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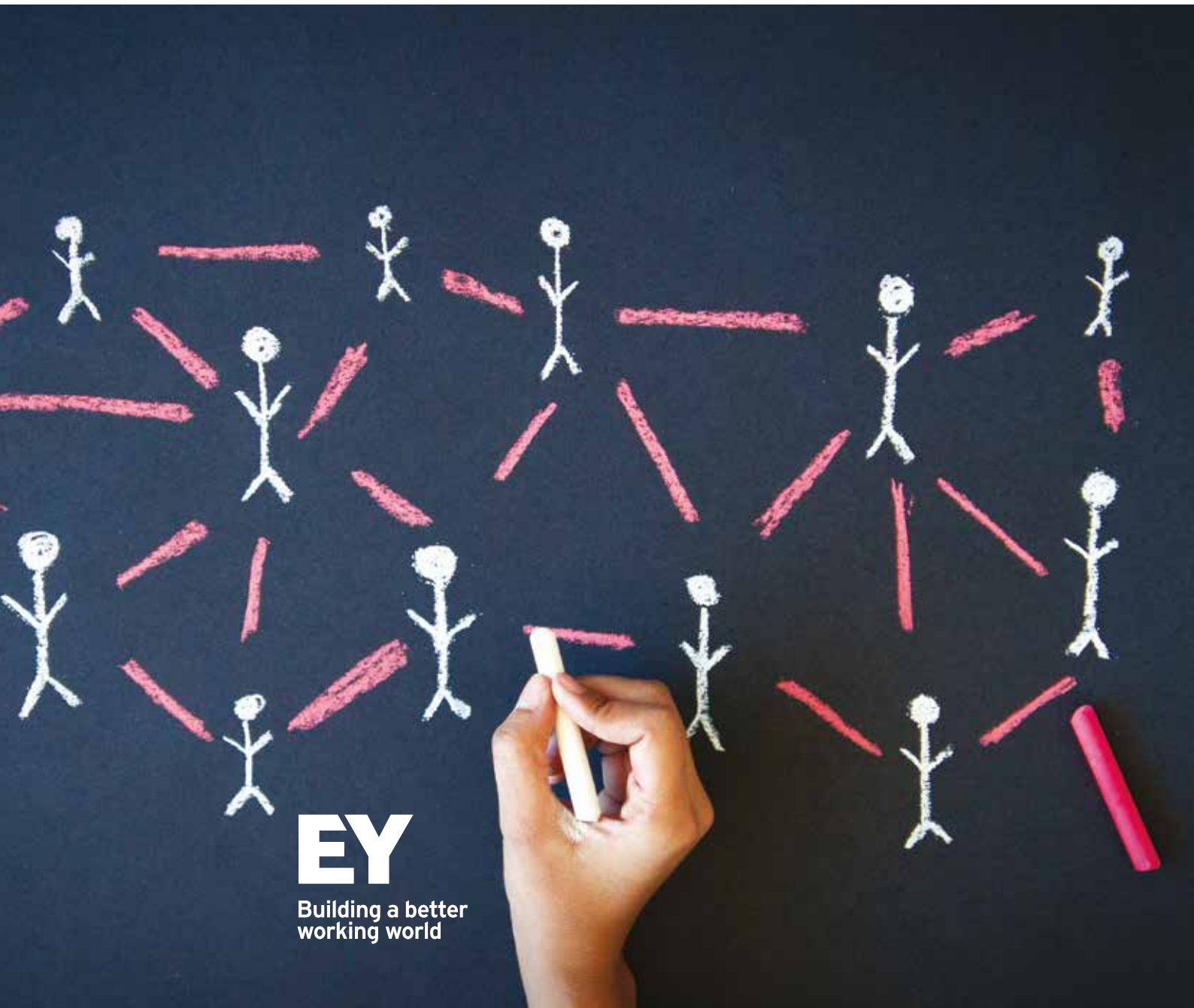
Multi-jurisdictional Labor and Employment Law update



Building a better working world

In this issue ...

Editorial

Health and safety issues at work have become more and more prominent in the workplace around the world.

The primary concern with respect to health and safety issues had always been limited to protecting the physical integrity and health of employees mostly employed to do manual work. Following the Industrial Revolution, most of these health and safety issues focused on the conditions of workers in factories.

In the twenty-first century, we are experiencing a radical shift in health and safety issues towards concern for the mental, emotional, and psychological health of employees, as well. Indeed, the focus of health and safety issues today is not only on physical health for manual and factory workers but also for all employees, including office workers.

The growing trend of employee claims against employers for stress, bullying and most recently "abusive misconduct" should cause a reasoned employer to pause and consider the potential risks and corrective actions required to protect the health of its employees.

