likelihood of the OSH-related risk (high, medium, low);
- (c) The size of the company (turnover: very large, large, medium, small, micro); and
- (d) The presence or absence of aggravating factors (past violations, ignored warnings from regulators and so on).

**Netherlands**

The Decree of the Minister of Social Affairs and Employment of 27 November 2012 laying down the Policy Rule on the imposition of a fine on working conditions legislation (G&VW/AA/2012/16953) sets out a series of considerations that apply in the determination of a penalty for an OSH violation:

- (a) The classification of the offence (as a ‘serious’, ‘direct debit’, or ‘second offence’ violation);
- (b) The presence of repeated violations (this can increase the fine by up to 300%);
- (c) The size of the company involved (the number of employees);
- (d) The severity of the outcome (death multiplies the fine by 500%; permanent injury by 400%; exposure of more than 50 employees to risk by 200%).

**Option 4: Defining the amount of penalty by reference to another external measure, such as the national minimum or average wage**

The advantage of this amount fixing technique is that the fines adapt to broader economic fluctuations and trends. The disadvantage of this option is that it may require duty holders to make some research or inquiries to find out the actual amount of the fine.



**Country example 186**

**Angola**

Article 31 of the Safety, Hygiene and Health at Work Decree No. 31, 1994 foresees a fine up to ten times the **average monthly salary paid in the company** for each offence.

**El Salvador**

Article 82 of the General Law on Occupational Risks Prevention, approved by Legislative Decree No. 254 allows for the imposition of financial penalties ranging from **4 to 28 times the national minimum wage**.

**Peru**

Article 39 of the Labour Inspection General Act No. 28806, 2006 establishes the maximum ceiling for fines (which varies depending on the degree of seriousness of the violation committed) in terms of “tax units”. The value of the tax unit is established by the Ministry of Economy through a decree and taking into account microeconomic factors.

**Zambia**

Occupational Health and Safety Act No. 36, 2010 uses the notion of “penalty units” to quantify the fines it foresees for offences. The value of the penalty unit is established by means of a Regulation of the Minister of Finance.

**(b) Non-monetary penalties**

A wide range of non-monetary penalties exists, which can be used in addition to monetary penalties or used independently. Non-monetary penalties can be of diverse nature. Having an array of diverse penalties to “choose” from may help the competent authority to “tailor” its response to OSH violations by choosing the most appropriate penalty, depending on the specific context. Non-monetary penalties may also have greater influence on duty holders’ behaviour. A non-exhaustive number of different types of non-monetary penalties are discussed below.

**Policy options****Types of non-monetary penalties**

- (i) Naming and shaming
- (ii) Exclusion from public procurement bidding processes
- (iii) Community service
- (iv) Revocation of licence to operate an undertaking or business closure
- (v) Disqualifying duty holders from legal roles or privileges
- (vi) Placing offenders under probation or supervision schemes
- (vii) Imprisonment

**(i) Naming and shaming**

Labour Inspectorates can maintain a “**shame list**” or **register of non-compliant duty holders** that have committed OSH violations and publicize this using various media, such as official gazettes and public authority websites. An alternative shaming-based penalty is the imposition of a **publicity order** that compels the duty holder or the public authorities to publicize the committed violation and penalty imposed in a highly visible way, such as in a business association publication, a public newspaper or the state gazette. Regulatory shaming penalties can provide a powerful means of bringing about behavioural change.<sup>6</sup>

<sup>6</sup> See Judith van Erp, “Naming without Shaming: The Publication of Sanctions in the Dutch Financial Market”, *Regulation and Governance* 5(3): 287–308.



### Country example 187

#### United States

The *Occupational Safety and Health Administration*, the federal workplace safety regulator, maintains an interactive map of that lists, state by state, all companies convicted of an OSH violation and in receipt of a fine of \$40,000 or more.<sup>7</sup>

#### Ireland

*Section 85 of the Safety, Health and Welfare at Work Act No. 10, 2005* states that the Health and Safety Authority may compile a list of names and addresses and the description of business or other activity of every person who received a fine or any other penalty concerning OSH legislation and may at any time cause that list to be published in such manner as it considers appropriate.

#### United Kingdom

*Section 10(1) of the Corporate Manslaughter and Corporate Homicide Act 2007* states that a court before which an organization is convicted of corporate manslaughter or corporate homicide may make an order (a “publicity order”) requiring the organization to publicize in a specified manner (a) the fact that it has been convicted of the offence; (b) specified particulars of the offence; (c) the amount of any fine imposed; (d) the terms of any remedial order made.

#### Spain

*Article 2 of the Royal Legislative Decree No. 597/2007 on the publication of sanctions for serious occupational safety and health related infractions* states that once sanctions have taken final effect, the competent body that issued [them]... will order that they be made public in the Official Gazette of the State or of the Autonomous Community, in accordance with the corresponding area of competence ... within a period not exceeding three months, and *article 3* adds that such a body may make publicize the sanctions by other public means than those mentioned in the previous section.

### (ii) Exclusion from public procurement bidding processes

Duty holders who have committed OSH violations may be prohibited to bid or submit tenders for public procurement contracts. The OSH law may allow for a ban to be imposed on a specific defendant in any particular case (as part of a package of penalties), or it may specify that *any* defendant will be ineligible for tendering as an automatic consequence of their conviction. Alternatively, government bodies that award public procurement contracts may decide, as a matter of their own policy, that they will not accept tenders from defendants who have been convicted of an OSH violation.



### Country example 188

#### Portugal

*Article 562(2)b of the Law No. 7/2009 approving the Labour Code* allows an offender who commits repeated and serious violations of the Code to be deprived of the right to bid in public tendering processes for a period up to two years.

<sup>7</sup> See United States Occupational Safety and Health Administration, “[Enforcement Cases with Initial Penalties of \\$40,000 or Above](#)”.

**(iii) Community service**

A penalty that combines a degree of reparation with a shaming effect may require a duty holder to perform services in the interest of the community, that is some form of work for the benefit of wider society.

