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VIII OSH Conference 2021: “OSH at work: time to change”

ME 16th May draft Law on OSH – what is still missing?

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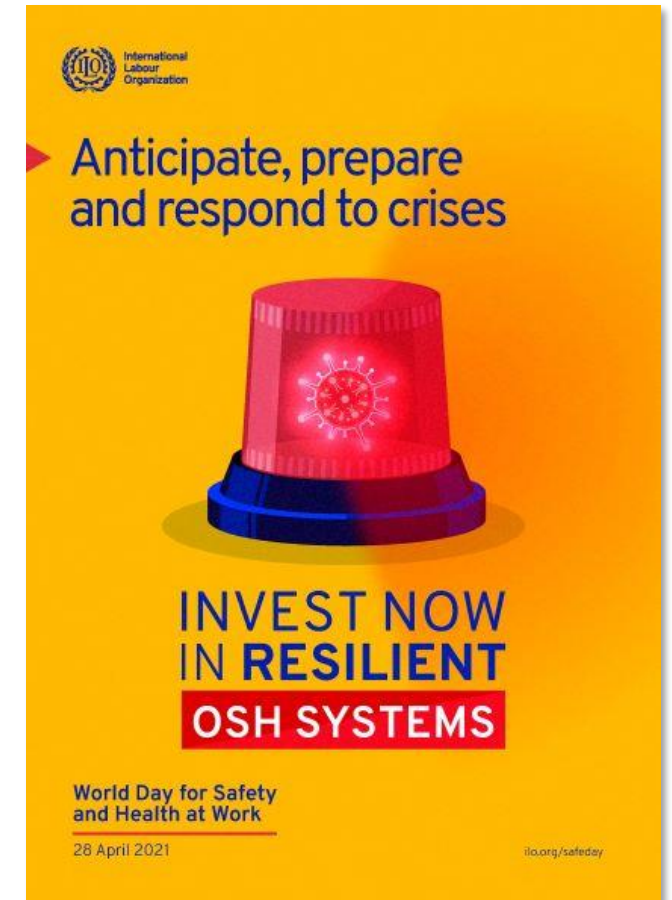
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► How to improve alignment with ILS & EU Acquis

- **Art.1(1)(22)** – “night worker”: redefine as “a worker who, during night time, works at least 3 hours of their daily working time or no less than ¼ of their annual working time – to align with **Art. 2(4)(a) of Dir. 2003/88/EC**
- **Art. 1(1)(37)** - “system of state management in the field of safety and health of workers”:
 - Review definition as, e.g.: “infrastructure which provides the main framework for implementing the national policy and national programmes on OSH” (draft only include public authorities) - **to better align it with Art.1(b) of ILO C187**
 - Specify main elements of the system, e.g.: laws, regulations, collective agreements; authority/body responsible for OSH; mechanisms to ensure compliance (including LI); arrangements to promote cooperation between employer, workers and their representatives at workplaces; national tripartite advisory body on OSH; information, training, research and advisory services on OSH; occupational health services; etc. - **to better align it with Art. 4 of ILO C187**

► How to improve alignment with ILS & EU Acquis

- **Article 11** – “special conditions for performance of high-risk works”:
 - **Art. 11(1)** – the authorization for its performance should not be replaceable for and addition insurance - **to align it with Article 11(b) of ILO C155**
 - **Art. 11(8)** – the fixing of a time-frame of 10 days to issue an authorization and especially its tacit authorization (after elapsing that time), undermines the application, in practice, **of Article 11(b) of ILO C155**
 - **Arts. 11(9) and 11(10)** – the grounds for refusing or revoking authorization should include:
 - ❖ Applicant’s conviction for violating OSH regulations on high risk works (within previous 2 years)
 - ❖ Applicants’ workers victims of fatal/serious accidents connected to high-risk works (in previous 2 years)
 - ❖ Labour inspectors verify employer’s inability to ensure worker’s OSH in such high-risk works

► How to improve alignment with ILS & EU Acquis

- **Art. 12(9)** - the minimum OSH requirements for the use of work equipment should be set forth by CMU (via CMU Decree), instead via ME Order – to ensure effective application and sustainability
- **Art. 15** - “Authorized entities for safety and health of workers”: requirements and different modalities of OSH services that should be ensured by the employers (external/internal and of safety/health) should be defined by workplace (instead of globally, for the employer), depending on (to align with Art. 7 of Dir. 89/391/EEC):
 - Number of workers of each workplace
 - Nature of occupational risks to which workers are or may be exposed at each workplace
- **Article 19** – “Workers’ health surveillance and health examinations”: Should be revised, in order to provide for the employer’s obligation to ensure the health surveillance and examination of **all** workers (as health exams should assess fitness to and impact of work and working conditions on workers’ health) – to align with Art. 14(2) of Dir. 89/391/EEC

► How to improve alignment with ILS & EU Acquis

► Art. 22 - “First aid, elimination of breakdowns, fire-fighting, and evacuation of workers”:

- Art. 22(4)(1) - the information on the risks involved and of the steps taken or to be taken as regards protection should be provided as soon as possible and before the occurrence of any real emergency situation and not, as foreseen in this provision, only “In case of emergencies that threaten life and health of workers (...)” – **to align with Art. 8(3)(a) of Dir. 89/391/EEC**
- Art. 22(6) - the wording “The fact of there being such a danger (...)”, which is suggested to add after the first sentence, should be deleted or deeply revised, because is **contradictory with Art. 13 of ILO C155 and Arts. 8(4) and 8(5) of EU Dir. 89/391/EEC**:
 - ❖ Workers should be able to removed themselves from work situations in which they have “reasonable justification to believe presents an imminent and serious danger to his life or health”
 - ❖ Workers’ decision to leave **cannot wait by a commission’s decision qualifying a given event as being dangerous because it has to be** (by the imminent nature of the danger) **immediate!**

► How to improve alignment with ILS & EU Acquis

- **Art. 35** - “Employer’s liability for violation of the legislation on safety and health of workers”:
 - **Arts. 35(4)(1) to 35(4)(17)**: infractions should be more **differentiated by severity and consequent amounts** of fines and the ones covered by the residual provision [Art. 35(4)(17)] should be kept to a minimum
 - **Arts. 35(4)(17)**:
 - ❖ The second sentence (“The fines mentioned in this paragraph shall be imposed in case of failure to comply with the labour inspector’s order concerning elimination of such violations drawn up on the basis of the inspection visit findings”), **should be deleted** because:
 - **Takes out** from labour inspection the **general preventive effect**; and
 - **Is contradictory with**: Arts. 17(2) and 18 of C81, Arts. 22(2) and 24 of C129, Art. 9(2) of C155, and Art. 4(2) of Dir. 89/391/EEC
 - ❖ The **amount of “half a minimum wage”** for this residual provision should be revised to **align it with the amount of “a minimum wage” foreseen** in the equivalent residual provision of sub-paragraph 8) of the second part of Article 268 of the **Code of Labor Laws** of Ukraine

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- **Art. 35** - “Employer’s liability for violation of the legislation on safety and health of workers”:
 - **Arts. 35(8)**: should be reworded, to provide that the employer, **to benefit from the offered discount of 50% of the amount of the fine, besides paying it within 10 banking days, has also to correct the violation committed within the same period of time.**
 - The amount of fines should also be **increased by the amount of the financial gain of the employer** with the commitment of the infraction, in order to dissuade non-compliance
 - It should also be considered the **introduction of non-monetary accessory sanctions**, more directed to the vital interests of the employers.

► How to improve alignment with ILS & EU Acquis

- **SECTION VIII - FINAL PROVISIONS** (alterations to Chapter XVIII of Code of labour Laws, Law 877 on State Supervision and Law on National Police):
 - Our recommendations are the same as the ones already provided, in 3 April 2021, to the ME Draft Law “On Amending Some Legislative Acts on the Procedure of State Supervision (Control) of Compliance with the Labour Legislation”, which content is similar (available at: https://www.ilo.org/budapest/what-we-do/projects/declared-work-ukraine/WCMS_779301/lang--en/index.htm).
 - They include, *inter alia*, the alignment of these provisions with ILO C81 and C129 on Labour Inspection and, in particular, in what concerns:
 - ❖ Take labour inspection out of the scope of the Law 877 (or, at least, from the application of several of its provisions which were identified in our technical recommendations)
 - ❖ Powers of labour inspectors
 - ❖ Grounds for inspection visits
 - ❖ Duration, frequency and scope of inspection visits
 - ❖ Collaboration between labour inspection and National Police

What's next?

- ▶ Adoption of the legal acts aimed at transposing the following EU individual Directives on OSH:
 - Council Directive **92/58/EEC**, of 24 June 1992, on the minimum requirements for the provision of **safety and/or health signs** at work.
 - Council Directive **89/656/EEC**, of 30 November 1989, on the minimum health and safety requirements for the use by workers of **personal protective equipment** at the workplace.
 - Council Directive **89/654/EEC**, of 30 November 1989, concerning the minimum safety and health requirements for the **workplace**.
 - Directive **2009/104/EC**, of the European Parliament and of the Council, of 16 September 2009, concerning the minimum safety and health requirements for the use of **work equipment** by workers at work.
 - Council Directive **92/57/EEC**, of 24 June 1992, on the implementation of minimum safety and health requirements at **temporary or mobile constructions sites**.
 - Directive **2003/88/EC**, of the European Parliament and of the Council, of 4 November 2003, concerning certain aspects of the organization of **working time**.
 - Directive **1999/92/EC**, of the European Parliament and of the Council, of 16 December 1999, on minimum requirements for improving the safety and health protection of workers potentially at risk from **explosive atmospheres**.

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Q&A



Contacts

Дякую за увагу!

Thank you for your attention!





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