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Bulgaria

Updates on health and safety at work in Bulgaria

The Bulgarian Labor Inspectorate has recently indicated, in its annual report, that the most common violations in the employment area are those of health and safety at work regulations. They represent 41.3% of all violations.

More than half of them are breaches related to the organization and management of activities aimed at ensuring health and safety at work. A large number of violations are also connected with the work facility, technological processes and the norms on occupational hygiene. Delegating activities to incompetent employees has been identified as a major reason for this high percentage of violations of health and safety regulations.

However, comparative analysis shows that, each year, the relative share of companies that have taken measures to eliminate professional risk and be compliant with legislative requirements increases.

Recent court practice also indicates that the authorities enforcing health and safety at work issues are taking the matter seriously. A number of individuals have been sentenced to imprisonment because it was proven that they acted negligently when an employee of theirs died during working hours.

Another established court practice says that the mere appointment of someone to be responsible for health and safety at work, and holding daily briefings with employees, is not enough to fulfill the employer's obligations when there is no real control of the workplace.

At the same time, court practice safeguards the basic rule of civil law. When there is contributory negligence on behalf of the injured, the responsibility of the employer shall be reduced or rejected.

Amendments in legislation for intermediary agencies

With a view to eliminating the discrepancies identified by the European Commission, a bill amending the Employment Promotion Act has been recently adopted. The obligation to register each agreement between a Bulgarian intermediary agency and a foreign employer with the Employment agency was abolished.

The license for providing intermediary services has been changed. It is now for an unlimited period of time, as opposed to the previous situation where renewal was required every five years. A new regime was established for intermediary agencies providing a one-off service or services for a limited period of time. These will now be subject to a notification regime instead of registration.

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France

Health and safety in France: the protection of employees' physical and psychological health

Over the past few years, health and safety has been at the heart of French legislation and case law. It has become more and more important as the notion of health and safety in France has expanded to include elements that are not traditionally considered to be tied to health and safety. Indeed, the notion of health and safety has evolved into two ways.

The first relates to the physical health of employees at work. For example going beyond factory workers, in recent years, the risks of repetitive strain injury in an office environment have increased.

The second relates to employees' psychological health. Not only does this seem somewhat distant from the initial purpose of health and safety laws, but it is also applied to several issues that could seem unrelated to health and safety.

For instance, in a recent decision, the Paris Court of Appeal ruled that a restructuring plan organized by one of France's largest entertainment retail chains was illegal given that: "The restructuring plan failed to account for health and safety risks tied to the fact that the plan would potentially lead to an increase in individual workload, which would in turn increase stress and affect the psychological health of the remaining employees." Ever since this decision, companies planning restructuring within their organization are wary of the manner in which they evaluate and quantify the potential impact on individual workloads.

In a recent decision, the French Supreme Court ruled , that unless proper supervision was applied, working schemes designed around days worked as opposed to hours worked, given that they threatened the psychological health of employees. This decision had a considerable impact, as most managers in France are on a working day system. Therefore, in order to remedy this situation, employers must now set up biannual meetings with employees whose employment contracts contain such provisions, in order to evaluate the psychological impact of the employee's workload and avoid excessive stress at work.

In addition, the national collective bargaining agreement "Syntec" has just been modified to allow employees a right to "disconnection" time from their smart phones and computers, also for the intended effect of allowing employees to psychologically "rest."

The idea of psychological health is also expanding to issues tied to bullying and discrimination at work. Employers must no longer guarantee just the physical integrity of their employees. They must also ensure that their psychological health is protected. Over the past few months, there have been several cases where employers were fined under health and safety rules because they failed to protect an employee against the "psychological" bullying of his colleagues.

Lastly, harsh working conditions have been at the heart of a debate regarding French retirement pension. Indeed, it was generally felt that individuals who worked under harsh conditions, such as individuals who frequently worked in contact with dangerous chemicals or were exposed to extreme temperatures, should benefit from earlier retirement. Therefore, starting 1 January 2015, each employee will be able to monitor throughout his/her career the level of harshness of the career which will then impact the age of retirement.

In conclusion, health and safety in France is becoming a very prevalent issue for companies. They must now be concerned with stress related and psychological issues as well as their employees' physical health.

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Italy

The latest amendments to health and safety provisions in Italy

Law Decree no 69/2013, published in the Italian Official Gazette no 144 on 21 June 2013, came into effect on 22 June 2013. This law decree, called "Decreto del Fare" (Decree for Action), aims to resolve long-standing issues that are considered to have held back economic growth in Italy over the past few years.

In summary, the main measures of the legislation that relate to employment are the following.