**Country example 189****Canada**

*Section 75(1) of Alberta's Occupational Safety and Health Act, 2017 Act* states that where a person is convicted of an offence against this Act, in addition or as an alternative to taking any other action provided for in this Act, the court may ... make an order directing the person

- (a) to pay, in the manner and the amount prescribed by the court, a sum of money to a party named by the court to be the recipient of such funds, for any of the following purposes:
  - (i) training or educational programmes regarding the health and safety of workers
  - (ii) research programmes into the diagnostic, preventive or remedial aspects of worker health and safety;
  - (iii) any worker health and safety initiative by a non-profit organization;
  - (iv) the establishment and maintenance of scholarships for educational institutions offering studies in occupational health and safety and related disciplines;
  - (v) any other purpose that furthers the goal of achieving healthy and safe work sites; or
- (b) to take any other action the court considers proper.

The order may contain any substance or conditions that the court considers appropriate. This is a broad discretionary power to impose creative sentences.

**(iv) Revocation of licence to operate an undertaking or business closure**

Another penalty that may be imposed following a violation is the ordering of remedial work, temporary work stoppages or the closure of a business.

**Country example 190****Spain**

*Article 26 of the General regulation of the procedure for imposition of sanctions for labour law infractions, approved by Royal Decree No. 928/1998*, establishes that the labour inspectorate may, following serious OSH breaches, propose the suspension of work activities for a specified time or the closure of the corresponding workplace.

**Saudi Arabia**

*Article 236 of the Labour Law* states that any person who violates the provisions... [relating to workplace safety and accident prevention] shall be subject to a fine...or closing down the firm for 30 days or permanently. This measure positions the closure of premises not as a contingent measure (to make improvements) but as a form of punishment in its own right.

**(v) Disqualifying duty holders from legal roles or privileges**

Penalties can also disqualify duty holders from legal roles or privileges, including licences to engage in certain activities (for example, the right to request visas for foreign workers, the licence to engage in a particular business or occupation, a permit to sell alcohol) or to benefit from public subsidies. These may follow on incidentally from an OSH violation.



### Country example 191

#### United Kingdom

*Section 2 of the Company Directors Disqualification Act 1986* empowers a court to make a disqualification order against a person where he is convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company. A breach of the *Health and Safety at Work etc. Act 1974* may constitute such an offence.

#### Spain

*Article 46 of the Labour Infractions and Sanctions Law, approved by Royal Legislative Decree No. 5/2000* provides for automatic withdrawal of public aids, bonuses, and benefits related to employment and vocational training programmes in the event of a number of serious and very serious infractions.

### (vi) Placing offenders under probation or supervision schemes

Orders requiring a programme of supervision or probation following an OSH violation may also be issued. Such an order may augment the use of improvement notices but should specify the terms and duration of any probationary relationship and allocate responsibility for monitoring it.



### Country example 192

#### Canada

*Section 732.1(3.1g) of the Criminal Code, 1985* states that the court may prescribe, as additional conditions of a probation order made in respect of an organization, that the offender ... comply with any other reasonable conditions that the court considers desirable to prevent the organization from committing subsequent offences or to remedy the harm caused by the offence. This extends to OSH-related offences.

### (vii) Imprisonment

Often the most significant penalty that may be imposed following an OSH violation is imprisonment, something that is only relevant in the case of natural persons. Imprisonment tends to be reserved for the most serious (not administrative) criminal outcome violations and is usually imposed by an adjudicator following conviction.



### Country example 193

#### Republic of Korea

Articles 66–68 of the *Occupational Safety and Health No. 13096, 2016* set out the custodial sentences that attach to a series of “groups” of OSH violations. For example, article 67 states that a person who commits an offence that falls under any of the following subparagraphs shall be punished by imprisonment for not more than five years or a fine not exceeding 50 million won.

#### Spain

*Article 142(1) of Organic Law No. 10/1995 of the Penal Code* states that a person who, through gross negligence, causes the death of another, shall be punished as a defendant of reckless homicide, with a prison sentence of one to four years.

This is a criminal outcome offence which can be committed via an OSH failure. The maximum permissible sentence is specified, with consideration of the appropriate level based on the circumstances left to the discretion of the sentencing judge.

## 4. Procedural rules

Determining a violation and imposing a penalty require sound procedural rules. These vary depending on the nature of the violation (administrative/penal).

Detailed discussion of the procedural aspects of OSH law enforcement falls out of the scope of this Support Kit. However, in the context of this Support Kit, it is important to briefly mention the main procedural rules given their paramount role in achieving efficient and effective labour law enforcement systems.

### Useful tools and resources



ILO, [Key Principles Underlying Sanctioning Procedures Applicable to Occupational Safety and Health Violations](#), 2021.

Legislation should feature procedural rules that define the process to be followed when the finding of a violation of OSH legislation triggers formal action or a sanctioning process. Procedural rules include defining the form and content of notices as well as the deadlines and the means by which these may be served; the verification of compliance with orders and notices; the hearings of offenders that the labour inspectorate may need to conduct; and the deadlines, form and notification means for the imposition of penalties.

While in civil law countries procedural rules are usually defined in laws other than OSH laws such as in procedural labour laws and labour inspection statutes, in common law countries some procedural rules are embedded in the OSH Acts.

### International labour standards



- [Labour Inspection Convention, 1947 \(No. 81\)](#)
- [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#)

Of particular importance are procedural rules that establish **mechanisms for reviewing decisions made by labour inspectors or the labour inspectorate**, as these preserve the right of the alleged offender to be heard and defended. Resort to these mechanisms is required under ILS (Articles 13(2) of Convention No. 81 and 18(2) of Convention No. 129). Provision should be made in the legislation for the time frames in which the appeal can be filed; the matters that can be appealed against; the authorities that are competent to hear appeals; and the types of decision they can make.

### Useful tools and resources



ILO, [Labour Inspection Sanctions: Law and Practice of National Labour Inspection Systems](#), 2013.

Appeals can be non-judicial (administrative) and judicial. The first type are those heard by a public administrative authority – the labour inspectorate or the ministry. In the event that the applicant is not satisfied with the outcome of this internal review, the applicant should have resort to a tribunal or court.



