

# 1 Description of national OSH regulatory framework

## 1.1 Description of OSH regulatory framework

### Summary/citation

The Safety, Health and Welfare at Work Act 2005 form the legal foundation of the existing system. The 2005 Act is the principle legislation concerning occupational safety and health in Ireland.

Replacing the Safety, Health and Welfare at Work Act 1989, the 2005 Act implemented Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to improve the safety and health of workers at work and Council Directive 91/383/EEC of 25 June 1991 on measures to improve the safety and health at work of workers with a fixed-duration or temporary employment relationship. It also implemented Convention No. 155 on Occupational Safety and Health, 1981.

The underlying rationale and purpose of the 2005 Act has its roots in the 1983 Report of the Commission of Inquiry on Safety, Health and Welfare at Work. Additionally, the 2005 Act implemented the main principles of the ILO's 1981 Occupational Safety and Health Convention. The 2005 Act is supplemented by the Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2012.

The Law Reform Commission has prepared a revised version of the 2005 Act, which is 'an administrative consolidation of the Act'. This revised version incorporates into a single text all of the amendments which have been made to the 2005 Act. The full text of this revised version is available on the website of the Law Reform Commission.

The State's legislative framework has also been 'greatly influenced' by several European Union Directives and European Union Regulations on safety and health.

### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007)

Website of the Health and Safety Authority: Acts: Safety, Health and Welfare Act 2005 (No. 10 of 2005).

Website of the Law Reform Commission of Ireland.

## 2 Scope, coverage and exclusions

### 2.1 Health and safety covers physical and psychological health

#### Summary/citation

Section 8(1) of the Safety, Health and Welfare at Work Act 2005 states that '[e]very employer shall ensure, as far as is reasonably practicable, the safety, health and welfare at work of his or her employees.'

#### Remarks / comments

The 2005 Act does not define health, safety or welfare. However, the decision of the European Court of Justice (ECJ) in *UK v Council* makes it clear that these concepts are to be given a broad interpretation. In this case, the Court referred to the World Health Organization's definition of health which defines health as 'a state of complete physical, mental and social wellbeing'.

Furthermore, the fact that section 2(1) of the 2005 Act defines 'personal injury' as including 'any impairment of physical or mental condition' means that it can be concluded that the legislation covers both physical and psychological health. Additionally, 'physical or mental impairment' is also specifically referred to in Section 23(4) of the 2005 Act which deals with medical fitness to work. Section 23(4): 'If an employee referred to in subsection (1) becomes aware that he or she is suffering from any disease or physical or mental impairment which, should he or she perform a work activity referred to in sub

section (2), would be likely to cause him or her to expose himself or herself or another person to danger or risk of danger, he or she shall immediately notify the employer concerned or a registered medical practitioner nominated by that employer who shall in turn notify the employer.'

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1), § 8(1), § 23(4))

Case C-84/94 *UK v Council* [1996] ECR I-5755.

## 2.2 Definition of worker

### 2.2.1 Coverage of particular categories of workers

#### Summary/citation

Section 2(1) of the Safety, Health and Welfare at Work Act 2005 defines an 'employee' as a person who has entered into or works under a contract of employment. This includes a fixed-term and a temporary employee.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1), § 13(1))

#### 2.2.1.1 Migrant workers

#### Summary/citation

No provisions exclude migrant workers from the definitions set out in the Safety, Health and Welfare at Work Act 2005, although this is not explicitly set out within the Act itself. Regulation (EEC) No. 1612/68 of the Council implements Article 45(2) of the Treaty on the Functioning of the European Union which abolishes any discrimination between workers of Member States in employment, remuneration, and other conditions of work and employment. In Ireland, this Directive was transposed into the European Communities (Free Movement of Persons) (No. 2 Regulations) 2006 amended by Statutory Instrument 310 of 2008 and amended by Statutory Instrument 146 of 2011.

#### Remarks / comments

Research commissioned by the Health and Safety Authority identifies migrant workers as a high risk group due to the fact that they are more likely to be employed in sectors with existing health and safety concerns. The European Network on Free Movement of Workers has reported that the prohibition on discrimination against EU migrant workers is actively respected in Ireland. However, concerns have been expressed that exceptions contained in anti-discrimination laws may be too wide to ensure adequate protection for migrant workers.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Employment Equality Act (No. 21 of 1998). (§ 6(2)(h))

Protection of Employees (Part-Time Work) Act, 2001 (No. 45 of 2001).

The Health and Safety Authority and the Institute for Employment Studies, 'Irish and Non-Irish National Construction Workers: f  
Website of the Citizens Information Board website.

#### 2.2.1.2 Domestic workers

##### **Summary/citation**

No provisions exclude domestic workers from the definitions set out in the Safety, Health and Welfare at Work Act 2005, although this is not explicitly set out within the Act itself. Having ratified the ILO Domestic Workers Convention, 2011 (No. 189) in July 2014, Ireland utilises the ILO definition of a domestic worker which Article 1(b) of this Convention sets out as being 'any person engaged in domestic work within an employment relationship' on more than an occasional or sporadic basis. Additionally, in 2007, the Workplace Relations Commission (then the Labour Relations Commission) produced a Code of Practice for Protecting Persons Employed in Other People's Homes which sets out the rights of persons employed in private homes. The employment rights of domestic workers include the right to work in a safe and healthy workplace. Domestic workers have broadly the same employment rights as other workers, with access to employment being the only area in which their rights differ from those of other workers.

##### **References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Website of the Citizens Information Board website.

