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## Law trends in occupational safety and health from a preventive approach: Comparative study of international legislation and selected countries

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This study analyzes standard practices in occupational safety and health (henceforth OSH) from a prevention perspective in both the international and national realms. To that end, it looks to the most important components of the relevant international instruments, specifically the ILO Conventions and European Directives. Though neither is new, they were groundbreaking in the effort to establish prevention norms that differed in approach from the eminently protection-oriented traditional approach. This study will also take into account supranational declarations from the Latin American region, such as the Andean Occupational Safety and Health Instrument and the MERCOSUR Social-Labor Declaration.

Examples of national laws were selected without any particular restriction or limitation, on the sole basis of their interest to this study. An attempt was made to include countries that, due to the size of the population or economy, the incipient nature of some of the relevant norms, or a novel approach to the concerns addressed here, had particular importance internationally.

Regarding the obligations of manufacturers, importers, and suppliers, the experience of Japan, for example, is of great interest because of the rate at which it imports and exports industrial machinery and equipment. Norway and New Zealand were included in our analysis of recent regulations, and the other Scandinavian countries (Finland, Sweden, and Denmark) were considered due to the prevention orientation of their regulations.

In relation to European Union member states, European Framework Directive Nº 89/391/EEC is frequently mentioned in this study, as it is required that the body of law in that Directive be transferred onto national laws, which means that any mention of the Directive is also a direct reference to the legislation of the member countries.

**Section 1** provides an overview of the evolution from the traditional approach, which emerged in the early twentieth century, to the current prevention-oriented approach underlying best practices in OSH policies and statutes. This section also addresses international norms with particular emphasis on the transformation of regulations in Europe and the world at large after the development of the Scandinavian model for occupational safety.

**Section 2** addresses occupational safety and health legislation and how it has evolved over time. Specifically, it traces the shift from a traditional vision based on the protection of workers from

physical harm pursuant to workplace accidents or occupation-related diseases to the wider current approach that prioritizes prevention in the face of occupational risks. This new outlook attempts not only to foster the health of workers but also their quality of life and wellbeing at work.

This section outlines as well a multi-disciplinary approach to OSH that encompasses a range of areas: safety, hygiene, ergonomics, psycho-sociology, and occupational medicine. As the ILO points out (1975), work must not only respect the life and health of workers, and provide them with free time to rest and recreate, but also enable them to serve society and achieve self-fulfillment by developing their personal capacities.

**Section 3** deals with the enforcement of OSH laws, the most recent of which tend to extend their scope to include all salaried workers and to all OSH risks that workers might be exposed to, regardless of type of task performed, sector, or any other factor. Notwithstanding, experience shows that exceptions are often made, whether due to the type of activity performed or the group of workers involved. Convention No. 155, for instance, allows ratifying member states to exclude partially or totally certain branches of the economy pursuant to consultation with the organizations of workers and employers.

**Section 4** analyzes the definitions of some fundamental concepts related to OSH contemplated by certain regulatory frameworks. Experiences are dissimilar, and our comparison considers legislations with an extremely wide repertoire of definitions and others where almost none are included.

This section also examines how what are called prevention principles are inserted in bills and laws, in other words, the guidelines operative in legal systems regarding occupational risks. Relevant to this topic is how priorities and hierarchies of principles have been established.

In **section 5**, legislative frameworks with articles or provisions on OSH institutionality are addressed, among them the authorities with jurisdiction over the prevention of occupation risks, the mechanism for coordinating those authorities, and the establishment of tripartite social dialogue, specifically on OSH. Indeed, one of the main differences between countries is the relative weight of political entities and bodies responsible for regulation, prevention, inspection and protection.

The weight of tripartism within policy administration agencies varies enormously, as do the levels of decentralization, which varies with territorial organization model, and the degree to which supporting entities participate in the larger prevention system, whether through mutualism or collaborating firms.

**Section 6** deals with employers' obligations in OSH, not only regarding their own employees but also others who perform tasks on their premises (self-employed and subcontracted workers).

Almost all of the laws analyzed contain clauses on the "duty of care." Just what that obligation means when broken down varies a great deal, since it covers a number of aspects of risk prevention. Commitments along these lines tend to be articulated in general terms, without providing the specific articles or provisions that certain sectors or risks call for.

This section also discusses the concept of "reasonably practicable" compliance, a term that appears in much legislation in countries with a significant Anglo-Saxon influence. The expression means that the law cannot demand that an employer be held responsible for providing absolute and unlimited safety in the workplace or, therefore, merely objective safety; the bounds of that responsibility must, rather, be adjusted according to the circumstances that come into play in each case and to technical progress.