**Country example 194**

Country and law	Provision
<p><b>Australia</b> <i>Work Health and Safety Act 2011, Part 12</i></p>	<p>This Act regulates comprehensively the appeals of decisions before the labour inspectorate and the tribunal (Fair Work Commission, Australia's national workplace relations tribunal).</p>
<p><b>South Africa</b> <i>Occupational Health and safety Act, 1993, section 35</i></p>	<p>(1) Any person aggrieved by any decision taken by an inspector under a provision of this Act may appeal against such decision to the chief inspector, and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken.</p> <p>(2) Any person who wishes to appeal in terms of subsection (1), shall within 60 days after the inspector's decision was made known, lodge such an appeal with the chief inspector in writing, setting out the grounds on which it is made.</p> <p>(3) Any person aggrieved by a decision taken by the chief inspector under subsection (1) or in the exercise of any power under this Act, may appeal against such decision to the industrial court, and the industrial court shall inquire into and consider the matter forming the subject of the appeal and confirm, set aside or vary the decision or substitute for such decision any other decision which the chief inspector in the opinion of the industrial court ought to have taken.</p> <p>(4) Any person who wishes to appeal in terms of subsection (3), shall within 60 days after the chief inspector's decision was given, lodge such appeal with the registrar of the industrial court in accordance with the rules of the industrial court;</p> <p>(5) An appeal under subsection (1) or (3) in connection with a prohibition imposed under section 30(1)(a) or (b) shall not suspend the operation of such prohibition.</p>
<p><b>United Kingdom</b> <i>Health and Safety at Work etc Act, section 24</i></p>	<p>(1) In this section "a notice" means an improvement notice or a prohibition notice.</p> <p>(2) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to an [employment tribunal]; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.</p> <p>(3) Where an appeal under this section is brought against a notice within the period allowed under the preceding subsection, then—</p> <p>(a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;</p> <p>(b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).</p> <p>(4) One or more assessors may be appointed for the purposes of any proceedings brought before an [F1 employment tribunal] under this section.</p>

## Checklist

### Section 11



Relevant ILS	Included in the OSH law?	YES	NO	Observations
-. <sup>1</sup>	Violations			
-. <sup>2</sup>	Conduct violations			
-2	Outcome violations			
-. <sup>3</sup>	Aggravating factors			
<b>C81, Art. 18</b> <b>C129, Art. 24</b>	Penalties, including:			
-. <sup>4</sup>	(a) monetary penalties;			
-. <sup>5</sup>	(b) non-monetary penalties; and			
-. <sup>5</sup>	(c) custodial penalties.			
<b>C81, Art. 13(2) C129,</b> <b>Art. 18(2)</b>	Possibility to appeal penalties			

1 Violations must be defined in order to establish related penalties, which are required by ILS.

2 Consideration of a possible classification of types of violations, taking into account country practices.

3 Consideration of factors that can render a violation more serious and thus require a more serious penalty, in the light of country practices.

4 Consideration of the possible classification of types of penalties, taking into account country practices.





SECTION

12

## **Legislative drafting techniques**

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## Legislative drafting techniques

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### 1. Principles of legislative drafting techniques

Legislative drafting techniques play a key role in enacting a law that can be easily understood, navigated, applied and enforced – and can therefore prove effective. They also contribute to creating certainty for constituents regarding how the law will be applied.

It is beyond the scope of this Support Kit to discuss effective legislative drafting in detail; however, a number of key points are briefly discussed below. This is mainly to assist users of this Support Kit whose governments have not developed national guidelines on legislative drafting, or who otherwise require a simplified outline of basic legislative drafting techniques and principles.

Effective, well-drafted legislation should be:

- ▶ **appropriate:** responds to the problems it seeks to resolve;
- ▶ **coherent:** easy to navigate;
- ▶ **clear:** easy to understand and unambiguous;
- ▶ **simple:** does not include any unnecessary elements;
- ▶ **precise:** leaves no uncertainty in the mind of the reader;
- ▶ **internally consistent:** avoids contradictions, misconceptions and misleading language;
- ▶ **externally consistent:** aligns with the existing legal framework;
- ▶ **gender-neutral:** avoids using gender-specific terms and pronouns; and
- ▶ **drafted in a uniform style:** uses uniform language and symbols.



## 1.1 Appropriate

The text of the law should sufficiently address the problems identified and satisfactorily meet the law's objectives.

The following article that sets out the scope of an OSH law is an example of an *inappropriate* provision: "This law applies to situations of increased risk, heavy, hazardous and dangerous working conditions."

It is inappropriate because the objective of an overarching OSH law is to provide a baseline protection from occupational hazards for *all workers* and not just for some workers. Limiting the scope of the law only to workers in certain "types of work/conditions" would not achieve that goal as it would leave many workers unprotected. Workers who do not have dangerous professions may still be exposed to occupational risks as these are inherent to any job.

Another example of an *inappropriate* provision would be: "The employer shall not prevent the employees from taking measures to protect themselves in situations of imminent danger, except in cases of negligent and careless actions." This provision is inappropriate because it does not meet the objective of an OSH law, which is to keep workers safe. The negligence of a worker does not justify keeping that worker in a situation of an imminent danger. It is an OSH principle that if a worker has reasonable justification to believe that a situation presents an imminent and serious danger to his/her life or health, he/she should be able to remove him/herself from that situation of imminent danger.

A further example of *inappropriate* provision would be to require the employer to supply workers with dairy products (such as milk and yogurt) to prevent and/or mitigate the potential negative effects on workers' health resulting from the exposure to hazardous substances such as chemicals. This is an old practice followed by some countries, which lacks scientific evidence to be efficient in preventing health injuries. Notwithstanding the positive effects that dairy products may have on workers' health, by themselves they are far from being sufficient to protect workers exposed to hazardous substances from health injuries. Therefore, it is absolutely necessary to ensure that adequate PPE is used by workers whenever the risks they are exposed to could not have been eliminated or controlled by collective protective measures.

Moreover, foreseeing remuneration for hazardous work to "compensate" workers for exposing them to risks is also inappropriate. As a matter of general principle, *hazard pay* cannot be considered an effective or appropriate policy response. Instead, hazards should be tackled at the source and either eliminated or controlled where elimination is not possible so as to prevent accidents and diseases from occurring. Therefore, paying workers for the risks they are exposed to rather than controlling such risks is not consistent with the preventive approach of international good practice.