Safety at work and work contracted out

The law contains new provisions for activities with a low level of risk of accidents at work and occupational diseases. For such activities, the law provides that a form of attestation may be used. This attestation will replace the more complex evaluation document currently prepared by employers in accordance with the law on safety at work.

In case of supply contracts, the party contracting out the work is permitted to replace the risk assessment form. The form must be jointly prepared with the contractor, by appointing a fully qualified delegate in charge of the supervision and coordination of the parties for the purposes of compliance with the safety at work provisions. This appointment can only be made if the activities are characterized as low risk in terms of accidents at work and occupational diseases.

Simplifications for short term employment contracts

The law decree simplifies the duties of employers in relation to health information and supervision for workers hired with employment contracts for terms not exceeding 50 days on aggregate per calendar year.

The new negotiation procedure

Law Decree no 132, of 12 September 2014, introduces a new alternative dispute resolution system. In order to reduce the existing case backlog before the courts, the Italian Government has assigned a leading role to lawyers in a so-called assisted negotiation procedure, "procedura di negoziazione assistita da un avvocato."

This negotiation attempt will be mandatory in payment claims below €50,000. In other cases, the parties are not compelled to begin negotiations. But lawyers shall inform the client of the possibility of recourse to such procedure.

It is important to highlight that, according to the law decree, employees' rights provided by law or by collective agreements can also be object of negotiation.

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Japan

Amendment to the Industrial Safety and Health Act in Japan: employees' stress check will become mandatory

In June 2014, a law to amend Japan's Industrial Safety and Health Act was enacted. One of the most important amendments is the introduction of a stress check system for employees. A stress check on employees will become mandatory by December 2015.

Employees' mental health has become a subject of growing concern in Japan. Under the country's labor and employment laws, employers can be held responsible for their employees' physical diseases or injuries and mental illnesses declared during their employment. And employees can also claim damages through Workers' Accident Compensation Insurance.

According to figures provided by the Japanese Government, the number of claims made by workers under Workers' Accident Compensation Insurance due to mental illness has increased in recent years. During the fiscal year from April 2013 to March 2014, 1409 claims for insurance benefits due to mental illness were submitted to the labor standards inspection offices. This includes 177 claims due to employee's suicide or suicide attempts.

The main objective of the mandatory employees' stress check system is to prevent the development of mental illness, by helping employees to identify when they are suffering from stress.

The amendments to the Industrial Safety and Health Act relevant to employees' stress checks are scheduled to come into force by December 2015. The Ministry of Health, Labor and Welfare (MHLW) is now in the process of preparing the relevant enforcement regulations and guidelines that will determine the details of the stress check system. The enforcement regulations and guidelines are scheduled to be established by March 2015.

The outline of the stress check system is as follows:

- Employers will be required to conduct a stress check on employees working at a workplace where 50 or more employees are working. For the time being, stress checks at workplaces where fewer than 50 employees are working will not be mandatory. But the employer shall endeavor to conduct a stress check on these employees.
- The frequency of the stress check is now being discussed, but it is expected that a stress check will be required once per year.
- Details of the procedures undertaken during the stress check will be provided for in the enforcement regulations or guidelines to be established by MHLW.
- The stress check will be conducted by a doctor, a public health nurse or other professional that will be stipulated in the enforcement regulations or guidelines by MHLW.
- Doctors or other professionals who conduct the stress checks on employees cannot disclose the result thereof to any third party, including the employers. It will be the employers' obligation to provide results of the stress check to each employee. Consent of the employee must be given before the results are shared with the employer.
- Depending on the level of stress detected during the check and at the request of the employee, the employer will have to set up a meeting with a doctor at which the doctor gives medical guidance to the employee.
- It will be the employer's obligation to receive an opinion from the doctor who has conducted the meeting with the employee regarding the measures that are necessary to preserve the employee's health. Based on the doctor's opinion, if the employee deems it necessary to take certain measures – such as change of workplace, change of job duties, reduction of work hours or reduction of late-night working – the employer will need to take such measures.

In workplaces, employers are also obliged to handle various issues related to their employees' mental health. For example, if an employee whose overtime work per month exceeds 100 hours requests it, the employer must set up a meeting with a company doctor in order to give the employee medical guidance. This is because it is considered that working long hours can cause mental as well as physical illness.

Employers could also face difficulties when terminating the employment of a worker who suffers from a mental illness. Also, if an employee's mental illness is caused by over-work, a severe working environment or other reasons attributable to the employer, the employer could be liable to compensate for damage suffered by the employee. This could include covering medical bills, compensating for loss of income or providing other compensation.

