



International
Labour
Organization

► **Comments and Suggestions on Amending the Law of the People's Republic of China on the prevention and control of occupational diseases**

ILO Country Office for China and Mongolia

► I. Background

As a specialized agency of the United Nations, the International Labour Organization (ILO) is committed to advancing social justice, promoting decent work for all and protecting the fundamental rights and interests of workers. Since its establishment in 1919, the ILO has always placed occupational safety and health (OSH) among its core mandates. The ILO's programs and projects cover a wide range of areas, and supporting member states to ratify and implement international labour standards, including those on OSH, is one of the organization's priorities.

In view of this, at the time when the Chinese government is widely soliciting opinions and suggestions for amending the Law of the People's Republic of China on the Prevention and Control of Occupational Diseases (hereinafter referred to as the Law on the Prevention and Control of Occupational Diseases or the Law), we compare the Law with relevant international labour standards, and put forward comments and suggestions for reference of the Chinese government in light of China's national conditions, so that the revised Law on the Prevention and Control of Occupational Diseases will be more aligned with the requirements of relevant international labour standards, which will strengthen the implementation of Conventions ratified by China and as well as facilitate the possible future ratification of other OSH standards.

Our comments and suggestions on amending the Law are mainly based on the principles and requirements embodied in the following Conventions and Recommendations:

- Occupational Safety and Health Convention (No. 155) and its Recommendation (No. 164), 1981
- Occupational Health Services Convention (No. 161) and its Recommendation (No. 171), 1985
- Employment Injury Benefits Convention (No. 121) and its Recommendation (No. 121), 1964
- Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No. 155)
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- Labour Inspection Convention, 1947 (No. 81)
- Safety and Health in Construction Convention, 1988 (No. 167)
- Chemicals Convention, 1990 (No. 170)
- Safety and Health in Mines Convention, 1995 (No. 176)
- List of Occupational Diseases Recommendation, 2002 (No. 194)
- Chemicals Recommendation, 1990 (No. 177)

Among the above-mentioned Conventions and Protocols, China has only ratified the Occupational Safety and Health Convention, 1981 (No. 155) (hereinafter referred to as C.155), Safety and Health in Construction Convention, 1988 (No. 167) and Chemicals Convention, 1990 (No. 170) (hereinafter referred to as C.170). Though a country is not legally bound by non-ratified Conventions and Protocols, International Labour Standards (ILS) can provide universal guidance and reference for the legislative work of member States, bearing in mind that all ILS are adopted with the support of the broad majority of the tripartite representatives of member States at the International Labour Conference and are often agreed upon by consensus, hence represent the common understanding of the international community.

Our comments and suggestions are divided into two parts, "general comments and suggestions" and "specific comments and suggestions". The former is of general relevance or applicable to a number of articles of the Law, while the latter is arranged in the order of chapters, focusing on specific articles and paragraphs. For simplicity and clarity purpose, this document only retains specific comments and suggestions. If necessary, we can provide further explanation on the comments and suggestions. In addition, we are ready to provide more relevant technical advisory services upon request.

It should be noted that our comments and suggestions mentioned below only relate to some provisions of Law on the Prevention and Control of Occupational Diseases. Absence of comment or any particular provision should not be taken as indicating a particular view as to compliance with International Labour Standards. Comments are provided without prejudice to any comments that may be made at some later date by the bodies responsible for supervising the compliance with International Labour Standards in relation to a ratified Convention.

► II. Overall comments and suggestions

1. China has Work Safety Law but not Occupational Health Law. The prevention and control of occupational diseases is a part of occupational health, so it is necessary to discuss the prevention and control of occupational diseases in the broader context of occupational health. "All-round and all-cycle maintenance and protection of people's health, major improvement in health, and significant improvement of health equity" has been included in the "Healthy China 2030" Plan. In the process of amending the Law on the Prevention and Control of Occupational Diseases, it is necessary to consider expanding the Law from the Law on Prevention and Control of Occupational Diseases" to the Law on Occupational Health in future due course.
2. In OSH-related international labour conventions and recommendations, it is stressed to have full participation of workers' and employers' organizations in occupational safety and health work, including cooperation in at the levels ranging from work units, undertaking, local, sectoral and up to the national level. When the Central Government formulates and regularly reviews policies, systems and plans in this regard, it should seek the opinions of the most representative workers' and employers' organizations. At the same time, the State should promote cooperation between employers and employees on occupational safety and health issues at workplace level. It is recommended that in the process of revising the Law, consideration should be given to adding principles and contents in this regard.
3. According to Article 14 of C.155¹, measures shall be taken with a view to promoting 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. It is suggested that relevant contents should be included in the Law on the Prevention and Control of Occupational Diseases as appropriate to encourage education and training institutions at all levels to provide teaching contents on occupational safety and health and working environment issues.
4. From the perspective of improving the workplace environment and conditions, the control of occupational hazards should be part of the employers' responsibilities to ensure safety and health in working conditions and environments. With the advancement of technology and the development of production materials and processes, new occupational hazards are constantly emerging. The formulation and update of the Catalogue of Occupational Hazards, as issued by relevant government departments, usually lags behind the emergence of new hazards. Therefore, the surveillance, evaluation and daily monitoring should not be limited to the occupational hazards that have been included in the Catalogue of Occupational Hazards issued by the government.
5. Where feasible, it is suggested to emphasize in the Law nationally and internationally recognized principles of good practices on OSH preventive measures (hierarchy of preventative measures) as appropriate:
 - (a) eliminate the hazard/risk;
 - (b) control the hazard/risk at source through engineering control or management measures;
 - (c) minimize the hazard/risk by means that include the design of safe work systems (including management measures);

¹ Article 14 of C.155: 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.

(d) when the residual hazards / risks cannot be controlled by the above methods, the workers shall be provided with protective clothing and other personal protective equipment (PPE) free of charge, and measures shall be taken to ensure the correct use and maintenance of the PPE.