It is also important to note that while comparative labour law may showcase good practices and useful food for thought for lawmakers, the transfer of provisions and approaches from one country to another may not always work, especially where the legal, political, economic or social context differs. This may be especially the case for worker representation and participation provisions, the operation and effectiveness of which may depend on how such provisions cohere with the "variety" of capitalism and the industrial relations culture and traditions that prevail in a given country.

## 1.2 Coherent

Coherence refers to the logical structure and flow of a law, which organizes its content in blocks that group provisions on the same topic or with similar ideas. These blocks have several levels: higher-level, basic-level and lower-level units. A *table of contents* at the beginning of the legal instrument provides a snapshot of its content that helps lawmakers to ensure that the structure is coherent and assists users in navigating the law.

**Table 10:** Building blocks of a law

Level	Common law	Civil law
Higher-level units	chapter, part, division, subdivision	book, title, chapter, subchapter, section
Basic-level units	section	article
Lower-level units	subsection, paragraph, subparagraph, item, sub-item	number, paragraph, alinea

Table partially based on European Union, *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation*

### 1.3 Clear, simple and precise

Making laws intelligible is a prerequisite for compliance. A law that is hard for the layperson to understand is a law that will hardly ever be complied with. Therefore, legal instruments should be drafted as clearly, simply and precisely as possible. This can be achieved as follows.

#### Avoid elliptical turns of phrase that feature multiple ideas or concepts and use short sentences, ideally with one concept per sentence

For example: “The employer’s duty to consult workers is ensured through the workplace OSH committee, which is composed by an equal number of representatives of the employer and workers and where the latter are elected by the workers”. This sentence contains four ideas: (i) the employer has a duty to consult workers on OSH; (ii) the employer shall create a joint OSH committee as a consultation mechanism; (iii) the OSH committee shall be composed of an equal number of representatives of the employer and of the workers; and (iv) workers’ representatives shall be elected by the workers. For the sake of clarity, it is recommended to express one idea per sentence.

#### Order sentences in a way that logically reflects the progression of the reasoning

For example: “The employer has the duty to provide PPE to all workers. The employer also has the duty to provide OSH training to workers. The PPE shall be appropriate for the risks present at the workplace. OSH measures shall be at the cost of the employer”. In this case, one single provision encompasses several duties and it mixes the order in which those duties are presented: it starts with the duty to provide PPE, then mentions the duty to provide OSH training and then revisits the duty to provide PPE. Moreover, it is not clear what “OSH measures” refers to: does it refer to both PPE and training or only to one of them? Does it encompass other OSH measures, such as for instance ergonomic office material?

#### Use everyday language and avoid jargon and out-of-date terms

For example: “Duties imposed on an employer under section XXX of the OSH Act *mutatis mutandis* apply to a self-employed person.” *Mutatis mutandis* is a Latin expression often used in legal instruments (that could be considered as legal jargon), which may not be understandable by the lay person.

#### Use the present tense and the active rather the passive voice

For example: “Medical service at the workplace is *ensured* by medical and paramedical staff holding a certification issued by the Minister of Health”. This sentence, which uses the passive voice, is better expressed in the active voice: “Medical and paramedical staff holding a certification issued by the Minister of Health *ensures* the provision of medical service at the workplace”.

### Use positive rather than negative statements

For example: “The employer *shall not* expose workers to risks to their safety and health”. This negative sentence can easily adopt a positive tone instead: “The employer *shall* ensure the safety and health of workers”.

### Respect grammar, spelling and punctuation rules

For example: “Workers has the rights to affiliate to labour protection regimes for health care, undergo examinations for detection of occupational diseases, have occupational accident and disease insurance premium paid by the employer get compensation when suffering from occupational accidents and/or occupational diseases, have the costs of medical assessment for injuries and/or illnesses caused by occupational accidents and diseases paid ...”

Obviously, in this example there are a several grammatical, spelling and punctuation mistakes (missing commas), highlighted in yellow, which make the article hard to follow.

### Avoid excessive use of acronyms and abbreviations and spell out acronyms and abbreviations the first time that they are used

For example, sometimes law drafters refer to authorities by means of acronyms. This is not a recommended practice, as not all citizens will be able to understand what the acronyms refer to.

### Do not include provisions of a non-normative nature such as recommendations, declarations or wishes

For example: “It is recommended that the employer provide personal protective equipment not only to employees but also to other workers labouring in his/her undertaking, such as contractors”. A law is a normative and mandatory instrument, which should not feature recommendations. Such recommendations should instead be presented in a separate guidance document that accompanies or complements the law.

### Use auxiliary verbs that clearly differentiate an obligation (such as “shall”) from a possibility (such as “should” or “may”)

For example: “The employer *may* not deduct from the worker’s wage any sum in return for provided safety and health measures”. It is advisable to use the verb “*shall*” or the expression “*it is forbidden for the employer to*” in order to turn the sentence into a stronger obligation for the employer to cover the costs of safety and health measures.

### Do not include provisions that reproduce, repeat or rephrase passages from other laws, articles or titles of law

For example, reproducing exactly the same text of the law in the implementing regulations is not helpful.

### Reference other articles or laws so that they can be identified by the user and avoid serial or chain references (a provision that references another provision that contains further references)

For example:

- Article 15: The employer shall provide to workers PPE *as indicated in article 35*.
- Article 35: PPE shall comply with the technical rules established in the *respective regulation*.

In this example, there is a chain reference, which requires the reader to visit two articles and a regulation to understand one article. Also, article 35 does not identify the regulation in question. It is advisable to merge article 31 and 35 and indicate the exact title of the regulation, as follows: “The employer shall provide to workers PPE that complies with the technical rules established in *regulation No. 3 of 2020 on the technical requirements for PPE*”.

### Use a reference only when:

- (i) **it simplifies the text;**
- (ii) **it does not make the provision more difficult to understand;**
- (iii) **the act referred to has been published or is sufficiently accessible to the public;**
- (iv) **the consequences of possible amendments of the referred act are considered.**

The above example is applicable here as well. It is easier to refer to a regulation, as opposed to listing all technical rules that may apply in this case in the law and thus duplicating the content of the regulation. At the same time, technical rules are too specific to be included in a general overarching OSH law.

### Give a title to the law that reflects the subject matter of the text and does not mislead users

For example, “Law on the protection of workers”. Readers could misunderstand and think this law is about protection from undue disciplinary measures and unfair dismissal, as opposed to protection of workers from occupational risks.