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Kazakhstan

Work safety in Kazakhstan

The Kazakh Constitution guarantees a safe work environment for all employees. There are also a number of legal acts in Kazakhstan which regulate work safety issues as well as international treaties related to work safety, such as the Agreement on Cooperation in the Work Safety Sphere with CIS countries and the Treaty of the International Labor Organization on Work Safety and Hygiene in the Production Sector.

Kazakh labor legislation guarantees work and safety at work through two avenues. First, it sets forth obligations with which employers must comply and which aim to promote safety at work. Secondly, it gives the government the power to control companies in order to ensure they enforce the applicable rules.

At the moment, health and safety at work is a recurrent issue for state authorities. For instance, in 2014, the Kazakhstan labor authorities launched in several regions a pilot project for voluntary declaration by employers on their compliance with work safety requirements. Employers who proceed with such declarations will have a reduced amount of labor inspections over a period of three years.

General information on work safety regulation in Kazakhstan

Kazakhstan's labor legislation has set forth a specific definition of the term "work safety." Work safety is a system which aims to protect the health and safety of employees as they perform their work duties. Work safety includes a variety of issues and means which can be legal, social and economic, administrative and technical, sanitary and epidemiological, medical and preventive, recreational.

Employers not only protect the health and safety of their employees, but ensure that such protection is maintained through the course of time. Work safety consists of various measures set by Kazakhstan's labor legislation and obligatory for both employers and employees.

Depending on the factors associated with performance of work, the Kazakh legislation differentiates between the following types of working conditions:

- Normal working conditions
- Heavy work
- Work in harmful (extremely harmful) and/or hazardous conditions.

The type of working condition is established by specialized companies which are mandated by the Ministry of Healthcare and Social Development of the Republic of Kazakhstan.

There are certain general work safety requirements that apply for all employers. They include:

1. Conducting work safety training/ examination for employees specifically tailored to their job
2. Creating and updating certain documents such as work safety instructions, training registers
3. Sending, at least once every three years, management and specialists responsible for work safety for regular training/ examinations in this regard

In addition, employers with production facilities and which have production activities are obliged to have a work and industrial safety specialist and department as well as to have their working conditions re-established once every five years.

Investigation of work-related accidents

Along with work safety issues, the Kazakh labor legislation strictly regulates the procedure for the investigation of work-related accidents. Depending on the seriousness of an accident, an employer has to initiate either:

- An ordinary investigation

or

- A special investigation of a job-related accident.

In case of a work-related accident, among other things, an employer is obliged to provide first aid to an injured employee, immediately inform his/her relatives and notify the relevant state authorities and employee representatives about the accident, as well as initiate an investigation.

The ordinary investigation of a job-related accident should be conducted by the employer with the participation of employee representatives. A special investigation additionally requires the participation of representatives of the relevant state authorities.

Based on the results of the investigation, a commission determines the circumstances of the accident and the degree of the employer's fault in the accident. Upon completion of the investigation, the employer has to register the accident in the register of work-related accidents and submit statistical reporting to the state authorities. Moreover, an employer may be obliged to arrange for and/ or pay significant compensation to the injured employee.

It is worth noting that Kazakh legislation has implemented serious sanctions, both criminal and administrative, for employers who violate work safety requirements. For instance, a work safety specialist's violation of work safety requirements that leads to an employee's death may lead to a maximum sentence of five years with a possible prohibition of employment in certain positions or engagement in certain activities for a period of up to three years.

In light of the above, it is very important for employers to make sure that they comply with all requirements of Kazakh work safety law.

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Netherlands

The Dutch Work and Security Act

On 1 January 2015, part of the Dutch Work and Security Act (WWZ) will come into effect. The WWZ is one of the largest overhauls of Dutch labor law in the past decade. The WWZ has three main goals:

- To make laws governing termination of employment contracts fairer, easier, quicker and less costly to apply
- To strengthen the position of flexible workers
- To reduce the maximum unemployment benefit in the hope of encouraging the unemployed to find a job

The modifications will take effect at three different moments: on 1 January 2015, 1 July 2015 and 1 January 2016, epending on the nature of the modifications and the persons affected.

Modifications applicable on 1 January 2015

- Modifications that will be applicable on 1 January 2015 aim to strengthen the situation of employees with a fixed-term employment contract. According to the WWZ, employers may no longer include a probationary period in a fixed-term employment contract with a term of six months or shorter. A probationary period in such an employment contract will be considered as null and void.
- In addition, in principle, according to the new rules, non-compete clauses will be prohibited in fixed-term employment contracts. However, if the employer has a substantial business interest in including a non-compete clause, the clause could be regarded as valid if it substantiates, in a written statement, the necessity of the non-competition clause.
- Finally, the WWZ will introduce a notification duty for the benefit of employees with a fixed-term employment contract with a duration of six months or more. According to this new law, the employer must inform such employees, no later than one month before the end of the employment contract is set to end by operation of law, whether or not the employment contract will be extended and, if so, under what conditions. This duty of notification also applies to renewals of fixed-term employment contracts. In the event that the employer fails to notify the employee, or fails to do so in time, the employment contract will end on the agreed date, but the employer will be obliged to pay a maximum compensation of one month's salary to the employee.