6. From the perspective of further improving occupational health services and by comparing the Law with the requirements of Occupational Health Services Convention, 1985 (No. 161) (hereinafter referred to as C.161) (not ratified by China), it can be found that there are less provisions in the Law on the Prevention and Control of Occupational Diseases on the establishment, responsibilities and functions of occupational health services. It is suggested to strengthen the contents in relation to occupational health services in the Law.
7. From the perspective of prevention of occupational diseases, the diagnosis and recognition of occupational diseases should not be limited to determining whether a worker suffers from a disease which has been included in the List of Occupational Diseases. The occupational disease diagnosis and recognition bodies should be able to assess whether a disease is caused by exposure to harmful factors in the workplace during occupational activities, where scientific evidence is available, regardless whether this disease has been included in the List.
8. In the existing penalty provisions of the Law on the Prevention and Control of Occupational Diseases, the list of penalties is not inclusive for all violations of the provisions in this Law. For example, Article 39 stipulates a series of occupational health protection rights of workers, including the right to rehabilitation services for occupational diseases, but in the section for penalties, there is no penalty for violations of this provision. Article 56 stipulates that employers shall ensure that patients with occupational diseases shall be entitled the treatment of occupational diseases prescribed by the State in accordance with laws, and transfer the patients who are not physically fit for continuing their original work from their original posts and make proper arrangements, but there is no clear indication of penalty for violation of this provision. It is suggested that a comprehensive review be conducted during the amendment process to provide for appropriate penalties for all violations in this Law.
9. From the perspective of timely detection of early health impairment of workers and adoption of corresponding preventive measures, in the process of developing occupational health surveillance system, we should pay special attention to the balanced development of workers' rights to health and employment, so as to avoid employment discrimination due to overemphasis on medical contraindications. In fact, by improving the working conditions and adjusting the work according to the workers' own conditions, the work can be made more suitable for the workers' physical conditions and abilities. In this regard, special attention should be paid to the abilities and needs of special groups such as female workers and older workers.
10. According to Article 21 of C.155 (ratified by China), "occupational safety and health measures shall not involve any expenditure for the workers." In the Law there is no clear provision in this respect.

► III. Specific comments and suggestions

Chapter I General Provisions

Article 1 To prevent, control, and eliminate occupational disease hazards, prevent and control occupational diseases, protect the health and relevant rights and interests of employees, and promote economic and social development, this Law is formulated in accordance with Constitution.

Article 2 This law shall apply to the prevention and control of occupational diseases within the territory of the People's Republic of China.

For the purposes of this Law, "occupational diseases" means the diseases contracted by the employees of an enterprise, a public institution, an individual economic organization, or other employer for their exposures to toxic or harmful factors such as dust and radioactive substances in occupational activities.

The categories and catalogue of occupational diseases shall be determined, adjusted, and published by the health administrative department of the State Council in conjunction with labor and social security administrative department of the State Council.

Comments:

1. On the scope of application of the Law on the Prevention and Control of Occupational Diseases:
 - 1) Article 1 provides for the four purposes of this Law: first, prevention, control and elimination of occupational hazards; second, prevention and control of occupational diseases; third, protection of workers' health and related rights and interests; fourth, promotion of economic and social development. Article 2 stipulates that "this law shall apply to the prevention and control of occupational diseases within the territory of the People's Republic of China", which means that the scope of application of this Law is limited to the second of the above four purposes, which is inconsistent with the content of Article 1 of the Law.
 - 2) The international labour conventions and recommendations related to the prevention and control of occupational diseases are applicable to covers all industries and sectors of economic activities and all employees, including government agencies, public entities and non-profit organizations. The law does not specify whether it is applicable to government agencies and non-profit organizations, nor does it clearly define the scope of workers to whom it applies. Therefore, it is suggested to clarify that the scope of application of this Law covers all industries and sectors of economic activities and all employees, including government agencies, public entities and non-profit organizations.
 - 3) Article 2 stipulates that this Law shall "apply to the prevention and control of occupational diseases within the territory of the People's Republic of China". It is necessary to consider whether the Law is applicable to Chinese citizens who become ill due to work while working in Chinese enterprises and institutions outside of China.
2. Definition of occupational diseases:
 - 1) According to Article 1 (b) of Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (No. 155) (hereinafter referred to as P.155) (not ratified by China), the factors leading to occupational diseases refer to "risk factors arising from work activity"². According to paragraph 6 (1) of Employment Injury Benefits Recommendation, 1964 (No. 121) (hereinafter referred to as R.121), occupational diseases refer to "under prescribed conditions, diseases known to arise out of the exposure to substances or dangerous conditions in processes, trades or occupations". Paragraph 6 (2) of R121 states that "Unless proof to the contrary is brought, there should be a presumption of the occupational origin of such diseases where the employee (a) was exposed for at least a specified period; and (b) has developed symptoms of the disease within a specified period following termination of the last employment involving exposure." This definition is not limited to the pathogenic factors of diseases included in the List of Occupational Diseases. The occupational diseases identified in Appendix of the List of Occupational Diseases Recommendation, 2002 (No. 194)

²Article 1 (b) of P.155: the term "occupational disease" covers any disease contracted as a result of an exposure to risk factors arising from work activity.

(hereinafter referred to as R.194) include two types of diseases: the diseases in List, and other specific diseases caused by occupations or processes not mentioned in this list where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure arising from work activities and the disease(s) contracted by the worker. The list of occupational diseases of the ILO is subordinate to and serves the definition of occupational diseases in R.121 and P.155.

The Law on the Prevention and Control of Occupational Diseases defines occupational diseases, but at the same time, the scope of occupational diseases is defined by the List of Occupational Diseases. In other words, if a disease is consistent with the definition of occupational disease in the Law, but does not appear in the List, it cannot be considered as an occupational disease. In reality, some occupational diseases are caused by one factor, while some by multiple factors. It is difficult for the Catalogue of Occupational Hazards to cover all factors causing occupational diseases. Moreover, the update of the List of Occupational Diseases may lag behind the development of diagnosis and etiology technology. Only when a disease is included in the List can its pathogenic factors be officially included in the Catalogue of Occupational Hazards. This may lead to two situations. Firstly, although there is scientific evidence of a direct causal relationship between occupational exposure to a certain harmful factor and the disease suffered by the worker, the disease cannot be recognized as an occupational disease because the factor causing this disease is not included in the Catalogue of Occupational Hazards. Secondly, a factor can lead to a variety of diseases. Though the factor is included in the Catalogue of Occupational Hazards, the diseases caused by it may not be all included in the List of Occupational Diseases. Then, the disease, though caused by work, cannot be recognized as occupational diseases if it is not included in the List.