Another example of unnecessary complexity would be to require the employer to use different forms to record and notify occupational fatal and non-fatal accidents, major accidents, poisoning, diseases, near-misses, provision of first-aid and so on. Instead, it would be simpler and more user-friendly to provide one or two forms that are designed in a flexible manner so that they can be appropriate for any kind of reportable situation. Also, in principle there is no need to use different forms for the purposes of recording and notification since the information that employers will keep and the information that they have to submit to the competent authorities is essentially the same.

Specifying whether an OSH council/committee is national or workplace-based and defining its composition, functions and modus operandi, whenever an OSH law requires the establishment of such a body, will make the law more precise and clear.

## 1.4 Internally consistent

The internal consistency of a law refers to the absence of discrepancies and incongruences throughout the text, such as conflicting provisions. In order to ensure that a law is internally consistent, it is important to:

### Use the same terms to refer to the same concepts throughout the text

For example, defining both “notification” and “reporting” to refer to the same phenomenon (informing the authorities about occupational accidents and diseases) is confusing. Likewise, using the terms “employee” and “worker” interchangeably is problematic because they are traditionally used to refer to different roles. An “employee” is often understood as a person who is in an employment relationship with an employer and works under an employment contract. A “worker” usually refers very broadly to any person who provides a service or work to another person and thus may encompass a contractor, agency worker and independent workers (who are not employees). However, there are no universal definitions of such terms; countries define these terms differently, especially the latter, depending on the national OSH policy, and therefore it is always advisable to carefully define them in the OSH law and also to use either one or the other term but not both terms.

### **Use defined terms throughout the text in a uniform manner, that is, use them as defined and to represent the meaning that these terms have been given**

For example, an OSH law that uses interchangeably different terms such as “competent person”, “OSH professional”, “OSH technician” and “registered person” to refer to the same notion (that is, a professional who is hired to manage OSH at a workplace) lacks internal consistency and creates confusion.

### **Respect the scope of the legal instrument throughout**

For example, limiting the scope of application of certain provisions in the OSH law to specific sectors (construction, mines, manufacturing, agriculture, factories and so on) is inconsistent if that OSH law aspires to have a general and overarching nature, that is to provide baseline protection to *all workers in all branches of economic activities*. Similarly, including isolated provisions for different sectors is confusing as it makes unclear the extent of the scope of the OSH Law. The usual practice is to pass an overarching OSH law, which is then complemented by sectorial OSH laws or regulations that provide additional requirements for the sectors that demand further regulation given their risky nature. In the same way, it is inappropriate to grant differential inspectors’ powers for each sector. Enforcement provisions should extend to and be consistent across all industries, except where the particular nature of the industry requires additional powers to be granted.

### **Whenever requirements are set out, these should clearly indicate who is the responsible subject or duty holder**

For example, “Workers shall be provided with PPE”. It is important to clearly and expressly indicate that it is the duty of the employer to provide workers with PPE. Otherwise, one could argue that it is the obligation of the workers to buy their PPE or that of their trade unions or the state.

Another example of internal inconsistency could be a provision that requires the employer to notify the competent authorities about the occupational disease of an employee, while another provision establishes the confidentiality and privacy of personal medical data. These two provisions are contradictory. If the employer has to respect the confidentiality of personal medical data, he/she cannot be at the same time required to disseminate to third parties information on a disease suffered by a worker.

Internal consistency could be reinforced by a preamble, definitions and schedule/annexes, which can help make the law more intelligible (for further information, see subsection 3 below).

## **1.5 Externally consistent**

For a law to be externally consistent, it must:

- not contradict or conflict with laws of higher rank (such as the Constitution, international law) and laws of the same rank; and
- be aligned and compatible with other OSH-related laws in order to avoid confusion and contradictions.

For example, an OSH law that includes isolated provisions establishing procedural rules risks being externally inconsistent. This is because procedural rules may be regulated in a variety

of legal instruments besides the OSH law, including the labour law; a procedural law that specifically and exclusively regulates labour-related procedures; or a procedural law that applies to any dispute resolution on any issue between a person or a legal entity and the public administration. In fact, it is not rare that procedural rules that may be applicable to OSH (such as filing of complaints, sanctioning a violation and so on) are dispersed among several legal instruments. Therefore, if the OSH law includes procedural rules, it is important to make sure that they are compatible with the procedural provisions contained in other laws.

Transitory and final provisions are recommended to ensure that there is external coherence. These may indicate when the law enters into force and how it affects existing laws (for example it may abrogate some and amend others)(for further information, see subsection 3 below).

## 1.6 Gender-neutral

It is important from a policy perspective to use gender-neutral language in legislation in order to set an example; encourage the rejection of discriminatory language and behaviour; and ensure equality of access to and application of the law. Consequently, law drafters should ensure gender neutrality throughout the law by using the following techniques to contribute to achieving gender-neutral language.

Replace gender-specific terms with neutral terms (for example, replace “man” with “person” or “individual”).

- Replace single pronouns with plural forms (for example, replace “he” and/or “she” with “they”; replace him/her with “their”) or use both masculine and feminine forms (for example, “he or she”; the use of slashes and hyphens is usually discouraged).
- Provide a definition stating that the use of one gender includes in its meaning a reference to the other gender unless the context otherwise requires.
- Repeat nouns instead of using gender-specific pronouns (for example, repeat the noun “the employer” instead of replacing it with “him” or “her”).
- Use gender-neutral job titles (for example “police officer” instead of “policeman”).
- Rephrase the text to avoid the need for gender-specific terms and pronouns (for example, to avoid unnecessary references to “his”, “him” and so on in subordinate clauses).

For example, the following provision is not gender-neutral: “It shall be the duty of every self-employed person to conduct *his* undertaking in such a way as to ensure, so far as is reasonably practicable, that *he* and other persons (not being *his* employees) who may be affected thereby are not thereby exposed to risks to their health or safety”. Instead, gender neutrality can be easily ensured as follows: “It shall be the duty of self-employed persons to conduct *their* undertakings in such a way as to ensure, so far as is reasonably practicable, that *they* and other persons (not being *their* employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

Gender considerations are critical in regulating OSH as pregnant and breastfeeding women require special protections. Moreover, it is important to ensure that there are appropriate sanitation facilities for both men and women. Last but not least, gender-specific needs has to be duly taken into account when setting technical rules applicable to safety measures.