Changes from 1 July 2015

Successive contracts rules

The successive contracts rules (in Dutch: ketenregeling) state that successive fixed-term employment contracts are converted into employment contracts for an indefinite period of time at a certain point. As of 1 July 2015, the successive contracts rules are as follows:

Three fixed-term employment contracts may be concluded within a space of two years. This includes interruptions of up to six months. An employment contract for an indefinite period of time is formed by operation of law under either of these circumstances:

- The two-year period is exceeded in the case of two or more employment contracts.
- A fourth fixed-term employment contract is formed.

Alteration of the dual dismissal system

The two alternative paths for dismissal – permission from the Dutch Labor Office to give notice and dissolution by the sub district court – will continue to exist under the WWZ. However, there will be one single manner of dismissal mandatorily prescribed by the law, depending on the reason for the dismissal. For dismissal on grounds of (a) economic reasons or (b) long-term incapacity for work, dismissal will take place by requesting permission from the Dutch Labor Office to terminate the employment contract. Dismissal for other reasons (such as a damaged working relationship, inapplicability, inability to work as a result of sickness or invalidity, or culpable acts or omissions) will take place through dissolution by the sub district court.

In comparison with the current rules, the WWZ allows the possibility for appeal and appeal in cassation for both dismissal alternatives.

Transitional payment

The formula used by the sub district court (in Dutch: kantonrechtersformule) will be abolished. Under the new rules, an employee whose employment contract has been in place for two years is entitled to a transitional payment, regardless of the manner of dismissal. The transitional compensation is equal to a third of the monthly salary per year of service, for the first 10 years of service; and half of a monthly salary per year of service afterwards. The transitional payment cannot exceed €75,000 or one year's salary if this is higher than €75,000. The transition payment must subsequently be used by the employee for finding other work. The employee could lose the right to benefit from the payment if he commits a serious culpable act during his employment relationship.

Changes from 1 January 2016

Limitation of the duration of unemployment benefits

As outlined above, the changes contained in the WWZ with respect to the Unemployment Insurance Act aim to ensure that people find a new job soon after being made unemployed. Therefore, the maximum duration of benefits under the Unemployment Insurance Act will drop from 38 months to 24 months. Another measure that aims to ensure that the unemployed accept job offers as quickly as possible is that all jobs qualify as suitable employment after six months of unemployment. This means that people entitled to unemployment benefits will be obliged to accept all available jobs after six months of unemployment.

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New Zealand

New dawn for New Zealand health and safety legislation

New Zealand is in the midst of a once in a generation change to its health and safety (H&S) regime. With one in ten workers suffering a workplace accident each year and workplace accident costs estimated at 2% of GDP, New Zealand workers are significantly more likely to suffer injury or be killed at work than their Australian and UK counterparts.

Following the tragic death of 29 miners in a coal mine explosion in 2010, a Royal Commission of Inquiry and an Independent Taskforce reviewed New Zealand's current H&S regime. They found the current regime to be "unfit for purpose."

A raft of changes was proposed. A new standalone regulatory body, WorkSafe New Zealand, commenced operations in December 2013. Draft legislation (the Health and Safety Reform Bill 2013) is currently before Parliament. The new legislation is expected to come into force in late 2015.

The Bill is based on Australian Model Work Health and Safety Act. It comprehensively reforms New Zealand's current H&S laws. Major changes include:

- The primary duty to take reasonably practicable steps to ensure worker safety will be imposed on the "person conducting a business or undertaking" (PCBU). Companies, partnerships, sole traders, central government departments and local authorities will generally all qualify as PCBUs
- Safety duties will extend to all aspects of the supply chain. Those who commission, design, install, manufacture, import and supply plant, structures and substances will qualify as PCBUs with safety duties
- Each PCBU will have duties for the safety of its own employees, the employees of contractors and subcontractors (to the degree that it can influence this) and anyone else who may be affected by the work. PCBUs with responsibilities for the same workplace will be required to cooperate and coordinate compliance efforts
- All directors and senior managers of a PCBU will be under a duty to take reasonably practicable steps (or exercise due diligence) to ensure compliance by their PCBU with its H&S duties. Workers will have a greater ability to participate in improving workplace H&S standards
- A radically overhauled penalty regime will apply. The maximum fine for a business will rise from NZ$500,000 to NZ$3m, and courts will be able to make adverse publicity orders. Directors and senior managers will face up to five years' imprisonment and an NZ$600,000 fine.