The diseases included in the List of Occupational Diseases are only part of the diseases caused by exposure to occupational hazards. The purpose of establishing a list of occupational diseases is not only to compensate the injured workers, but more importantly, to also prevent the recurrence of the same occupational diseases among other workers with occupational exposure and take workplace prevention measures against the harmful factors that cause occupational diseases. The purpose of developing a List of Occupational Diseases and a Catalogue of Occupational Hazards is not to define the boundaries of occupational diseases and occupational hazards (i.e. only diseases caused by factors in the Catalogue of Occupational Hazards and included in the List of Occupational Diseases are occupational diseases). The rapid development of new materials, new processes, new technologies, and new ways of organizing and implementing work will bring new occupational hazards. Scientific and technological advances will bring about new discoveries of factors that cause diseases, while the update of the List of Occupational Diseases and the Catalogue of Occupational Hazards often lags behind these new changes. Therefore, unless all factors that pose a threat to workers' health can be included in the list and catalogue for purpose of occupational disease prevention and control, it is difficult to effectively protect workers' occupational health, compensate workers for occupational disease, and prevent work-related diseases³.

- 2) Article 2 of the Law on the Prevention and Control of Occupational Diseases defines occupational diseases as "diseases contracted by the employees of an enterprise, a public institution, an individual economic organization, or other employer for their exposures to toxic or harmful factors such as dust and radioactive substances in occupational activities". Article 85 defines occupational hazard factors as "various harmful chemical, physical, and biological factors existing in occupational activities as well as other occupational harmful factors arising in the process of operations". There are inconsistencies in the expressions of factors that cause occupational hazards in Article 2 and Article 85, which hampers the seriousness of legal documents and leads to ambiguity. It is suggested that the definition of occupational diseases in the Law on Prevention and Control of Occupational Diseases should be improved to include all diseases caused by occupational exposure to harmful factors.

3. Classification and List of Occupational Diseases:

- 1) The current Classification and List of Occupational Diseases does not include all diseases caused by workers' exposure to dust, radioactive substances and other toxic and harmful factors in their occupational activities. It is suggested to improve the definition of occupational hazards in the List of

³ Work-related diseases refer to diseases for which work factors are not the only or main cause of the disease but can contribute to the development and progression of the disease or even accelerate the coming of death.

Occupational Diseases to make it more consistent with the Law on the Prevention and Control of Occupational Diseases.

- 2) The Law provides that the Classification and List of Occupational Diseases shall be formulated, adjusted and published by the administrative department of health under the State Council together with the administrative department of labour and social security under the State Council, with no reference to consulting the most representative workers' and employers' organizations. In accordance with the requirements of relevant international labour conventions and recommendations, including R.194, consultation with these organizations is required.
- 3) The Law does not explicitly require regular review and update of the Classification and List of occupational diseases. It is suggested to require regular review and update of the Classification and List of Occupational Diseases in the Law in line with the requirements of R.194.

Article 4 Employees shall be entitled to occupational health protection according to law.

Employers shall create work environment and conditions meeting the national occupational health standards and health requirements and take measures to ensure that employees receive occupational health protection.

Trade unions shall oversee the prevention and control of occupational diseases and protect the lawful rights and interests of employees according to law. When formulating or amending rules and regulations on the prevention and control of occupational diseases, employers shall solicit the opinions of trade unions.

Comments:

1. Occupational health is not defined in the Law on the Prevention and Control of Occupational Diseases. We can refer to the definition of occupational health provided by the ILO and the World Health Organization, namely 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 workers in an occupational environment adapted to their physiological and psychological capabilities; and, to summarize, the adaptation of work to the workers and of each worker to his or her job. There are three objectives of occupational health: (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.
2. With regard to the first paragraph of Article 4 of the Law: workers should not only be entitled to occupational health protection, but also to the right to work in a safe, healthy and secured environment as required by laws and regulations. That the workers should work in a safe, healthy and secured environment is an important principle promoted by the United Nations, ILO, World Health Organization and other international organizations⁴.
3. With regard to the second paragraph of Article 4, it is not sufficient to require the employer to create a working environment that meets legal health standards and requirements and to take measures to provide occupational health protection for workers. The employer shall ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health (see Article 16 (1) of C.155)⁵. For this purpose, it can be considered to revise the 2nd paragraph of Article 4 as follows: Employers shall create work environment and conditions meeting the national occupational health standards and health requirements, take measures to ensure that employees receive occupational health protection, and

⁴ Article 3 of the Universal Declaration of Human Rights (1948) emphasizes the right to "life, liberty and security of person"; Article 7 of the International Covenant on Economic, Social and Cultural Rights further emphasizes the right to a "safe and healthy working environment"; the Constitution of the International Labour Organization recognizes "the protection of workers against diseases and injuries arising out of employment" as an essential element of social justice; the Philadelphia Declaration further states that one of the "solemn obligations" of the International Labour Organization is to develop programs to achieve "adequate protection of the lives and health of workers in all occupations". The Constitution of the World Health Organization, in the Third Paragraph of the Preamble, states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being."

⁵ Article 16(1) of C.155: 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.

ensure, so far as is reasonably practicable, that the workplaces, machinery, equipment and processes under their control are safe and without risk to health.

Article 9 The state shall apply an occupational health supervision system.

The health administrative department, and labor and social security administrative department of the State Council shall, according to the functions prescribed by this Law and the State Council, supervise and administer the prevention and control of occupational diseases across the country. Other relevant departments of the State Council shall, within their respective functions, supervise and administer the prevention and control of occupational diseases.