Attention	
Gender neutral vs sexist terminology	
Gender-neutral terms	Sexist terms
individual, person, human being people, community, society, humanity, humankind average person business circles, business managers ordinary person, individual ombudsperson personnel scientists staff, labour, workforce, worker work month or person month chairperson, president, convener police officer seafarer firefighter fisher member of congress council member artisan postal worker, mail carrier	man mankind average man businessmen common man ombudsman manpower working man man month chairman policeman seaman fireman fisherman congressman councilman craftsman mailman
Note: partly based on ILO, <a href="#">Manual for Drafting ILO Instruments</a> , 2006.	

### 1.7 Drafted in a uniform style

Maintaining a uniform style also helps to make a law easier to understand. In this regard, it is important to respect predefined rules on the use of acronyms and abbreviations; capitalization; numbers, dates; and currency and other symbols.

## 2. Structure of an OSH law

While the purpose of this Support Kit is to focus on setting out the content and substance of a comprehensive framework OSH law, it is important to remember that a clear and logical structure for an OSH law can play a central role in ensuring that the laws are accessible to and can be easily navigated by all stakeholders with varying levels of legal literacy. This in turn plays a crucial role in achieving effective OSH management. Broadly speaking, the structure of this Support Kit has been purposely designed to reflect the model structure of a comprehensive framework OSH law.

**Table 11:** Hypothetical structure of an OSH law vs structure of the Support Kit

Chapter or section heading	Corresponding section in this Support Kit
<b>Table of contents</b>	n/a
<b>Preamble/introduction</b>	Section 12
	Section 12 <sup>1</sup>
<b>Scope</b>	Section 2
<b>Institutions within national OSH systems</b>	Section 3

<sup>1</sup> Note that, although the discussion of the definitions is in the final section of this Support Kit, in OSH laws the definitions usually appear as one of the first substantive sections. In this regard, the structure of the Support Kit does not reflect most OSH laws currently in operation.

<b>OSH duty holders and rights holders</b>	Sections 4
<b>Representation, consultation and participation</b>	Section 5
<b>Provisions protecting vulnerable workers</b>	Section 6
<b>Occupational health services</b>	Section 7
<b>OSH professionals</b>	Section 8
<b>OSH data collection: Recording and notification</b>	Section 9
<b>Enforcement of OSH legislation</b>	Section 10
<b>OSH-related violations and penalties</b>	Section 11
<b>Transitional provisions</b>	Section 12
<b>Final provisions</b>	Section 12
<b>Schedules/annexes</b>	Section 12

## 2.1 Enforcement procedural provisions

Procedural provisions can include enforcement procedures for non-compliance, complaint mechanisms and procedures for appealing or challenging the public administration decision making. Effective rules regarding the enforcement of the laws play a crucial role in ensuring that all workplace participants can enjoy the substantive rights and protections that are contained in the substantive law. The focus of this Guide is on the legally substantive content of OSH laws, and so procedural law is generally outside its scope.

## 3. Auxiliary provisions

### 3.1 Preamble

A preamble is a descriptive component of a statute that is generally found after the long title and before the enacting words and substantive provisions. It plays a contextual role in positioning the legislation and providing an overview of the rationale, purpose and/or object of the law. It provides essential information to the reader regarding the legal basis and validity of the law. In some countries, it also contains details on the previous laws that this piece of legislation repeals and/or replaces.

The actual contents of the Preamble varies significantly from country to country; however, broadly speaking the preamble may include the following provisions:

- ▶ introduction, rationale and objectives of the law;
- ▶ pre-existing related legislation, its relevance and status;
- ▶ the legal basis of the law, that is the provisions in a higher statutory authority (such as the Constitution of the state) that enables the law to be adopted;
- ▶ an outline of the mechanism for the transmission of the draft legislation to national parliaments and the legislative procedure to be followed; and
- ▶ references to any international legal instruments adopted by parliament and incorporated in the national law.

### 3.2 Use of definitions

One extremely important aspect of a law is the use of definitions. While it is up to Member States to decide whether to define various terms, in the process of defining each term they should carefully assess (a) the need for the defined term; (b) the architecture of its definition (that is to ensure well-structured and meaningful definitions); and (c) its impact throughout the text (by substituting terms in the text with their definitions).

Law drafters should be aware that using defined terms that are not needed, definitions that are difficult to understand, so-called “circular definitions” (using the defined word in the definition text) or “chain definitions” (a defined term includes in its definition another defined term) are far from being helpful. They make the law unnecessarily heavy and complex and consequently may have a negative impact on compliance.

**Attention**


**Issues in definitions that are often encountered in OSH laws**

Issue	Example	Explanation
Unnecessary definitions	“hard work”, “harmful work”, “hazardous work”	Using and defining several concepts that are very close in meaning to each other is usually unnecessary and may be counterproductive as it creates confusion and makes the law difficult to understand and interpret.
Circular concepts	“Chemical” means a <i>chemical</i> element and compound and a mixture thereof, whether natural or synthetic.	It is discouraged to define a term using a word contained in that term as this does not add any clarity to the meaning of the term.
Chain definitions	“Industrial establishment” means a <i>factory</i> , shop, office or workplace and any building ...	This definition contains the term “factory”, which has been also defined in the law from which this example has been extracted. Including a defined term into the definition of a term adds (often unnecessary) complexity.

Consequently, a decision to define a term should be based on a deliberate rationale outlining the need for such a definition. Only terms that are used throughout the text and that may be ambiguous should be defined. Definitions should be drafted in a straightforward manner, without employing in the text of the definition the defined term or referencing another defined term. Care should be taken to ensure that definitions of OSH-related terms are accurate (that is, in alignment with the internationally agreed meaning of those terms).

The table below contains a selection of regularly defined terms and their definitions as configured in international labour standards. Following the terminology of international labour standards may be particularly helpful to ensure that terms used in national legislation (a) are aligned (and compliant) with them and (b) are conceptually accurate.