Workplace Relations Committee, Code of Practice for Protecting Persons Employed in Other People's Homes.

#### 2.2.1.3 Home workers

##### **Summary/citation**

No provisions exclude homeworkers from the definitions set out in the Safety, Health and Welfare at Work Act 2005, although this is not explicitly set out within the Act itself. Homeworkers are classified as a category of lone workers. An employer has the same responsibility for the safety and health of employees who work from home as for any other category of employees. An employer is obliged to accept liability for accident or injury of a homemaker as for any other employee.

##### **Restrictions / obligations**

Section 19 of the Safety, Health and Welfare at Work Act 2005 requires an employer to carry out a risk assessment which 'shall determine whether or not an employee may work alone.' Furthermore, employers are obliged to be aware of any specific legislation on lone workers which is applicable to their specific industry.

##### **References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 19)

Website of the Health and Safety Authority.

#### 2.2.1.4 Self-employed persons

##### **Summary/citation**

A self-employed person is defined by section 2(1) of the Safety, Health and Welfare at Work Act 2005 as 'a person who works for profit or gain otherwise than under a contract of employment, whether or not the person employs other persons.' Section 7 of the 2005 Act provides that '[t]he relevant statutory provisions apply, where appropriate, to a self-employed person as they apply to an employer and as if that self-employed person was an employer and his or her own employee and references in the relevant statutory provisions to an employer shall be read as references to a self-employed person'.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1), § 7)

### 2.3 Definition of employer

#### Summary/citation

Section 2(1) of the Safety, Health and Welfare at Work Act 2005 defines 'employer' as 'the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) contract of employment'. This definition 'includes a person (other than an employee of that person) under whose control and direction an employee works, and includes where appropriate, the successor of the employer or an associated employer of the employer'.

#### Restrictions / obligations

Sections 8 – 12 of the 2005 Act set out the general duties of employers, with Section 8 being particularly relevant. Those duties include the duties to:

- To ensure the safety, health, and welfare at work of its employees (section 8(1)).
- To manage and conduct work activities in a manner which ensures the health and safety of employees in the workplace (section 8(2)(a)).
- To prevent any improper conduct or behaviour that is a potential risk to health, safety, and welfare at work of employees (section 8(2)(b)).
- To ensure that the design, provision, and maintenance of the workplace is in a condition which will not endanger its employees (section 8(2)(c)(i)).
- To ensure the design, provision, and maintenance of safe means of access to and egress from it (section 8(2)(c)(ii)).
- To maintain plant and machinery (section 8(2)(c)(iii)).
- To ensure the safety and the prevention of risk to health at work of employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent (section 8(2)(d)).
- To provide systems of work for employees that are planned, organised, performed, maintained, and revised as necessary so that they are without risk to health (section 8(2)(e)).
- To provide and maintain facilities and arrangements for the welfare of employees at work (section 8(2)(f)).
- To provide information, instruction, training, and supervision for employees (section 8(2)(g)).
- To determine and implement the safety, health and welfare measures necessary for the protection of safety, health and welfare of employees when identifying hazards and carrying out a risk assessment under section 19 or when preparing a safety statement under section 20 and to ensure that the measures take account of changing circumstances and the general principles of prevention specified in Schedule 3 (section 8(2)(h)).
- To have regard to the general principles of prevention in Schedule 3, where r

isks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, to provide and maintain such suitable protective clothing and equipment as is necessary to ensure the safety, health, and welfare at work of employees (section 8(2)(i)).

- To prepare and revise, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger (section 8(2)(j)).
- To report accidents and dangerous occurrences, as may be prescribed, to the Health and Safety Authority or to a person prescribed under section 33, as appropriate (section 8(2)(k)).
- To obtain, where necessary, the services of a competent person to ensure the safety, health, and welfare at work of employees (section 8(2)(l)).
- To ensure the working conditions of any fixed-term or temporary employee are such as will protect his or her safety, health, and welfare at work. (section 8(4)).
- To ensure employees who may not be literate understand information regarding occupational safety, health and welfare (section 9).
- To ensure instruction, training, and supervision is provided in a form and manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned (section 10(1)(a)).
- To ensure employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training (section 10(1)(b)).
- To prepare plans, procedures, and measures for dealing with emergencies or serious and imminent dangers (section 11).
- To manage the undertaking so as to ensure that individuals at the place of work (other than employees) are not exposed to risks to their safety, health or welfare (section 12).

Most of the duties set out in these sections are restricted by the requirement that the employer must only do what is 'reasonably practicable'. Section 2(6) of the 2005 Act defines 'reasonably practicable' in relation to the duties of an employer as meaning 'that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work.'

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1), § 2(6), § 8, § 9, § 10, § 11, § 12, § 33)

## 2.4 Exclusion of branches of economic activity

### 2.4.1 Agriculture

#### **Summary/citation**

The Health and Safety Authority has issued a Code of Practice for Preventing Injury and Occupational Ill Health in Agriculture by virtue of section 60 of the Safety, Health and Welfare at Work Act 2005 and with the consent of the Minister of State at the Department of Enterprise, Trade and Employment. The aim of the Code is to improve the level of safety and health among people employed within the agricultural sector. It provides practical guidance in relation to observance of the 2005 Act, including sections 19 and 20. The Code of Practice incorporates a Risk Assessment Document and a Safety System of Work Plan (SSWP). The former includes a risk assessment form for farms with three or less employees, highlights major risks in farming, and provides a checklist of safety measures to be carried out. The latter is a non-exhaustive list of hazards and controls.