The health administrative departments, and labor and social security administrative departments of the local people's governments at and above the county level shall, according to their respective functions, supervise and administer the prevention and control of occupational diseases within their respective administrative regions. Other relevant departments of the local people's governments at and above the county level shall supervise and administer the prevention and control of occupational diseases within their respective functions.

The health administrative departments, and labor and social security administrative departments of the people's governments at and above the county level (hereinafter together referred to as the "departments of occupational health supervision and administration") shall strengthen communication and cooperate closely with each other and, according to their respective functions, legally exercise powers and assume responsibilities.

Comments:

1. It is suggested to clarify the functions, responsibilities and obligations of competent government departments, workers and employers and other relevant departments in the Law on Prevention and Control of Occupational Diseases in line with the requirements of Article 6 of C.155.
2. It is suggested to consider further clarifying the functions and responsibilities of workers' and employers' organizations in relation to occupational safety and health and the working environment, particularly at the national level. The ILO emphasizes that national policies on occupational safety and health should be formulated, implemented and regularly reviewed, and that the competent government departments should consult with the most representative workers' and employers' organizations in the process of formulating these policies to ensure that they have the opportunity to participate in the development and revision of laws and policies for the prevention, control and elimination of occupational hazards and the prevention and control of occupational diseases (See Articles 4 (1)⁶ and Article 8⁷ of C.155).

Article 10 The State Council and the local people's governments at and above the county level shall prepare plans on the prevention and control of occupational diseases, which shall be included in the national economic and social development plan, and organize the implementation of such plans.

The local people's governments at and above the county level shall uniformly lead, organize, and coordinate work on the prevention and control of occupational diseases within their respective administrative regions, establish effective working systems and mechanisms for the prevention and control of occupational diseases, and uniformly lead and direct work in response to occupational health emergencies; and enhance their capabilities of preventing and controlling occupational diseases and related service systems and improve and implement the responsibility system for the prevention and control of occupational diseases.

The people's governments of townships, ethnic townships, and towns shall, in accordance with this Law, support the departments of occupational health supervision and administration in performing their statutory functions.

⁶ Article 4(1) of C.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.

⁷ Article 8 of C.155: Each Member shall, by laws or regulations or any other method consistent with national conditions and practice and in consultation with the representative organisations of employers and workers concerned, take such steps as may be necessary to give effect to Article 4 of this Convention.

Comments: when formulating the occupational disease prevention and control plan, the national and local governments need to consult the most representative workers' and employers' organizations. Reference can be made to Article 2 (2)⁸ and Article 5 (1) ⁹of Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)(not ratified by China).

Article 12 The national occupational health standards on the prevention and control of occupational diseases shall be formulated and published by the health administrative department of the State Council.

The health administrative department of the State Council shall organize monitoring and special investigations on major occupational diseases and assessments on occupational health risks to provide a scientific basis for formulating occupational health standards and policies for the prevention and control of occupational diseases.

The health administrative departments of the local people's governments at and above the county level shall collect statistics and conduct survey and analysis on the prevention and control of occupational diseases within their respective administrative regions on a regular basis.

Comments: Article 11 (c) of Convention No. 155 requires all countries to establish and apply procedures for the notification of occupational accidents and diseases, by employers and insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases¹⁰.

Chapter II Early Prevention

Article 15 The formation of an employer with occupational disease hazards shall meet the requirements of laws and administrative regulations, and the employer's work sites shall also meet the following occupational health requirements:

(1) The intensity or density of occupational disease hazard factors meets the national occupational health standards;

(2) There are facilities suitable for protection from occupational disease hazards;

(3) The production layout is reasonable and conforms to the principle of separating harmful operations from harmless operations;

(4) There are accessory health facilities, such as changing rooms, bathrooms, and lounges for pregnant women;

(5) Equipment, tools, appliances, and other facilities shall meet the requirements for protecting the physical and mental health of employees; and

(6) Other requirements of laws, administrative regulations, and the health administrative department of the State Council for protecting the health of employees.

Comments:

1. The expression of "employer with occupational hazards" in the first paragraph of Article 15 could be misinterpreted as the application of the Article is only limited to undertakings with workplace hazards that have been included in the Catalogue of Occupational Hazards or those that have been included in the List of Undertakings with Occupational Hazards, while the actual scope of application should cover all employers and all workplaces.
2. With regard to Article 15 (1): since occupational health standards have limitations and are usually updated with some time lapse, it is a common practice to emphasize in policies and regulations that employers have the responsibility to provide and ensure healthy and safe working process, environment and conditions. This means that employers have not only the responsibility to ensure the level or concentration of occupational hazards in

⁸ Article 2(2) of Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187): Each Member shall take active steps towards achieving progressively a safe and healthy working environment through a national system and national programmes on occupational safety and health by taking into account the principles set out in instruments of the International Labour Organization (ILO) relevant to the promotional framework for occupational safety and health.

⁹ Article 5(1) of Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187): Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.

¹⁰ Article 11(c) of C.155: the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases.

industrial premises compliant with the national occupational health standards, but also the obligation to identify, evaluate and control all hazardous factors that put the health and safety of workers at risk (not limited to the hazardous factors mentioned in the occupational health standards). Reference can be made to Article 16 of C.155¹¹.

3. With regard to Article 15 (2), generally speaking, it is difficult for the administrative department of health to include all known occupational hazard factors in the Classification and List of Occupational Hazard, and there is a time lapse in the update and review of the List. Therefore, employers should be responsible not only for the occupational hazard factors included in the List published by the administrative department of health, but also for the existing or emerging occupational hazards that have not been included in the List. Only doing so can employers fully assume their responsibilities in ensuring safety and health at the workplace.
4. With regard to Article 15 (5), reference can be made to the requirements of Article 5 of C.155¹², that is, the relationships between the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents, work processes) and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of the workers. It is suggested that Article 15 (5) be amended as follows: working time, organisation of work and work processes and equipment, tools, appliances and other facilities shall meet the requirements of protecting the physical and mental health of workers.
5. If there are external employees affiliated with the subcontractor in the same workplace, the employers concerned need to strengthen communication and cooperation. According to Article 17 of C.155¹³, it is suggested to consider, where appropriate, making provisions on situations where two or more enterprises conduct activities in the same workplace at the same time by requiring such enterprises to collaborate with each other to ensure the implementation of the Law on Prevention and Control of Occupational Diseases and other relevant laws and regulations.