<b>International labour standards</b>	
<b>Frequently defined terms</b>	<b>Definitions based on ILS and other ILO normative tools</b>
<b>commuting accident</b>	An accident resulting in death or personal injury occurring on the direct way between the place of work and: (a) the worker's principal or secondary residence; or (b) the place where the worker usually takes a meal; or (c) the place where the worker usually receives his or her remuneration. (Protocol of 2002 to Convention No. 155)
<b>contractor</b>	A person or an organization providing services to an employer at the employer's worksite in accordance with agreed specifications, terms and conditions. (ILO-OSH 2001)
<b>competent person</b>	A person possessing adequate qualifications, such as suitable training and sufficient knowledge, experience and skill for the safe performance of the specific work. The competent authorities may define appropriate criteria for the designation of such persons and may determine the duties to be assigned to them. (Convention No. 167)
<b>dangerous occurrence (incident or near-miss)</b>	Readily identifiable event as defined under national laws and regulations, with potential to cause an injury or disease to persons at work or to the public. (Protocol of 2002 to Convention No. 155)
<b>employer</b>	See section II of this Support Kit.
<b>hazard</b>	The inherent potential to cause injury or damage to people's health. (ILO-OSH 2001)
<b>health</b>	In relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work. (Convention No. 155)
<b>joint OSH committee</b>	Committees in which workers have at least equal representation with employers' representatives. (Recommendation No. 164)
<b>national system for OSH</b>	The infrastructure which provides the main framework for implementing the national policy and national programmes on OSH. (Convention No. 187)
<b>national programme on OSH</b>	Any national programme that includes objectives to be achieved in a predetermined time frame, priorities and a means of action formulated to improve OSH and a means to assess progress. (Convention No. 187)
<b>national preventive safety and health culture</b>	A culture in which the right to a safe and healthy working environment is respected at all levels; in which government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties; and in which the principle of prevention is accorded the highest priority. (Convention No. 187)
<b>occupational accident</b>	An occurrence arising out of, or in the course of, work which results in fatal or non-fatal injury. (Protocol of 2002 to Convention No. 155)
<b>occupational disease</b>	Any disease contracted as a result of an exposure to risk factors arising from work activity. (Protocol of 2002 to Convention No. 155)
<b>occupational health services</b>	Services entrusted with essentially preventive functions and responsible for advising employers and workers and their representatives in the undertaking on: (a) the requirements for establishing and maintaining a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work; and (b) the adaptation of work to the capabilities of workers in the light of their state of physical and mental health. (Convention No. 161)

<b>OSH management system</b>	A set of interrelated or interacting elements to establish OSH policy and objectives and to achieve those objectives. (ILO-OSH 2001)
<b>risk</b>	A combination of the likelihood of an occurrence of a hazardous event and the severity of injury or damage to the health of people caused by this event. (ILO-OSH 2001)
<b>risk assessment</b>	The process of evaluating the risks to safety and health arising from hazards at work. (ILO-OSH 2001)
<b>safety and health committee</b>	A committee with representation of workers' safety and health representatives and employers' representatives established and functioning at organization level according to national laws, regulations and practice. (ILO-OSH 2001)
<b>surveillance of the working environment</b>	A generic term which includes the identification and evaluation of environmental factors that may affect workers' health. It covers assessments of sanitary and occupational hygiene conditions; factors in the organization of work which may pose risks to the health of workers; collective and personal protective equipment; the exposure of workers to hazardous agents; and control systems designed to eliminate and reduce them. From the standpoint of workers' health, the surveillance of the working environment may focus on but not be limited to ergonomics; accident and disease prevention; occupational hygiene in the workplace; work organization; and psychosocial factors in the workplace. (ILO-OSH 2001)
<b>worker</b>	See discussion in section II of this Support Kit.
<b>work-related injuries, ill health and diseases</b>	Negative impacts on health arising from exposure to chemical, biological, physical, work-organizational and psychosocial factors at work. (ILO-OSH 2001)
<b>workers' health surveillance</b>	A generic term which covers procedures and investigations to assess workers' health in order to detect and identify any abnormality.  The results of surveillance should be used to protect and promote the health of the individual, collective health at the workplace and the health of the exposed working population. Health assessment procedures may include but are not limited to medical examinations, biological monitoring, radiological examinations, questionnaires or a review of health records. (ILO-OSH 2001)
<b>workers' representative</b>	Any person who is recognized as such by national law or practice, whether they are:  (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or  (b) elected representatives, namely, representatives who are freely elected by the workers of the [organization], in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the exclusive prerogative of trade unions in the country concerned. (Convention No. 135)
<b>workers' OSH representative</b>	Workers' representative elected or appointed in accordance with national laws, regulations and practice to represent workers' interests in OSH issues at the workplace. (ILO-OSH 2001)
<b>workplace</b>	All places where workers need to be or go to by reason of their work and which are under the direct or indirect control of the employer. (Convention No. 155)

### 3.2.1 Use of “reasonably practicable”

Some countries (mainly common law states) often resort to the phrase “*reasonably practicable*” in setting out employers’ obligations. However, this term may pose interpretation issues both for duty holders and the judiciary if not well defined. Therefore, if used, a definition is highly desirable. It helps duty holders to understand how to take action that is “reasonably practicable” and assists judges in their interpretative role.

#### Country example 195

##### Australia

*Work Health and Safety Act 2011, section 18*

In this Act, **reasonably practicable**, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- the likelihood of the hazard or the risk concerned occurring; and
- the degree of harm that might result from the hazard or the risk; and
- what the person concerned knows, or ought reasonably to know, about:
  - the hazard or the risk; and
  - ways of eliminating or minimizing the risk; and
  - the availability and suitability of ways to eliminate or minimize the risk; and
  - (e) after assessing the extent of the risk and the available ways of eliminating or minimizing the risk, the cost associated with available ways of eliminating or minimizing the risk, including whether the cost is grossly disproportionate to the risk.