#### **Restrictions / obligations**

Section 61 of the 2005 Act provides that the Code of Practice (and any code of practice bearing the seal of the HSA) may be admissible as evidence in criminal proceedings where the code gives practical guidance on observing any of the relevant statutory provisions.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 60, § 61)

The Agricultural Code of Practice for Preventing Injury and Occupational Ill Health in Agriculture.

The Agricultural Code of Practice: Risk Assessment Document.

The Agricultural Code of Practice: SSWP.

### 2.4.2 Construction

#### **Summary/citation**

The construction industry is regulated by Statutory Instrument No. 291 of 2013, Safety, Health and Welfare at Work (Construction) Regulations 2013 which came into force on 1 August 2013. The purpose of S.I. 291 of 2013 is to set out the main requirements for the protection of the safety, health, and welfare of persons working on construction sites. It regulates design and management; the general duties of contractors and others; excavations, shafts, earthquakes, underground works, and tunnels; cofferdams and caissons; compressed air; explosives, general health hazards; construction work on or adjacent to water; transport, earthmoving, and materials-handling machinery and locomotives; demolition; and roads.

## References

Safety, Health and Welfare at Work (Construction) Regulations 2013 (S.I. No. 291/2013)

National Irish Safety Organisation, 'New Construction Regulations'.

### 2.4.3 Services

#### **Summary/citation**

The services industry is regulated by the Safety, Health and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations 2007 as amended. The Health and Safety Authority has published a document – 'Safe Hospitality: Safety, Health and Welfare in Hotels, Restaurants, Catering and Bars, Part 7 of which outlines the duties, obligations, and requirements set out in 2005 Act and the 2007 Regulations as they relate to the services industry.

## References

The Health and Safety Authority, 'Safe Hospitality: Safety, Health and Welfare in Hotels, Restaurants, Catering and Bars – Part

The Health and Safety Authority, 'Safe Hospitality: Safety, Health and Welfare in Hotels, Restaurants, Catering and Bars – Part

### 2.4.4 Public sector

#### **Summary/citation**

The Health and Safety Authority defines the public sector as 'that part of the economy that provides government services' and as including local and central government. The Authority provides guidelines relating to safety, health, and welfare in the education, healthcare, and local and central government sectors in particular.

#### **Remarks / comments**

In Ireland, the public sector accounts for approximately 335,000 employees or 17% of the 1.98 million workforce. In 2006, the Health and Safety Authority, in association with the Forum Group, developed a safety and health audit tool for the healthcare sector to assist in the continuous development and implementation of a safety and health management system for the healthcare sector. The Authority has also developed a suite of online health and safety courses for teachers and students in both primary and post-primary education sectors; the courses are available at [hsalearning.ie](http://hsalearning.ie).

#### References

Central Statistics Office Quarterly National Household Survey, Quarter 3 2015.

The Health and Safety Authority, 'Auditing a Safety and Health Management System: A Safety and Health Auditing Tool for the Public Sector section of the Health and Safety Authority website.

Education Sector section of the Health and Safety Authority website.

Local Government section of the Health and Safety Authority website.

#### 2.4.5 Other

##### **Summary/citation**

Chemicals, diving, docks, fishing, mining, offshore, and petrol stations sectors are all included. The website of the Health and Safety Authority provides specific guidelines and information pertaining to each individual industry.

#### References

Your Industry section of the website of the Health and Safety Authority.

## 2.5 Definition of occupational accident

##### **Summary/citation**

Section 2(1) of the Safety, Health and Welfare at Work Act 2005 defines 'accident' as 'an accident arising out of or in the course of employment which, in the case of a person carrying out work, results in personal injury'.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1))

## 2.6 Definition of occupational disease

#### 2.6.1 List of occupational diseases

##### **Summary/citation**

Part 4 of Statutory Instrument No. 102 of 2007 sets out the list of prescribed diseases for the purposes of the regulations.

##### **Restrictions / obligations**

Special provisions apply to pneumoconiosis, byssinosis, occupational asthma, vibration-induced white finger, and occupational deafness.

#### References

Social Welfare (Consolidated Occupational Injuries) Regulations 2007.

Website of the Department of Social Protection.

## 2.6.2 Mechanism for compensating other diseases as occupational ones

### Summary/citation

The Personal Injuries Assessment Board Act 2003 applies to 'a civil action by an employee against his or her employer for negligence or breach of duty arising in the course of the employee's employment with that employer' (section 3(a)). The 2003 Act provides that all personal injury claims, including occupational claims, must be made through the Personal Injuries Assessment Board. An employee can make an application to the Personal Injuries Assessment Board under section 11 of the 2003 Act in writing or by electronic mail.

### Remarks / comments

In Ireland, employers' liability insurance is not compulsory. It provides cover to enable employers to meet the cost of compensation for employees' injuries or illness which occur while the employees are working for the employers. Employers' liability insurance only applies where the employer's negligence was found to have caused the particular injury or illness.

The Occupational Injuries Benefit Scheme is a group of benefits for people injured or incapacitated by an accident at work or while travelling directly to or from work. The scheme also covers people who have contracted a disease as a result of the type of work in which they are engaged. The benefits which are available are: Injury Benefit, Disablement Benefit, Incapacity Supplement, Constant Attendance Allowance, and Medical Care Scheme.

### References

Personal Injuries Assessment Board Act 2003 (Act No. 46 of 2003). (§ 3(a), § 11)

Personal Injuries Assessment Board (Amendment) Act 2007 (No. 35 of 2007).