Article 16 The state shall establish a declaration system for projects with occupational disease hazards.

Where an employer's work site has any occupational disease hazard factors as listed in the catalogue of occupational diseases, the employer shall truthfully declare the hazardous project to the local health administrative department in a timely manner and accept supervision.

A catalogue of categorized occupational disease hazard factors shall be formulated, adjusted, and published by the health administrative department of the State Council. The specific measures for declaration of projects with occupational disease hazards shall be formulated by the work safety administrative department of the State Council.

¹¹ Article 16 of C.155:

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.
3. Employers shall 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.

¹² Article 5 of C.155: 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:

- (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);
- (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, organisation 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 co-operation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level;
- (e) the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.

¹³ Article 17 of C.155: Whenever two or more undertakings engage in activities simultaneously at one workplace, they shall collaborate in applying the requirements of this Convention.

Comments:

With regard to the second paragraph of Article 16, it is suggested that the following contents should be added in the process of amending the Law on Prevention and Control of Occupational Diseases as appropriate: if the employer finds that workers are exposed at work to hazards that cause diseases and endanger the health of workers but have not yet been included in the Catalogue of Occupational Hazards, the employer should also promptly and truthfully report the hazards to the relevant local health authorities.

Article 19 The state shall apply special administration to radioactive, highly toxic, and high-risk dust operations. The specific administrative measures shall be formulated by the State Council.

Comments:

It is suggested to replace the word "dust" with "substance". High-risk and highly toxic factors include not only dust but also smoke, gas, etc.

According to Article 11 (b) of C.155¹⁴ and Article 5 of C.170¹⁵, the determination of work processes and of substances and agents the exposure to which is to be prohibited and limited should be subject to authorisation or control by the competent authority or authorities; health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration. It is suggested to define the above responsibilities of the health administrative departments at national level in the Law on Prevention and Control of Occupational Diseases.

Chapter III Protection and Management during Employment

Article 20 An employer shall take the following management measures for the prevention and control of occupational diseases:

- (1) forming or designating an occupational health management body or organization and having fulltime or part-time occupational health management personnel to be responsible for the employer's prevention and control of occupational diseases;**
- (2) preparing plans and implementation schemes for the prevention and control of occupational diseases;**
- (3) establishing and improving occupational health management rules and operating procedures;**
- (4) establishing and improving occupational health archives and employee health surveillance archives;**
- (5) establishing and improving the rules for monitoring and evaluating occupational disease hazard factors at work sites; and**
- (6) establishing and improving the emergency response plans for occupational disease hazard accidents.**

Comments:

1. Regarding Article 20 (1): it is necessary to change "forming or designating an occupational health management body or organization" to "forming or designating an occupational health management and service body or organization".
2. It is suggested to add the following principle under Article 20: improving working conditions and environment to make them more suitable for workers, including adaptation of machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of the workers. Reference can be made Article 5 (b) of C.155)¹⁶.

¹⁴ Article 11 (b) of C.155: the determination of work processes and of substances and agents the exposure to which is to be prohibited, limited or made subject to authorisation or control by the competent authority or authorities; health hazards due to the simultaneous exposure to several substances or agents shall be taken into consideration.

¹⁵ Article 5 of C.170: The competent authority shall have the power, if justified on safety and health grounds, to prohibit or restrict the use of certain hazardous chemicals, or to require advance notification and authorisation before such chemicals are used.

¹⁶ Article 5 (b) of C.155: 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:

(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);

(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, organisation of work and work processes to the physical and mental capacities of the workers;

Article 22 Employers must adopt effective protective facilities against occupational diseases and provide employees with occupational disease protection items for personal use.

The occupational disease protection items for personal use provided by an employer to its employees must meet the requirements for the prevention and control of occupational diseases; and those failing to meet such requirements shall not be used.

Comments:

When taking preventive and protective measures, the employer should assess and deal with the risks according to the following hierarchy of prevention measures: i) eliminate the risk; ii) control the risk at source; iii) minimize the risk by means that include the design of safe work systems; and iv) in so far as the risk remains, provide for the use of personal protective equipment. Reference can be made to Article 13(1) of C.170¹⁷ and Article 6 of Safety and Health in Mines Convention, 1995 (No. 176)¹⁸ (not ratified by China).

In other words, the hierarchy of prevention measures to be taken by the employer is to eliminate the risk, control the risk at source, minimize the risk through technical and management means, and use personal protective equipment when the risk cannot be reduced to an acceptable level after the implementation of these preventive or control measures. When this is necessary, the employer shall provide, without any cost to the worker, adequate personal protective clothing and equipment. Reference can be made to Article 21 of C.155 (quoted above in paragraph 10 of the Overall Comments and Suggestions section), as well as Paragraph 10 (e) of Occupational Safety and Health Recommendation, 1981 (No. 164)(hereinafter referred to as R164)¹⁹.

Article 23 Employers shall adopt preferably new technologies, new processes, new equipment, and new materials, which facilitate the prevention and control of occupational diseases and the protection of health of employees and gradually replace technologies, processes, equipment, and materials causing serious occupational disease hazards.

Comments: the employers will have much room for flexibility in the actual implementation of “adopt preferably and gradually replace”, while the law enforcement departments will find it difficult to impose penalties in such situation.

Article 26 Employers shall designate special persons responsible for the daily monitoring of occupational disease hazard factors and ensure the normal operation of the monitoring system.

An employer shall, according to the provisions of the health department of the State Council, conduct regular tests and evaluations of the occupational disease hazard factors at its work sites. The results of such tests and

(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 co-operation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level;

(e) the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.