One of the challenges facing New Zealand's legislators and WorkSafe is encouraging office-based businesses to prioritise H&S. Although covered by both the current and the proposed legislation, stress-related and other psychological harm has traditionally been addressed through New Zealand's employment regime. One indicator that this may be changing following WorkSafe's establishment is the release in February 2014 of WorkSafe's guidelines for "Preventing and Responding to Workplace Bullying." This comprehensive guide defines workplace bullying for the first time and indicates that WorkSafe is taking an active interest in psychological, as well as physical, harm in the workplace.

The proposed legislative changes are already having an impact. Now is the time for organisations with New Zealand-based operations to:

- Review their approach to workplace H&S
- Assess whether the processes and procedures currently in place are adequate (a gap analysis)
- Check that directors and senior managers will receive the training and resources necessary for them to comply with their new due diligence duties
- Liaise with other involved parties to establish a collaborative approach to the new overlapping, mutual H&S duties
- Prepare for much wider cooperation with workers and their representatives on H&S management

Ahead lies a period of change for New Zealand business as H&S assumes a more pivotal role in risk management and overall strategy.

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Norway

Health, safety and environmental regulations in Norway: responsibilities of the employer for physical and mental health

Employer's responsibility for health, safety and the environment

The employer has primary responsibility for ensuring that the statutory requirements related to health, safety and environment are implemented. The Norwegian Working Environment Act contains a general requirement that the working environment shall be fully satisfactory when factors in the working environment can influence the employees' physical and mental health and welfare. The requirements that must be satisfied depend on the size and risk related to the enterprise.

Requirements for the working environment

According to the Working Environment Act, it is the responsibility of the employer to ensure that the working environment is fully satisfactory regarding the employees' physical and mental health and welfare. The employer shall also take into account the employees' individual physical and psychological abilities when organizing and arranging the work of the individual.

The workplace must be organized so as to preserve the employees' integrity and dignity, and to enable contact and communication with other employees.

The employer also has to ensure that there is no harassment, including sexual harassment, or other improper conduct in the workplace and that, as far as possible, employees are protected against violence, threats and undesirable strain as a result of contact with other persons. The employer is obliged to have a procedure for handling bullying at the workplace.

The employer shall ensure that measures to maintain a good working environment are systematically implemented. This includes systematic work on sick leave.

Supervision and responsibility

It is the employer's duty to conduct ongoing monitoring of the working environment through internal control. It is also their duty to ensure that the work is planned and organized to meet the requirements that are laid down in the Working Environment Act and appurtenant regulations. Employees have both the right and obligation to participate in activities at the workplace to ensure this.

In addition, several important roles are defined in the regulations that are designed to ensure control and monitoring of the working environment:

Safety delegates

All businesses must elect a safety delegate (alternative solutions may be agreed if the business has fewer than 10 employees). The safety delegate represents the employees in all matters that are relevant to the working environment.

The Working Environment Committee

All businesses with at least 50 employees must establish a working environment committee.

The duties of the working environment committee are to make efforts to establish a fully satisfactory working environment, participate in planning safety and environmental work, and follow up developments closely in questions relating to the safety, health and welfare of the employees.

Sanctions

The Labor Inspection Authority can respond to contraventions of health, environmental and safety legislation with various sanctions, including orders, coercive fines and notification to the police. Which sanction is chosen will often be a matter of judgment.

Whenever the law or regulation has been contravened, the gravity of the contravention and the type of enterprise involved will all have a bearing on the choice of sanction.

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Peru

Health and safety at work in Peru: the empowerment of workers and special protection for people with disabilities

With the issuance of Law No. 29783, the Health and Safety at Work Act, a legal protection system was established in Peru in order to create appropriate mechanisms to ensure the health and safety of workers in different labor regimes. The system also promotes a prevention culture against risks arising from working activities.

Prior to this law, health and safety at work in Peru was regulated by Supreme Decree No. 009-2205-TR, which established a system with lower standards.

This law, which was the first passed by the current government of President Ollanta Humala, is based on the following principles:

- Prevention: The employer must establish mechanisms that aim to protect the health and safety of its employees and any provider of services within its facilities.
- Cooperation: The Government, employers, workers and worker unions must establish appropriate mechanisms for cooperation on safety and health at work compliance.
- Integral management: The employer must promote the management of safety and health at work in its facilities.