Personal Injuries Assessment Board Rules 2004.

## 3 Institutions and programmes relating to OSH administration and/or enforcement

### 3.1 Competent national authority for safety and health at work

#### Summary/citation

The Health and Safety Authority is the primary statutory body tasked with enforcing OSH law in Ireland. The Health and Safety Authority is given statutory grounding under the Safety, Health and Welfare At Work Act, 2005

### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Website of the Health and Safety Authority.

#### 3.1.1 Objectives, roles and/or functions

#### Summary/citation

The Safety, Health and Welfare At Work Act, 2005 sets out the key roles and objectives for the Health and Safety Authority. The principal functions of the Health and Safety Authority are to make adequate arrangements for the enforcement of statutory OSHA law; to promote, encourage and foster a preventative approach to health and safety at work; to provide information relating to safety, health and welfare at work; and to promote, sponsor, evaluate, and publish research, surveys, and studies relating to hazards and risks to safety and health within the workplace (or arising from work activities).

### References



Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 34(1))

### 3.1.2 Chairperson and composition

#### **Summary/citation**

The Safety, Health and Welfare At Work Act, 2005 outlines the rules relating to governance of the Health and Safety Authority.

The Health and Safety Authority is governed by the Minister for Enterprise, Trade and Employment, who appoints three persons nominated by organizations representing employees, three persons nominated by persons representing employers, and four persons representative of relevant Government Departments, State Agencies, and other bodies consists of a chairperson and ten ordinary members.

The chairperson holds office for a term of three years.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 33, 37)

### 3.2 National OSH research programme or institute

#### **Summary/citation**

The Health and Safety Authority is the primary statutory body tasked with promoting, sponsoring, and evaluating Occupational Safety and Health law in Ireland. In addition to this, the Health and Safety Authority promotes research in the field.

#### References

Website of the Health and Safety Authority.

### 3.2.1 Objectives, roles and/or functions

#### **Summary/citation**

The principal functions of the Health and Safety Authority are to make adequate arrangements for the enforcement of statutory Occupational Safety and Health law; to promote, encourage and foster a preventative approach to health and safety at work; to provide information relating to safety, health and welfare at work; and to promote, sponsor, evaluate, and publish research, surveys, and studies relating to hazards and risks to safety and health within the workplace (or arising from work activities).

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 34)

### 3.2.2 Governance board constitution and chairmanship

#### **Summary/citation**

The Health and Safety Authority is governed by the Minister for Enterprise, Trade and Employment, who appoints the Chief Executive of the Health and Safety Authority. The Chief Executive deals with the general administration and business of the authority.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 39)

### 3.2.3 Source of funding

**Summary / Citation**

The Health and Safety Authority is provided funds by the Oireachtas with the consent of the Minister for Finance. The Authority also has the power, with the consent of the Minister of Enterprise, Trade and Employment and the Minister for Finance, may seek funding from other sources. Additionally the Authority has the power to borrow and set fees for service.

**References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 45, § 46, § 47)

**3.3 National OSH programme****Summary/citation**

The Chief Executive holds the responsibility of submitting a strategy statement to the Health and Safety Authority. The Authority is then responsible for submitting this plan to the Minister for Enterprise, Trade and Employment for their approval. The most recent publication was the Strategy Statement 2016-2018. The expected outcomes for the current statement are reducing workplace-related death and injury, active employer and employee engagement, increased awareness on hazards, and better transposition of EU regulations in domestic law.

**References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 39(5)a, § 43)

The Health and Safety Authority. 'Strategy Statement 2016-2018'

**3.3.1 Consultation on the national OSH programme****Summary/citation**

The Health and Safety Authority carries out public consultations prior to decision making with relevant stakeholders and the public. Stakeholders are invited to make submissions to the Authority, who will evaluate them. A report will be made to the Minister thereafter.

The Public Consultation procedures are outlined in the Health and Safety Authority's Strategy Statement 2016-18.

It notes; "The Authority engaged in a very extensive programme of stakeholder and public consultation during the development of this strategy. This involved surveys, interviews and a series of workshops with employers, employees, representative bodies, government departments and other agencies, our own staff and an open consultation process for the public. This process attracted comment from a large range of individuals and organisations and many of these have been reflected in the strategy."

**References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 44)

The Health and Safety Authority. 'Strategy Statement 2016-2018' (page 16)

The Health and Safety Authority. 'Public Consultation Policy'.

**4 Employers' duties and responsibilities to protect the safety and health of workers and others****4.1 Duty to ensure the health and safety of employees****Summary/citation**

Section 8 of the Health, Safety and Welfare at Work Act 2005 sets out in legislation an employer's duty to ensure the health and safety of employees in the workplace. S8(1) states: Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 8)

### 4.2 Duty to protect the health and safety of people other than their own employees

#### Summary/citation

Section 12 of the Act states that every employer shall manage and conduct his or her undertaking in such a way as to ensure, so far as is reasonably practicable, that in the course of the work being carried on, individuals at the place of work (not being his or her employees) are not exposed to risks to their safety, health or welfare.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 12)

### 4.3 Collaboration among two or more employers at the same workplace

#### Summary/citation

Under the Safety, Health and Welfare at Work Act 2005, there is a duty on employers to co-operate. This duty extends to complying and implementing relevant statutory provisions, coordinating actions relating to the protection from risks of safety, and to inform relevant parties of risk arising from their work.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 21)

### 4.4 Surveillance of workers' health in relation to work

#### Summary / Citation

The Safety, Health and Welfare At Work Act requires employers to ensure that employees are protected against any dangers which may specifically affect them. Section 22 of the Act requires every employer to ensure that health surveillance is made available to all employees with regard to risks to health, safety and welfare that may exist in the work place.