¹⁷ Article 13(1) of C.170: Employers shall make an assessment of the risks arising from the use of chemicals at work, and shall protect workers against such risks by appropriate means, such as:

(a) the choice of chemicals that eliminate or minimise the risk;

(b) the choice of technology that eliminates or minimises the risk;

(c) the use of adequate engineering control measures;

(d) the adoption of working systems and practices that eliminate or minimise the risk;

(e) the adoption of adequate occupational hygiene measures;

(f) where recourse to the above measures does not suffice, the provision and proper maintenance of personal protective equipment and clothing at no cost to the worker, and the implementation of measures to ensure their use.

¹⁸ Article 6 of Safety and Health in Mines Convention, 1995 (No. 176): In taking preventive and protective measures under this Part of the Convention the employer shall assess the risk and deal with it 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, having regard to what is reasonable, practicable and feasible, and to good practice and the exercise of due diligence.

¹⁹ Paragraph 10 (e) of R164: to provide, without any cost to the worker, adequate personal protective clothing and equipment which are reasonably necessary when hazards cannot be otherwise prevented or controlled.

evaluations shall be entered into the occupational health archives of the employer and, on a regular basis, be reported to the local health administrative department and disclosed to its employees.

The tests and evaluations of occupational disease hazard factors shall be conducted by the legally established occupational health technical service institutions accredited by the health administrative department of the State Council or the work health department of the local people's government at or above level of a districted city according to its functions. The occupational health technical service institutions shall provide objective and authentic tests and evaluations.

When discovering that the occupational disease hazard factors at a work site fail to meet the national occupational health standards and health requirements, an employer shall take corresponding control measures immediately, and if the national occupational health standards and health requirements are still not met, the employer must discontinue operations with occupational disease hazard factors; and such operations may be resumed only after the occupational disease hazard factors have met the national occupational health standards and health requirements after control measures are taken.

Comment: many employers do not have the technical means and professional ability to conduct daily monitoring of occupational hazards, so they often need to rely on professional services to perform the function of monitoring occupational hazards and other occupational health services. When entrusting professional bodies to carry out occupational health surveillance, according to Article 14 of C.161²⁰, the employer should inform occupational health services any known or suspected factors in the working environment which may affect the workers' health (including workers' illness and absence from work for health reasons), so that occupational health service bodies can take all the possible health hazards in the workplace into consideration when assessing whether these hazards are related to the health condition of workers.

Article 27 Occupational health technical service institutions shall legally conduct tests and evaluations of occupational disease hazard factors and accept supervision and inspection by the health administrative departments. Health administrative departments shall legally perform their duties of supervision.

Comment: there is no specific regulation in the Law on Prevention and Control of occupational Diseases on the functions and roles of occupational health service bodies in performing the functions of occupational disease prevention and control and occupational health services. It is suggested to strengthen this aspect in the Law. Reference can be made to Article 5 of C.161²¹ on the functions of occupational health service bodies and to Article 6-8 of C 161²² on the organization of occupational health service bodies.

²⁰ Article 14 of C.161: Occupational health services shall be informed by the employer and workers of any known factors and any suspected factors in the working environment which may affect the workers' health.

²¹ Article 5 of C.161: Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, 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 organisation 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) organising of first aid and emergency treatment;
- (k) participation in analysis of occupational accidents and occupational diseases.

²² Article 6-8 of C 161:

Article 6:

Provision shall be made for the establishment of occupational health services-

- (a) by laws or regulations; or

Article 35 For employees conducting operations with exposure to occupational disease hazards, an employer shall organize pre-job, on-the-job, and off-the-job occupational health examination of employees according to the provisions of the health administrative department and health administrative department of the State Council and inform in writing employees of the examination results. The expenses for the occupational health examination shall be assumed by the employer.

Employers shall not assign employees who have not undergone the pre-job occupational health examination to operations with exposure to occupational disease hazards; shall not assign employees with occupational contraindications to operations causing such contraindications; shall transfer employees who are found during occupational health examination to have suffered health injuries related to their jobs from such jobs and settle such employees appropriately; and shall not rescind or terminate labour contacts with employees who have not undergone the off-the-job occupational health examination.

The occupational health examination shall be conducted by medical health institutions that have acquired the Practicing License for a Medical Institution. The health administrative departments of the people's governments shall strengthen regulation and management of occupational health inspection. The management methods shall be developed by the health administrative department of the State Council.

Comments:

1. The surveillance of workers' health in relation to work, such as physical examination, should take place as far as possible during working hours. Reference can be made to Article 12 of C.161²³.
2. With regard to the second paragraph of Article 35, it is suggested to consider adding the following contents, as appropriate: the employer should not assign workers without proper training and adequate protective measures (including appropriate personal protective equipment) to tasks that involve exposure to occupational hazards.

Article 36 Employers shall establish occupational health surveillance archives for employees and appropriately maintain the archives for a prescribed period.

The occupational health surveillance archives shall include the occupational history, history of exposures to occupational disease hazards, occupational health examination results, diagnosis and treatment of occupational diseases, and other relevant personal health information on employees.

Employees leaving an employer shall be entitled to request a copy of their own occupational health surveillance files, and the employer shall provide a true copy of such files free of charge and sign and seal the copy provided.

Comments:

1. It is suggested to add the content of protecting workers' privacy in Article 36, with reference to the following principles of Occupational Health Services Recommendation, 1985 (No. 171):

(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 organisations of employers and workers concerned.

Article 7

1. Occupational health services may be organised as a service for a single undertaking or as a service common to a number of undertakings, as appropriate.

2. In accordance with national conditions and practice, occupational health services may be organised by-

- (a) the undertakings or groups of undertakings concerned;
- (b) public authorities or official services;
- (c) social security institutions;
- (d) any other bodies authorised by the competent authority;
- (e) a combination of any of the above.

Article 8

The employer, the workers and their representatives, where they exist, shall cooperate and participate in the implementation of the organisational and other measures relating to occupational health services on an equitable basis.

²³ Article 12 of C.161: 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.