##### United Kingdom

The *Health and Safety Executive* has provided guidance on the meaning of “so far as is reasonably practicable” and clarified that it “involves weighing a risk against the trouble, time and money needed to control it”. (See United Kingdom, HSE, “[Risk management: Expert Guidance](#)”)

### 3.3 Transitional and final provisions

The transitional and final provisions typically stipulate what is the impact of the new OSH law on existing legislation and how these will interact. These provisions are necessary for legal certainty and legislative coherence. Key or common provisions include:

- ▶ Provisions indicating the date of entry into force of the new OSH law and the date on which specific provisions will take effect (these may be different dates, depending on the circumstances of individual countries);
- ▶ Provisions expressly repealing any law or provision previously in force that the new OSH law renders inapplicable or obsolete;
- ▶ Provisions which make it clear that in the event of conflicting provisions in the new OSH law and existing legislation, the new OSH law will prevail;
- ▶ Provisions amending earlier acts.;
- ▶ Provisions establishing time limits and periods during which some specific provisions are not applicable or will not apply (that is, if a provision has effect for a certain period only); if necessary, the provision should clearly articulate what the effects of the expiry of the provision will be.

**Country example 196****Final provisions****Australia**

*Rail Safety National Law (South Australia) Act 2012, section 48*

- (1) If a provision of the occupational health and safety legislation applies to railway operations, that provision continues to apply, and must be observed, in addition to this Law.
- (2) If a provision of this Law is inconsistent with a provision of the occupational health and safety legislation, the provision of the occupational health and safety legislation prevails to the extent of any inconsistency.
- (3) Compliance with this Law or with any requirement imposed under this Law is not in itself a defence in any proceedings for an offence against the occupational health and safety legislation.
- (4) Evidence of a relevant contravention of this Law is admissible in any proceedings for an offence against the occupational health and safety legislation.

**Transitional provisions****European Union**

*Directive 2006/42/EC on machinery, article 27*

As a general rule, since manufacturers have a period of three and a half years between the entry into force of Directive 2006/42/EC and the application of its provisions during which to adapt their products where necessary, it was not considered necessary to foresee a transition period. However, by way of derogation to the general rule, article 27 foresees a transition period of 18 months for portable cartridge-operated fixing machinery and other portable cartridge-operated impact machinery, during which Member States may allow the placing on the market of products that comply with the national provisions in force previously.

(See European Commission, "[Guide to Application of the Machinery Directive 2006/42/EC](#)", para. 154.)

**3.4 Schedules/annexes**

Annexes or schedules are used to present material separately from the body of the substantive or enacting text, because they contain lengthy or technical detail that is not appropriate or desirable to include in the main law. Examples of the type of content that may be appropriate for a schedule or annexure include:

- technical provisions (for example a list of occupational diseases or hazardous substances that are referred to in the substantive provisions);
- other lengthy material that may detract from a stakeholder's comprehension of the substantive provisions, such as a table containing civil or criminal penalties;
- a list of amended provisions;
- details of regulation-making powers pursuant to the primary OSH law;
- references to international treaties that the OSH law will bring into force; and
- a long series of minor textual amendments.

There should be a clear reference in the substantive provision in the main body of the law to the annex or schedule. For example, a substantive provision in the law may state that "*it is unlawful to expose workers under 18 to the hazardous substances listed in schedule 1*". This reference in the body of the substantive text provides the interaction or link to the content of the annexure.

It is important to note that annexes and schedules should not create any new legal rights or obligations that have not already been created in the main body of the OSH law.



### Useful resources

- Belgium, Conseil d'État, *Principes de technique législative: Guide de rédaction des textes législatifs et réglementaires*, 2008.
- Héctor Pérez Bourbon, *Manual de Técnica Legislativa*, Konrad-Adenauer-Stiftung, 2007. (Argentina)
  - European Parliament, "[Gender-Neutral Language in the European Parliament](#)", 2018.
  - European Union, *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation*, 2015; available in English, French and Spanish and 21 other languages.
- France, Conseil d'État, *Guide de légistique*, 2017.
- ILO, [Manual for Drafting ILO Instruments](#), 2006.
- Peru, Congreso de la República, *Manual de Técnica Legislativa*, 2011.
- Spain, Ministerio de la Presidencia, *Directrices de técnica normativa*, 2005.
- Switzerland, *Guide de législation: Guide pour l'élaboration de la législation fédérale*, 2019.
- United Kingdom, Office of the Parliamentary Counsel, [Drafting Guidance](#), 2020.
- United States, Massachusetts Senate, *Legislative Drafting and Legal Manual*, 2003.



### Checklist

#### Section 12 - Reflects commonly accepted legislative drafting techniques

Questions	YES	NO	Observations
Is the draft OSH law:			
- appropriate?			
- clear?			
- simple?			
- precise?			
- coherent?			
- internally consistent?			
- externally consistent?			
- gender-neutral?			
- drafted in a uniform style?			
Is the structure of the draft OSH law sound? Have you grouped regulatory elements by topic? Is there a logical flow?			
Do you define terms in the OSH law? If so:			
- have you reflected on the need of having such definitions?			
- are they useful?			
- are they consistent with ILS?			
- have you evaluated their impact?			
- are they used consistently throughout the text?			
If the law does not include definitions, are all terms clear? Is there a need to define certain terms?			
Does the law incorporate auxiliary provisions, including:			
- a preamble?			
- transitional and final provisions?			
- schedule(s)/ annex(es)?			
If not, would incorporating some of the above be helpful to ensure internal and external consistency and clarity of the law?			

Frequently defined terms in OSH laws	ILS containing such definitions	Are these definitions included in your OSH law?		Observations
		YES	NO	
commuting accident	P2002			
contractor	ILO-OSH 2001			
competent person	C167; ILO-OSH 2001			
dangerous occurrence (incident or near-miss)	P2002			
employer	See discussion in section II of this Support Kit on the scope and coverage of OSH laws			
hazard	ILO-OSH 2001			
health	C155			
joint OSH committee	R164			
national system for occupational safety and health	C187			
national programme on OSH	C187			
national preventative safety and health culture	C187			
occupational accident	P2002			
occupational disease	P2002			
occupational health Services	C161			
OSH committee	ILO-OSH 2001			
OSH management system	ILO-OSH 2001			
risk	ILO-OSH 2001			
risk assessment	ILO-OSH 2001			
surveillance of the working environment	ILO-OSH 2001			
worker	C155 (see also discussion in section II of this Support Kit on the scope and coverage of OSH laws)			
work-related injuries, ill health and diseases	ILO-OSH 2001			
workers' health surveillance	ILO-OSH 2001			
workers' representative	C135			
workers' safety and health representative	ILO-OSH 2001			
workplace	C155			

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