In addition to the above, employees may be required by employers to submit tests for intoxicants under the supervision of a medical practitioner.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 13(1)c, § 22)

#### 4.4.1 Specific hazards for which surveillance is required

##### Summary / Citation

An employer must identify and assess the hazards in the workplace and be in possession of a written assessment of such risks. This also includes any particular or unusual threat which may affect the workforce. The Safety, Health and Welfare at Work (Quarries) Regulations, 2008 requires that the health surveillance must be made available before employees are assigned to particular work activities in the workplace where a risk assessment identifies health surveillance is required.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 10(1)d, § 19, § 22(1))

Safety, Health and Welfare at Work (Quarries) Regulations 2008 (§ 63)

#### 4.5 Surveillance of the working environment and working practices

##### **Summary / Citation**

Every employer must ensure that supervision of employees is provided in a form and manner that is likely to be understood by those concerned. Where competency requirements are prescribed, the employer must provide for the release of workers during working hours and without loss of pay for the purposes of attending safety training with regards to their work. The employer must also ensure that the work place is, as is reasonably practicable, without risk to health and safety by its design, provision and maintenance.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 8(2)c, § 8(4), § 10(1)a)

#### 4.6 Duty to provide personal protective equipment

##### **Summary / Citation**

Section 8(2)(i) of the Safety, Health and Welfare At Work Act sets out the employer's duty where risks cannot be eliminated or adequately controlled to provide suitable protective clothing and equipment as is necessary to ensure the safety, health and welfare at work of employees. All training regarding the use of this protective equipment must be given in a manner and language that can clearly be understood by the employee.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 8(2)(i))

#### 4.7 Duty to ensure the usage of personal protective equipment

##### **Summary / Citation**

Under the Safety, Health and Welfare At Work Act the employer must, where risks cannot be eliminated or controlled, provide and maintain suitable clothing and protective equipment as is necessary to protect their employees. It is the employees own duty to ensure that they use their protective equipment as per section 13 with regard to their training given by the employer.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 8(2)(i), § 13(1)g)

#### 4.8 Duty to provide first-aid and welfare facilities

##### 4.8.1 Arrangements for first-aid

##### **Summary / Citation**

Every employer has a duty to prepare the necessary plans and procedures to be followed in case of emergency or serious danger. This includes the necessary measures to be taken for first aid, fire-fighting and the evacuation of employees and any other individuals present, accounting for the nature of work being carried out and the size of the work place.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 11(1)a)

##### 4.8.2 Sanitary installations

##### **Summary / Citation**

Section 20 of the Safety, Health and Welfare at Work (General Application) Regulations 2007 states that employees are entitled to adequate and suitable sanitary and washing facilities which the employer must maintain in a clean state. The employer must provide an adequate number of bathrooms and washbasins, with both hot and cold running water close in proximity to workstations, changing rooms, rest rooms and shower facilities. Separate use of lavatories for women and men must be provided when so required for reason of propriety. Regulation 20(d) provides that adequate showers must be provided for employees if required due to the nature of the work being carried out, or for health reasons. Further, separate facilities must be provided for men and women, must be equipped with hot and cold water, and be sufficiently large enough to allow employees to wash themselves in hygienic conditions.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 20(a), § 20(c), § 20(d),)

#### 4.8.3 Drinking water

##### **Summary / Citation**

Employers are obligated to provide an adequate source of potable water within the workplace as per section 18(d) of the Regulations. These water points must be maintained, accessible, and should be provided in a number suited to the size of the workforce.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 18(d))

#### 4.8.4 Rest and eating areas

##### **Summary / Citation**

Section 19 of the Safety, Health and Welfare at Work (General Application) Regulations provide that an employer must supply rest rooms large enough for the relevant workforce, and adequately equipped with clean surfaces and seats with backs. This need for resting or break rooms would arise where physical activity or work is conducted in a hostile environment where there is exposure to fume, noise, heat or cold, or dust. These rest areas are to ensure that employees do not spend all their work hours in hazardous conditions. This section also provides that where a restaurant or canteen is provided as a rest area, that employees be permitted to use the facilities without being obligated to make purchases.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 19)

## **5 Employers' duty to organize prevention formally along generally accepted OSH management principles and practices**

### **5.1 Elements of an OSH management system**

#### **5.1.1 Policy or plan specifying responsibilities and arrangements for health and safety**

##### **Summary/citation**

Employers have a duty to compile a safety statement, outlining how to promote the health and welfare of employees, and these statements are subject to review based on updated risk assessments carried out. Safety statements are to be made available to employees at their place of work, and brought to the attention of employees on an annual basis.

"20.—(1) Every employer shall prepare, or cause to be prepared, a written statement (to be known and referred to in this Act as a "safety statement"), based on the identification of the hazards and the risk assessment carried out under section 19, specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed."

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 20(1))

### 5.1.2 Appointment of a person for health and safety

#### **Summary/citation**

A duty of care is owed by employers to their employees, and employers are responsible for their employees' health and safety while carrying out their occupation, as far as is reasonably practicable. Employers ensure this by hiring a competent person when required.

"8. — (2)(l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees."