Furthermore, Law No. 29783 provides a special emphasis on the protection and development of pregnant women, underage workers and people with disabilities. This special protection is manifested in the following employer obligations:

1. Employers must transfer expectant mothers, or mothers during breastfeeding phase, to a job position that does not involve any health or security risk.
2. Employers are prohibited from hiring or retaining teenage workers to perform hazardous work activities or any activity that may affect proper physical and mental development.
3. Employers must establish appropriate mechanisms and tools for people with disabilities to help them do their jobs in an adequate environment.
4. Employers must ensure a job transfer for staff who have suffered a disability that prevents them from proper development in their original job position, as a consequence of a work accident or an occupational disease.

One of the most important aspects developed by the law is the active participation of workers and work unions in the management of safety and health at work.

In this regard, the law requires that each company with 20 or more workers must have a Safety and Health at Work Committee. The committee must consist of equal numbers of employer and employee representatives.

The election of workers' representatives must be done through an electoral process led by the union with the most affiliated workers. If the company does not have a work union, employees must organize the elections.

The Safety and Health at Work Committee is responsible for the enforcement of the safety and health at work policies established by the company. It is also responsible for developing the company's internal regulations on safety and health at work and for ensuring that all safety and health at work obligations are being duly fulfilled by the company.

Among other relevant obligations set by Law No. 29783, companies must submit their workers to occupational medical examinations:

1. Before employment
2. During employment
3. After termination of employment

The frequency at which employees must take periodic medical examinations has changed during the last year. The original version of Law No. 29783 and its supplementary regulations required that periodic occupational medical examination took place on an annual basis. But an amendment to the law published in 2014 has changed the frequency to every two years, unless workers perform hazardous activities. In such cases, the frequency will be defined by the authorities in their respective activity sectors.

The change in frequency of medical examinations is the product of reflects the view of business associations, which want to reduce the costs generated by occupational medical examinations.

As a result of the issuance of Law No. 29783, the company representative in charge of health and safety at work is exposed to deprivation of liberty should their negligence endanger the life or well-being of any worker.

The issuance of Law No. 29783 has already produced encouraging results. For example, the number of accidents in the mining industry declined by approximately 18% between 2012 and 2013.

Such results are the consequence of responsible companies showing commitment to the health and safety of their employees, and of the correct legal enforcement by the Peruvian labor authorities. Nevertheless, there is still much progress to make on health and safety at work standards. It is the responsibility of Peruvian authorities and employers to continue to drive improvement.

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Health and safety in Spain: organizing labor risk prevention

The control of the correct application of the labor risk prevention rules in Spain may lie in both the company itself as well as in external agents. The size of the company, the potential labor risks associated with its activity and the choice made by the employer are the three aspects that come into play when it comes to decide who shall be the responsible for labor risk prevention in a certain company.

The law establishes five different available options which allow the employer to organize the labor risk prevention service:

1. Voluntarily undertaking labor risk prevention activities

Employers may voluntarily assume the leading role in the labor risk prevention activities provided that their companies employ less than 10 workers. Exceptionally, they may also be in charge of the labor risk prevention in companies employing more than 10 workers and less than 25, provided that all their activity takes place in one single workplace. This option is only available for the employers whose employees regularly perform their activities in the same workplace.

2. Appointing one or more employees to deal with labor risk prevention activities

Employers who employ less than 500 employees, or who have "particularly risky activities" ("actividades de especial riesgo"), may choose to appoint one or more employees to deal with labor risk prevention activities. The employees designated are not obliged to devote themselves exclusively to labor risk prevention. However, the employer must provide them with the adequate means and the time that is necessary for them in order to attend their duties.

These appointed employees benefit from the same guarantees given to the members of the Works Council (e.g., special protection against dismissal, permanence priority when collective dismissals are carried) so that their independence towards the employer in the performance of the labor risk prevention activities is guaranteed.

3. Implementing a company's internal prevention service

The employer must constitute this service in the three following cases:

- In companies employing more than 500 workers
- In companies employing more than 250 workers and having particularly risky activities
- In companies that are not included in the two above mentioned cases but are obliged to constitute the company's prevention service by the competent Labor Authority, due to a series of circumstances such as the accident rates and the risks associated with the activities performed by the company

In this latter case, the employer may also decide to hire an external prevention service on the terms that will be described in paragraph five.

In all these cases, the employees in charge of this service shall exclusively devote themselves to it and be provided with the adequate means in order to perform their activities correctly.

4. Constituting joint prevention services through cooperation with other companies

This option consists in the creation of a single prevention service whose services are provided to different companies. It is only possible to constitute joint prevention services for companies rendering their services simultaneously in the same workplace, building or commercial center. However, this option is not available for those companies obliged to constitute their own prevention service in the terms described in the above paragraph.