- 1) Provisions should be adopted to protect the privacy of the workers and to ensure that health surveillance is not used for discriminatory purposes or in any other manner prejudicial to their interests;
 - 2) Files containing personal medical confidential information should only be accessible to medical personnel;
 - 3) Personal data relating to health assessments may be communicated to others only with the informed consent of the worker concerned.
2. Occupational health surveillance files, such as those on physical examination information, contain medical information and should be protected by medical confidentiality laws. It is a common international practice for occupational health technical services to keep medical information such as health examination of workers. If the employer does not have its own independent occupational health service body, it has the obligation to arrange and entrust external occupational health service bodies to establish and properly keep the occupational health surveillance files of workers. The following amendments may be considered as appropriate: "when a worker leaves the employer, he or she has the right to ask for a copy of his or her own occupational health surveillance file, and the employer or the occupational health service body that keeps the file on behalf of the employer shall provide it truthfully and free of charge with seal on the copy provided".

Article 40 The trade union of an employer shall oversee and assist the employer in providing publicity, education and training regarding occupational health, be entitled to offer opinions and suggestions on the employer's prevention and control of occupational diseases, legally conclude a special collective contract on labor safety and health with the employer on behalf of employees, consult with the employer over issues raised by employees concerning the prevention and control of occupational diseases, and promote the resolution of such issues.

The trade union of an employer shall be entitled to require correction of the employer's conduct which violates laws and regulations on the prevention and control of occupational diseases and infringes upon the lawful rights and interests of employees; be entitled to require the employer to take protective measures or offer suggestions to the relevant government departments regarding the adoption of compulsory measures, when any serious occupational disease hazard arises; be entitled to participate in accident investigation and disposition, when any occupational disease hazard accident occurs; and be entitled to offer suggestions to the employer regarding evacuation of employees from a dangerous site when discovering any circumstances which endanger the life or health of employees, and the employer shall handle such suggestions immediately.

Comments:

1. According to Article 5 (e) of C.155²⁴, the State should formulate laws to protect workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with national occupational safety and health policies. There is no explicit provision in the Law in this regard.
2. According to Article 51 of the Work Safety Law, employees have the right to refuse command against rules and regulations and that forces them to work at a risk; Article 52 of the Work Safety Law stipulates that employees shall have the right to stop operation or leave the workplace after taking possible emergency measures when they find an emergency that directly endangers their personal safety. According to Article 13 of C.155, "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". According to Article 19 (f) of C.155, "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; 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". The Law on the Prevention and Control of Occupational Diseases does not clearly stipulate that workers have the right to stop work and leave the workplace when they find an emergency that directly endangers their personal safety, nor does it make it clear that employers shall not require workers to return to the working environment where there are still imminent and serious risks to life and health before taking necessary remedial measures.

²⁴ Article 5 (e) of C.155: the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.

3. According to Article 19(e) of C.155²⁵, workers or their representatives shall be enabled to enquire into and are consulted by the employer on, all aspects of occupational safety and health associated with their work.
4. According to Article 20 of C.155²⁶, cooperation between management and workers and their representatives within the undertaking shall be an essential element of occupational safety and health measures in the undertakings. Where appropriate, consideration may be given to encouraging enterprises to appoint workers' occupational safety and health delegates, workers' safety and health committees and/or joint workers' safety and health committees in which workers should have at least equal representation with employers' representatives. Reference can be made to Paragraph 12 (1) of R164²⁷.

Chapter IV Occupational Disease Diagnosis and Safeguards for Occupational Disease Patients

Article 47 An employer shall truthfully provide the occupational history and history of exposures to occupational disease hazard factors of employees, test results of occupational disease hazard factors at work sites, and other information necessary for occupational disease diagnosis or identification; the health administrative department shall oversee and urge the employer to provide the aforesaid information; and employees and relevant institutions shall also provide information related to occupational disease diagnosis or identification.

Where an occupational disease diagnosis or identification institution needs information on the occupational disease hazard factors at a work site, it may conduct an onsite investigation of the work site or request the health administrative department to do so, and the health administrative department shall organize an onsite investigation within 10 days. The employer shall not refuse or obstruct the onsite investigation.

Comments: with regard to the information mentioned in the first paragraph of Article 47, if the employer fails to provide such information truthfully, he/she should bear the corresponding consequences. Reference can be made to Article 12 (c) and (d) of C.170²⁸ and Paragraph 18 of Chemicals Recommendation, 1990 (No. 177)²⁹.

²⁵ Article 19(e) of C.155: 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.

²⁶ Article 20 of C.155: Co-operation between management and workers and/or their representatives within the undertaking shall be an essential element of organisational and other measures taken in pursuance of Articles 16 to 19 of this Convention.

²⁷ Paragraph 12 (1) of R164: The measures taken to facilitate the co-operation referred to in Article 20 of the Convention 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.

²⁸ Article 12 (c) and (d) of C.170:

(c) monitor and record the exposure of workers to hazardous chemicals when this is necessary to safeguard their safety and health or as may be prescribed by the competent authority;

(d) ensure that the records of the monitoring of the working environment and of the exposure of workers using hazardous chemicals are kept for a period prescribed by the competent authority and are accessible to the workers and their representatives.

²⁹ Paragraph 18 of Chemicals Recommendation, 1990 (No. 177):

(1) The employer, or the institution competent under national law and practice, should be required to arrange, through a method which accords with national law and practice, such medical surveillance of workers as is necessary:

(a) for the assessment of the health of workers in relation to hazards caused by exposure to chemicals;

(b) for the diagnosis of work-related diseases and injuries caused by exposure to hazardous chemicals.

(2) Where the results of medical tests or investigations reveal clinical or preclinical effects, measures should be taken to prevent or reduce exposure of the workers concerned, and to prevent further deterioration of their health.

(3) The results of medical examinations should be used to determine health status with respect to exposure to chemicals, and should not be used to discriminate against the worker.

(4) Records resulting from medical surveillance of workers should be kept for a period of time and by persons prescribed by the competent authority.

(5) Workers should have access to their own medical records, either personally or through their own physicians.

(6) The confidentiality of individual medical records should be respected in accordance with generally accepted principles of medical ethics.

(7) The results of medical examinations should be clearly explained to the workers concerned.

(8) Workers and their representatives should have access to the results of studies prepared from medical records, where individual workers cannot be identified.