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(1), § 27(1))

### 5.1.3 Written risk assessment

#### **Summary/citation**

Employers are required to carry out a risk assessment of hazards that would put employees at risk while carrying out their occupational duties and outline what employees should do to avoid these risks. Employers must identify risks and hazards and let these be known in a written assessment.

"19.—(1) Every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (to be known and referred to in this Act as a "risk assessment") of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions."

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 19(1))

### 5.1.4 Safe operating work systems and procedures

#### **Summary/citation**

A duty of care is owed by employers to their employees, and employers are responsible for their employees' health and safety while carrying out their occupation, as far as is reasonably practicable.

"8.—(1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees."

- (2) Without prejudice to the generality of subsection (1), the employer's duty extends, in particular, to the following:
- (a) managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
  - (b) managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk, (...)
  - (e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health."

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 8(1), § 8(2))

### 5.1.5 Training and information on risks

#### **Summary/citation**

The Safety, Health and Welfare Act 2005 has outlined numerous methods to prevent risk and for employees to be aware of these risks. The employer has a duty of care to their employees to ensure these risks are known through identifying risks and by providing training when required.

"8.—(1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(2) Without prejudice to the generality of subsection (1), the employer's duty extends, in particular, to the following:

(g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees."

"9.—(1) Without prejudice to the generality of section 8 , every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information—

(a) is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and

(b) includes the following information—

(i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment,

(ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work, and

(iii) the names of persons designated under section 11 and of safety representatives selected under section 25 , if any.

(2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to in subsection (1)."

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 8(1), § 8(2)(g), § 9(1), § 9(2))

### 5.1.6 Review or assessment of the results of preventive measures

### 5.1.7 Consultation with workers in health and safety

#### **Summary/citation**

Regarding employers and employees interaction with trade unions, a joint safety and health agreement can be drafted by the representatives of the employer and the employees which then can be submitted for approval by the Health and Safety Authority. If approved, the joint safety and health agreement will be published in the *Iris Oifigiúil*, the official Irish State gazette.

Employers have a duty to consult their Employees to ensure a high standard of safety, health and welfare at the work place.

“24.—(6) Where the Authority approves of a joint safety and health agreement, it shall publish a notice of approval in *Iris Oifigiúil* and in at least 2 daily newspapers circulating in the State, and that notice shall—

- (a) identify the agreement,
- (b) specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the agreement is approved and published, and
- (c) specify the date on which the agreement shall come into operation.”

“26.—(1) Every employer shall, for the purpose of promoting and developing measures to ensure the safety, health and welfare at work of his or her employees and ascertaining the effectiveness of those measures—

- (a) consult his or her employees for the purpose of making and maintaining arrangements which will enable the employer and his or her employees to co-operate effectively for those purposes,
- (b) in accordance with the arrangements referred to in paragraph (a), consult with his or her employees, their safety representatives or both, as appropriate, in advance and in good time regarding—
  - (i) any measure proposed to be taken in the place of work which may substantially affect the safety, health and welfare of those employees, including measures to be taken under the relevant statutory provisions,
  - (ii) the designation of employees under section 11 ,
  - (iii) activities arising from or related to the protection from and the prevention of risks to safety, health and welfare at work
- , ,
- (iv) the hazard identification and the risk assessment to be carried out under section 19 ,
- (v) the preparation of a safety statement under section 20 ,
- (vi) the information to be provided to employees under section 9 ,
- (vii) the information required to be kept or notified to the Authority in respect of accidents and dangerous occurrences referred to in section 8 (2)(k),
- (viii) the appointment of persons referred to in section 18 ,
- (ix) the planning and organisation of the training referred to in section 10 , or
- (x) the planning and introduction of new technologies particularly in relation to the consequences of the choice of equipment and working conditions and the working environment for the safety, health and welfare of employees.”

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 24(6), § 26(1)(a)-(x))

### 5.2 Obligation to implement a specific OSH management system or standard

## 6 Employers' duty to ensure availability of expertise and competence in health and safety

### 6.1 OSH competence

#### 6.1.1 Requirement to access expert advice and/or support in health and safety

#### Summary / Citation



An employer shall appoint a competent person/s to perform functions relating to the protection from and prevention of risks to health and safety. The definition of 'competent persons' is given in Section 2(1)(2)a of the Safety, Health and Welfare at Work Act 2005, it notes; "a person is deemed to be a competent person where, having regard to the task he or she is required to perform and taking account of the size or hazards (or both of them) of the undertaking or establishment in which he or she undertakes work, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken."

In addition to this, when defining a competent person, the 2005 Act requires that attention is given to the framework of qualifications outlined in the Qualifications and Quality Assurance (Education and Training) Act 2012 when appropriate.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 18(1), § 2(1)(2)a)

Qualifications and Quality Assurance (Education and Training) Act 2012 (Act No. 28 of 2012). (§ 43)

##### 6.1.1.1 Qualifications of experts or professional services

#### **Summary / Citation**

The definition of 'competent persons' is given in Section 2(1)(2)a of the Safety, Health and Welfare at Work Act 2005, it notes; "a person is deemed to be a competent person where, having regard to the task he or she is required to perform and taking account of the size or hazards (or both of them) of the undertaking or establishment in which he or she undertakes work, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken."

