



Session 45

Employment law 5

Safety

Safety on the workplace

Considering that on average 1 out of 16 workers gets injured on the workplace safety at work has become an issue of importance.

Info CDN: <http://www.ccohs.ca/>

Info CH: http://www.suva.ch/english/startseite-en-suva.htm?WT.srch=1&WT.mc_id=sem_pro_allg_google_f_adwords_AS1&vt=keyword-s%25C3%25A9curit%25C3%25A9%2520au%2520travail%2520suisse_mt-e_network-g_cr-creative41108724602_copy-%5bname%5d

Employer obligations

The obligations of the employer in terms of health and safety at work include the following (LTr, art 61; OHSA, s 13 (1)):

- Takes all the measures of which experience has demonstrated to be necessary and which the state of technique allows to apply.
- Takes all the necessary measures to protect the integrity of employees.
- Fits out the installations and machines.
- Adjusts the process of work.
- Takes care that the worker does not consume alcoholic drinks or other psychotropic substances.
- Collaborates with employees in the protective measures of the health.

Canada: employees are to assist the employer with the application of prescriptions on the protection of the health (OHS, s 17(1)). It follows that both employers and employees are not only concerned, but also liable for health and safety in businesses. In the case of serious breach in health and safety regulations, both are liable.

Switzerland: the employer (LTr, art 591) is criminally liable when the following prescriptions are violated: the protection of the health and the approval of plans on health – if the act is deliberate or resulting from negligence; the duration of the work or the rest – if the act is deliberate; the special protection of minors or women – if the act is deliberate or resulting from negligence; the worker (LTr, art 601) is criminally liable when breaks deliberately prescriptions on the protection of the health or puts seriously in danger of other persons by malpractice or negligence.

Employer specific duties

Employers need to establish a company regulation that contains capacities on the protection of the health and the prevention of accidents and, as it is necessary, on the internal order and the behavior of the employees in the company (LTr, art 381). Disciplinary measures can be imposed only in the case and as far as the regulations of the company specify it.

Risk assessment

Every employer needs to make a suitable and sufficient assessment of the following:

- The risks to the health and safety of employees to which they are exposed whilst they are at work.
- The risks to the health and safety of persons not in employment arising out of or in connection with the company.
- The conduct by him of his undertaking, for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon.

Risk assessment (cont.)

- The same applies to self-employed persons. Any assessment is reviewed by the employer or self-employed person who made it if there is reason to suspect that it is no longer valid; or there has been a significant change in the business organization.

Employing minors

In principle, employers cannot employ minors unless the risks to the health and safety of young persons has been established or reviewed. In particular, employers need to consider:

- The inexperience, lack of awareness of risks and immaturity of young persons.
- The fitting-out and layout of the workplace and the workstation.
- The nature, degree and duration of exposure to physical, biological and chemical agents.
- The form, range, and use of work equipment and the way in which it is handled.

Employing minors (cont.)

- The organization of processes and activities.
- The extent of the health and safety training provided or to be provided to young persons.

Health and safety arrangements

Every employer needs to make arrangements with regard to the nature of the activities undertaken and the size of the business, for the effective planning, organization, control, monitoring and review of the preventive and protective measures.

Surveillance

Employers need to ensure that employees are provided with health surveillance with regard to the risks to their health and safety which are identified by the assessment.

Health and safety arrangements (cont.)

Health and safety assistance

Every employer needs to appoint one or more competent persons to assist in the undertaking of measures so as to comply with the legal requirements.

Contacts with external services

Given the technical character of health and safety, employers need to make contacts with external services particularly as regards first-aid, emergency medical care and rescue work.

Health and safety arrangements (cont.)

Information for employees

An important aspect for the effective management of health safety is access to comprehensible and relevant information on the risks to their health and safety identified by the assessment, the preventive and protective measures; the procedures, the identity of responsible persons, and the risks.

Health and safety arrangements (cont.)

Co-operation and co-ordination

Where two or more employers share a workplace (whether on a temporary or a permanent basis) each such employer needs to co-operate with the other employers to guarantee that provisions and regulations are commonly respected. This means that all reasonable steps are taken to co-ordinate the measures and to inform the other employers concerned of the risks to their employees' health and safety arising out of or in connection with their businesses

Health and safety arrangements (cont.)

Persons working in host employers' or self-employed persons' undertakings

Every employer and every self-employed person shall ensure that the employer of any employees from an external organization is provided with comprehensible information on the risks relative to health and safety and the measures taken by that first-mentioned employer or by that self-employed person in compliance with the requirements and prohibitions imposed upon (OHSA, s 13 (1) and 18).

Health and safety arrangements (cont.)

Capabilities and training

Employers need to take into account employee capabilities as regards health and safety. It is therefore the employer's responsibility that employees are provided with adequate health and safety training when being recruited, or when they are exposed to new or increased risks because of a change of responsibilities, or with the introduction of new equipment or new technology, or even a new system of work (OHSA, s 13 (1)).

It is therefore important that training be repeated periodically where appropriate, be adapted to take account of any new or changed risks to the health and safety of the employees concerned; and take place during working hours.

Health and safety arrangements (cont.)

Risk assessment in respect of new or expectant mothers

The employer has to occupy the pregnant women and the mothers who breast-feed so that their health and health of the child is not compromised and to fit out their conditions of employment as a consequence. Prescriptions can forbid, for reasons of health, the occupation of the pregnant women and the mothers who breast-feed in painful or dangerous works, or under particular conditions (LTr, art 35). Employers need to take action in relation to an employee only until she has notified the former in writing that she is pregnant, has given birth within the previous six months, or is breastfeeding.

Employee specific duties

Starting from the fact that it is the employer who has to provide employees with all the equipment necessary for the performance of work (CO, art 327a), every employee can use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided by the employer in accordance both with any training in the use of the equipment concerned, and the instructions respecting that use which have been provided by the employer.

At the same time employees need to be diligent not only with respect to the employer but also their fellow employees, and have a duty to report any dangerous behavior (OHSA, s. 17(1)).

Temporary workers

In the case of temporary or part-time employment, the provisions are the same. Thus employers need to make information available on any special occupational qualifications or skills required to carry out work safely and arrange for surveillance.