**Section 6.2** studies firms' prevention organization, which constitutes a key part of their OSH-management systems. This section includes a large number of examples from different countries

that make use of different prevention modalities, among them the appointment of an OSH officer and access to health services at the workplace.

**Section 6.3** enumerates the risks identified and their assessment, that is, it describes the cornerstone of OSH-management systems. Many international and national norms establish a company's obligation to assess occupational risks prior to adopting suitable prevention and protection measures. Employers' evaluation of those risks must take into account the type of activity performed by the company, which in turn makes it possible to choose appropriate equipment, chemical and other substances, and to duly prepare the workplace.

Risk assessment should also facilitate prevention measures; the work procedures and production methods used by the employer must guarantee maximum protection of workers' safety and health.

**Section 6.4** describes the guidelines in various international instruments and provides examples of national legislations on collective and individual protection, including the obligations of employers, and of equipment and machinery manufacturers, importers, and providers.

Two features are found in almost all of the frameworks studied: first, occupational risks must be duly assessed before prevention measures are applied in order to ensure maximum efficacy; second, collective protection must take precedence over individual protection.

This section also addresses the obligations of manufacturers, importers, and providers of equipment and machinery, and of personal protection gear.

**Section 6.5** deals with employer obligations regarding equipment and machinery used by workers.

**Section 6.6** addresses prevention training and information; as in Section 3, the point of reference is ILO Convention No. 155 and European Framework Directive N° 89/391/EEC, two international instruments that regulate OSH from an occupational risk prevention perspective.

**Section 6.7** analyzes aspects of regulations geared to safeguarding workers' health on the basis of the guidelines outlined in Convention No. 161 and European Framework Directive N° 89/391/EEC.

**Section 6.8** studies the relocation of workers with health problems incompatible with their jobs.

Both Convention No. 161 and European Framework Directive N° 89/391/EEC include provisions on the adaptation of jobs to workers' capacities and limitations due to physical and mental health. Legislation in Norway and Denmark are of particular interest in this area.

**Section 6.9** deals with potential situations of severe and imminent risk at the workplace. It focuses on legislations in some countries regarding the *ius resistendiae* of workers and their representatives in a situation that presents an imminent danger to their physical integrity or health.

**Section 6.10** studies employers' obligations regarding first aid, emergencies, and evacuation plans.

**Section 6.11** contains comparative examples of the regulation of prevention documentation that companies are required to produce and keep, and the attendant potential risk of "prevention bureaucracy."

**Section 6.12** studies how to regulate situations where a number of employers operate at the same location.

**Section 6.13** studies international norms and the norms in effect in some countries on the protection of groups of workers with specific needs and vulnerabilities, such as pregnant or breastfeeding women, adolescents, workers with disabilities, migrant workers, subcontractors and temporary workers, part-time workers, and others with non-standard employment arrangements.

**Section 6.14** provides a detailed analysis of norms for the register, notification, and investigation of workplace incidents, accidents, and occupational diseases on the basis of the guidelines in Convention No. 155, Protocol No. 155, the ILO Repertoire of Recommended Practices, and the European Framework Directive 89/391/EEC. It then analyzes regulations in effect in countries like the United States and the United Kingdom.

**Section 7** provides a summary of workers' obligations regarding occupational safety and health—a topic on which a large amount of international and national legislation exists.

**Section 8** provides a study of legislation on the participation of workers and their representatives in consultation and collaboration mechanisms regarding OSH, mechanisms based on both international norms and the norms operative in different countries.

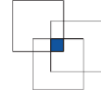
Though not exhaustive, **section 9** studies the regulations in effect regarding certain specific risks, looking to examples related to exposure to carcinogens, chemical and biological agents, pesticides, ionizing radiation, extreme noise and vibration, tobacco smoke, asbestos, the HIV virus, as well as ergonomic and psychosocial risks, risks associated with working at heights, in confined spaces, and in nanotechnology, and violence at the workplace.

**Section 10** provides an overview of legislation on administrative responsibilities (including fines and ancillary penalties) in selected countries and on penal regimens, namely the sorts of penalties imposed for failure to comply with OSH norms.

**Section 11** focuses on OSH-management systems; it discusses the 2001 ILO-OSH Guidelines and a detailed study of the topic that examines legislation in Singapore and Sweden, and European regulations.

Lastly, **sections 12 and 13** discuss, respectively, the current OSH challenges facing States' legislative frameworks and the conclusions of this study. Both sections describe new trends, the integral conception of OSH, factors at play in occupational psychology, the growing importance of ergonomics, the materiality and sustainability of OSH, the OSH implications of new technologies and new forms of employment, as well as workers' participation.

[Full document \(PDF\)](#)



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