In addition to this, when defining a competent person, the 2005 Act requires that attention is given to the framework of qualifications outlined in the Qualifications and Quality Assurance (Education and Training) Act 2012 when appropriate.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 18(1), § 2(1)(2)a)

Qualifications and Quality Assurance (Education and Training) Act 2012 (Act No. 28 of 2012). (§ 43)

## 6.2 Appointment of an OSH practitioner

#### **Summary/citation**

"An employer shall, for the purpose of complying with the relevant statutory provisions, appoint one or more competent persons to perform such functions as are specified by the employer, relating to the protection from and the prevention of risks to safety, health and welfare at work"

#### **Restrictions / obligations**

An employee appointed as a competent person shall be allowed adequate time, with no loss of remuneration, to enable him or her to perform such functions as are specified by the employer

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 18(1), § 18(2))

##### 6.2.1 Workforce size threshold for the appointment of OSH practitioners

**Summary/citation**

Every employer shall ensure that the number of competent persons appointed, the time available to them and the means at their disposal to perform their functions are adequate having regard to the size of the place of work, the risks to which employees are exposed and the distribution of those risks in the place of work

**References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 18(3))

**7 Workers' rights and duties****7.1 Duty to take reasonable steps to protect their own safety and health****Summary / Citation**

While the Health, Safety and Welfare at Work Act 2005 imposes duties of care on employers to manage and achieve a safe working environment, employees are expected to be alert and are also required to operate in a safe and responsible manner to ensure their own safety is maintained.

In relation to their own safety, §13 of the Act provides that an employee shall, while at work shall —

“(1) (a) comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare...”

“(1) (b) ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety...”

“(1) (e) not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work...”

“(1) (g) having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment...”

(1) (h) requires an employee to report to his or her employer any work being carried on, any defect with machinery or any contravention of the relevant statutory provisions “which may endanger the safety, health and welfare at work of the employee...of which he or she is aware”

“(2) An employee shall not, on entering into a contract of employment, misrepresent himself or herself to an employer with regard to the level of training as may be prescribed.”

§23(1) notes that a class or classes of employees that is prescribed by the employer to undergo an assessment by a registered medical practitioner “shall co-operate with such a medical assessment.” It is argued that the undertaking of such examinations is within the best interests of the employees, especially if it is assessed whether they are capable or fit enough to perform the prescribed work activities expected.

**Remarks / comments**

At present, any aspect of an employee's contract of employment that permits testing if requested by the employer is a matter of agreement between the individual employee and employer and is outside of the remit of the Health & Safety Authority.<sup>1</sup> Therefore, it is in the interests of an employer to warrant its employees to undertake “any appropriate, reasonable or proportionate tests for intoxicants” deemed necessary if it is perceived such influence is a risk to safety. This is because employers will be held liable by the courts for any injuries or damage caused by an employee who turns up to work still under the influence.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 13(1), § 13(2), § 23(1) )

### 7.2 Duty to take reasonable steps to protect the safety and health of others

#### Summary / Citation

Under §13 of the 2005 Act, it is stated employees ought to;

“(1) (a) comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect...the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work”

“(1) (b) ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger [the] safety, health or welfare at work...of any other person”

“(1) (e) not engage in improper conduct or other behaviour that is likely to endanger [the] safety, health and welfare at work...of any other person”

“(1) (h) requires an employee to report to his or her employer any work being carried on, any defect with machinery or any contravention of the relevant statutory provisions “in manner which may endanger the safety, health and welfare...of any other person of which he or she is aware”

#### Remarks / comments

The same provisions set out above in the 2005 and 2014 Acts respectively also apply to duties employees have towards other employees and others. Just as adherence by the provisions set out in §13 apply to protecting their own safety, compliance with such provisions also extends to the safety of their fellow employees. Moreover, the statute in force places legally based responsibility on employees towards not only themselves but others on matters affecting safety, health and welfare in the workplace.

While no actual definition of improper conduct is specified in the legislation, Irish precedent has identified violence, bullying and horseplay whilst at work as coming under the generic term. When working with potentially dangerous machinery, horseplay can have serious consequences and all varieties of this type of conduct are prohibited by §13.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 13(1))

### 7.3 Supervisors' duty to take reasonable steps to protect the safety and health of others

#### Summary / Citation

§15 of the Safety, Health and Welfare at Work Act 2005 concerns the duties of those “who have control over places of work to those who work there”. It provides that these individuals shall ensure;

“...so far as is reasonably practicable, that the place of work, the means of access thereto, or egress therefrom, and any article or substance provided for use in the place of work, are safe and without risk to health.”

A separate provision within the Act sets out the responsibilities of those monitoring the health and safety at construction sites specifically. §17 of the 2005 Act expands upon the duties of those who commission construction projects, or those involved in the design or building of construction projects. As per the Act, this position should be awarded to a “competent person or persons” for the purpose of ensuring that the envisaged project “is designed and is capable of being constructed to be safe and without risk to health”. (§17(1) & (2))

Further detail on the safety duties on various individuals within this industry (i.e. the client, project design supervisor, the project construction supervisor, on-site contractor, assigned employee safety representative, safety officer, safety advisor and general employee body) is provided within the Construction Regulations 2013 (S.I No. 291 of 2013 respectively. 2 A similar theme is echoed throughout the responsibilities of each organ which is the maintenance of a health and safety plan that is to contain information on any factor likely to affect the health, safety and welfare of employees on site). Other duties assigned exclusively to each of the aforementioned safety positions can be explored at the link below.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 15, § 17(1), § 17(2), )

Safety, Health and Welfare at Work (Construction) Regulations 2013 (S.I. No. 291/2013)