5. Contracting with external prevention service providers

External labor risk prevention services are rendered by specialized entities in the following cases:

- When the designation of one or more employees is not sufficient for the correct performance of the prevention activities and the constitution of a company's prevention service is not mandatory
- In companies that are compelled by the competent Labor Authority to constitute the company's prevention service
- When the labor risk prevention activities are only assumed partially by the company (the company meaning the employer himself, the designated employees or the internal prevention service)

Therefore, it is possible to externalize a part of the labor risk prevention service through the hiring of a specialized entity even if some labor risk prevention activities are already being carried out by internal agents.

In conclusion, Spanish labor risk prevention activities may be undertaken by different entities depending on certain circumstances, such as the potential risk of the activities carried on by the company or its size. However, the regulation tries to be flexible allowing in most cases the employer to take some decisions concerning the way in which he wants labor risk prevention to be tackled in his company.

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Ukraine

Labor protection in Ukraine

Ukraine has an extensive legal framework in respect of health care, labor and social protection. These issues are regulated by the Constitution of Ukraine, the Labor Code of Ukraine, the Law of Ukraine "On labor protection" and a wide range of regulatory acts adopted in conformity with those mentioned above.

Labor safety legislation has been developing rapidly since Ukraine's independence in 1991. The Law of Ukraine "On labor protection," which is the fundamental document in this area, was adopted as early as 1992. It was the first legal act within the territory of the former Soviet Union that changed the labor safety provisions derived from the Soviet Union. Since its adoption, the law has been modified more than 20 times, and was completely revised in 2002.

According to the law "On labor protection," state policy in the labor safety sphere should be based on the following principles: prioritizing life and health protection of workers over economic interests, full responsibility of the employer to create safe and healthy conditions of work, the establishment of single requirements on labor safety for all enterprises, irrespective of their type, and adapting work processes to the capabilities of each particular employee, based on his health and mental state.

Additionally, the Cabinet of Ministers of Ukraine and Ministry of Health Protection of Ukraine have issued a number of very specific resolutions and orders concerning labor protection in Ukraine. These include norms limiting weight for lifting and moving heavy cargos by women and minors; hygienic classification of work types, based on harmful and hazardous occupational factors and work stress; and labor safety regulations while operating a computer. For example, regulations set requirements for the level of light, noise and vibration in the workplace, and the microclimate.

Nevertheless, as a legacy of the former Soviet Union, the Ukrainian legislation on occupational safety concentrates mainly on the physical health of the employees, and the protection of specific categories of employees, such as pregnant women, single parents, young workers and those with disabilities. Existing laws prescribe mandatory health checks on a regular basis for employees working in arduous conditions, and for all employees under 21.

However, the protection of employees' mental health is not guaranteed. This may become a major problem because recent research shows that more than 57% of office workers in Ukraine are regularly working over-time, which leads to a problematic work-life balance, constant stress and the deterioration of health.

On 16 September 2014, the Ukrainian Parliament, Verkhovna Rada, ratified the Association with the European Union, which envisages close cooperation in the social and economic spheres and, in particular, in the area of health and safety at work.

According to the association, Ukraine shall implement the provisions stipulated by the Directives of the European Economic Community into national legislation. In particular, among others, Ukraine shall implement the provisions of directives concerning:

- Minimum safety and health requirements for the workplace
- Minimum safety and health requirements for the use of work equipment by workers
- Minimum safety and health requirements for work with display screen equipment
- Certain aspects of the organization of working time

The respective directives' provisions should be implemented in a 3 to 10 year period after the association comes into force.

Analysis of existing Ukrainian regulations and provisions of the above mentioned directives shows that, in the coming years, health and safety at work in Ukraine should improve significantly.

It is also worth mentioning that decisions of the Ukrainian courts on labor protection cases are usually favorable for the individuals rather than the enterprises. Claiming compensation for physical damage caused by unsafe conditions at the workplace is fairly provided for in Ukraine's current legislation. However, claiming compensation for non-pecuniary damages — for example, mental health deterioration caused by stress — is not very common and might have low success rate because it is difficult for individuals to substantiate such claims.

Non-compliance with the regulatory requirements related to labor protection in Ukraine may result in the imposition of financial sanctions on the offending enterprises and their executives. It may even lead to enterprises being prohibited from conducting their activities. Additionally, according to the Criminal Code of Ukraine, executives of the offending companies may be subject to criminal liability of up to 10 years' imprisonment for violation of labor safety requirements that entail health damage to an employee death of an employee, or creating a situation dangerous for life.

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