(9) The results of medical records should be made available to prepare appropriate health statistics and epidemiological studies, provided anonymity is maintained, where this may aid in the recognition and control of occupational diseases.

Article 50 Employers and medical and health institutions shall report in a timely manner discovered occupational disease patients or patients suspected of occupational diseases to the local health administrative department. The departments receiving such reports shall make dispositions according to law.

Comments:

1. Employers, occupational health service institutions and medical institutions should be encouraged to report to the competent government departments occupational injuries and diseases that have been proved or supported by evidence as caused by work activities but not yet included in the List of Occupational Diseases. Reference can be made to Article 11 (c) of C.155³⁰.
2. After receiving the occupational disease diagnosis report, the employer should immediately formulate and implement the workplace preventive measures, and report the implementation and effects of the measures to the relevant administrative departments.

Article 51 The health administrative departments of the local people's governments at and above the county level shall administer the statistical reports on occupational diseases within their respective administrative regions and report to the higher authorities according to the relevant provisions.

Comments: the local government should regularly publish the statistical information on the incidence of occupational diseases. Reference can be made to Article 11(e) of C.155³¹, as well as Article 6 of P.155³².

Article 56 Employers shall ensure that occupational diseases patients enjoy the occupational disease benefits prescribed by the state.

Employers shall, according to the relevant provisions of the state, arrange the diagnosis, rehabilitation, and regular examination of occupational diseases patients.

Employers shall transfer occupational disease patients who are no longer suitable for their original jobs from their jobs and settle them appropriately.

Employers shall provide appropriate job allowances to employees conducting operations with exposure to occupational disease hazards.

Comments: the employer should not allowed to replace workplace occupational disease prevention and control measures with post allowances.

Chapter V Supervision and Inspection

Article 65 The law enforcement personnel of occupational health supervision shall produce their law enforcement credentials when performing their duties.

The law enforcement personnel of occupational health supervision shall be devoted to their duties, be impartial in law enforcement, and strictly abide by law enforcement rules; and keep confidential the involved secrets of employers.

Comments: in addition to keeping confidential the secrets of the employer, the occupational health inspectors should also treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions by the employer. Reference can be made to Article 15 (c) of Labour Inspection Convention, 1947 (No. 81) (not ratified by China)³³.

³⁰ Article 11 (c) of C.155: the establishment and application of procedures for the notification of occupational accidents and diseases, by employers and, when appropriate, insurance institutions and others directly concerned, and the production of annual statistics on occupational accidents and diseases.

³¹ Article 11(e) of C.155: the publication, annually, of information on measures taken in pursuance of the policy referred to in Article 4 of this Convention and on occupational accidents, occupational diseases and other injuries to health which arise in the course of or in connection with work.

³² Article 6 of P.155: Each Member which ratifies this Protocol shall, based on the notifications and other available information, publish annually statistics that are compiled in such a way as to be representative of the country as a whole, concerning occupational accidents, occupational diseases and, as appropriate, dangerous occurrences and commuting accidents, as well as the analyses thereof.

³³ Article 15 (c) of Labour Inspection Convention, 1947 (No. 81): Subject to such exceptions as may be made by national laws or regulations, labour inspectors: (c) 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.

Chapter VII Supplementary Provisions

Article 85 For the purposes of this Law:

“Occupational disease hazards” means various hazards which may cause occupational diseases to workers engaged in occupational activities. “Occupational disease hazard factors” includes: various harmful chemical, physical, and biological factors existing in occupational activities as well as other occupational harmful factors arising in the process of operations.

“Occupational contraindications” means the special individual physiological or pathological state of an employee who is more likely to suffer occupational disease hazards and contract occupational diseases, suffer aggravation of an existing disease, or contract a disease that may endanger the life or health of others during operations than the general working population when the employee is engaged in a particular occupation or exposed to particular occupational disease hazard factors.

Comments:

1. It is suggested to consider making the following revision in the first paragraph of Article 85: “Occupational disease hazards” means various hazards which may cause occupational diseases to workers during occupational activities.
2. On the definition of terms:

In addition to the terms mentioned in Article 85, the terms of workplace, occupational or work activity, enterprise, public institution, individual economic organization and worker are also very important for the prevention and control of occupational diseases. Providing clear definitions of these terms will contribute to the implementation of the Law on the Prevention and Control of Occupational Diseases.

3. On occupational contraindications:

According to the definition of the Joint ILO/WHO Committee on Occupational Health, occupational health should be committed to 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.

The ILO has also put forward some other specific principles on occupational contraindications. For example, Article 5 (b) of Occupational Safety and Health Convention, 1981 (No. 155) stipulates that full consideration should be given to relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organisation of work and work processes to the physical and mental capacities of the workers. Paragraph 8 (e) of Part II of Occupational Health Services Recommendation, 1985 (No. 171) stipulates that occupational health services should collaborate in job analysis and in the study of organisation and methods of work with a view to securing a better adaptation of work to the workers. There are guiding principles for employment or work of specific occupations in Part V of Technical and Ethical Guidelines for Workers' Health Surveillance “Use of health-related data”, including: first, there is no such thing as occupational contraindications in general; second, both the work and the worker's working ability are subject to change, and contraindications may no longer be contraindications with the improvement of working conditions; third, caution should be exercised when a worker is examined for medical contraindications to avoid overestimating functional disability, so that workers will not lose the opportunity to engage in available work, and to avoid underestimating a worker's ability to overcome a working functional disability; fourth, when an occupational disease has been detected in a worker, the first thing to do is to remove hazards, and improve the working environment and working conditions, and only when the occupational hazards are intrinsically linked to the work can the worker be removed from the post.

The ultimate goal of occupational safety and health and occupational disease prevention and control is to adapt working conditions and environment to workers on the one hand, and to ensure that workers can adapt themselves to their work on the other hand, which is a two-way adaptation process. If the definition of occupational contraindications is not related to the adaptation of work to workers, and not taking the protection of workers' health as the starting point, it is difficult to avoid employment discrimination against workers and not conducive to the prevention and control of occupational hazards.

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