### 7.4 Senior officers’ duty to take reasonable steps to protect the safety and health of others

#### Summary / Citation

: Effective safety and health management starts with the carrying out of workplace-specific risk assessments, writing them down and implementing the improvements that they identify as necessary. These assessments and the collating of this safety statement are required by §19 and 20 of the 2005 Act and must be included in the undertaking's safety statement and, where applicable, in the safety and health plans for construction sites. Additionally, §80 provides that where an act has been committed, is deemed to constitute an offence and “has been authorised, or consented to by, or is attributable to connivance or neglect on the part of, a person, being a director, manager or other similar officer of the undertaking,” that person will be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Directors are defined by §2(c) as persons “in accordance with whose directions or instructions the directors of the undertaking concerned are accustomed to act.” They are obliged to assess the extent to which the policies set out in the company's risk assessment and safety statement have been applied efficiently. In assessing that statement, directors should analyse the relevance of the objectives of the statement to the operations of the undertaking

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(c), § 19, § 20, § 80)

### 7.5 Self-employed persons’ duty to take reasonable steps to protect their own and other people’s health and safety

#### Summary / Citation

§7 provides that 'where appropriate,' the duties assigned to an employer will apply to an independent contractor;

"...as if that self-employed person was an employer and his or her own employee and references in the relevant statutory provisions to an employer shall be read as references to a self-employed person."

Accordingly, §12 of the 2005 Act provides that employers (including the self-employed) owe a duty of care to those who are not their employees but may be exposed to risks to their health, safety and welfare at the place of work while work is being carried on. This also applies where the public has access to the place of work while work is in progress.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 7, § 12)

### 7.6 Duty to comply with OSH-related requirements

#### Summary / Citation

§13(f) of the 2005 Act provides that employees ought to;

"...attend such training and, as appropriate, undergo such assessment as may reasonably be required by his or her employer or as may be prescribed relating to safety, health and welfare at work or relating to the work carried out by the employee."

§13(g) of the 2005 also states that;

"...having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment."

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 13(f), § 13(g))

### 7.7 Right to enquire about risks and preventive measures

#### Summary / Citation

§9 of the 2005 Act provides that employers have a duty to provide information to their employees relating to safety, health and welfare at work. The information should; be reasonably likely to be understood by the employees concerned, include information regarding hazards identified in the risk assessments, and should include the protective and preventative measures taken to ensure safety, health and welfare at work.

More recently in Irish law, employees have been encouraged to make protective disclosures on a range of 'relevant wrongdoings' within the workplace. The scope of what comes under the realm of disclosures includes "threats to health and safety or the environment" or "any attempt to conceal information in relation to such wrongdoings". In fact, "an employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure." (Protected Disclosures Act 2014, §5(1)(d) & §12(1))

#### Remarks / comments

Due to the inclusion of the duty for employers to provide information to their employees regarding risks to safety and health, it can be said there is a correlative right of employees to inquire about that information.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 26)

Protected Disclosures Act 2014 (§ 5(1), § 12(1))

## 7.8 Right to remove themselves from a dangerous situation

### Summary / Citation

§11 provides that where an emergency or serious and imminent danger is present, an employer shall;

“(2)(b) save in exceptional cases for the reasons specified in the plans and procedures referred to in subsection (1), refrain from requiring employees to carry out or resume work where there is still a serious and imminent danger to their safety and health.”

“(2)(c) ensure that, in the absence of appropriate guidance or instruction and having regard to the knowledge of the employee and the technical means at his or her disposal, and where the employee’s immediate superior responsible cannot be contacted, the employee concerned may take appropriate steps to avoid the consequences of the danger.”

Furthermore §11(3) provides that;

“In the event of serious, imminent and unavoidable danger, an employer shall—

(a) take action and give instructions to enable employees to either or both stop work and immediately leave the place of work and to proceed to a safe place, and

(b) ensure that an employee who leaves a place of work is not penalised because of such action.”

§27 (3) (f) of the 2005 Act provides that;

“...an employer shall not penalise or threaten penalisation against an employee [...] in circumstances of danger which the employee reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, leaving (or proposing to leave) or, while the danger persisted, refusing to return to his or her place of work or any dangerous part of his or her place of work, or taking (or proposing to take) appropriate steps to protect himself or herself or other persons from the danger.”

§27(6) of the 2005 Act provides that;

“For the purposes of subsection (3)(f), in determining whether the steps which an employee took (or proposed to take) were appropriate, account shall be taken of all the circumstances and the means and advice available to him or her at the relevant time.”

### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 11(2), § 11(3), § 27(3), § 27(6))

## 7.9 Right to be reassigned to non-hazard work

### Summary / Citation

In relation to pregnant employees and their exposure to potentially hazardous work, §149(a) of the Safety, Health and Welfare at Work (General Application) Regulations 2007 provides that

“...an employer shall assess any risk to the safety or health of employees and any possible effect on the pregnancy of, or breastfeeding by, employees, resulting from any activity at that employer's place of work likely to involve a risk of exposure to any agent, process or working condition...”

Accordingly §149(b) of the same Regulation states that where such risk to health, safety or welfare of the pregnant individual is identified, the employer must “take the preventive and protective measures necessary to ensure the safety and health of such employees and avoid any possible effect on such pregnancy or breastfeeding.” §149(c) (iii) expands upon this obligation noting that an employer shall “ensure that any such employee is not required to perform duties for which the assessment reveals such risk.”

In the event that the risk presented is unavoidable, §150 asserts that the employer must “provide the employee concerned with other work” by temporarily “adjusting the working conditions or the working hours, or both, of the employee concerned so that exposure to such risk is avoided.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 149(a), § 149(b), § 150)

7.9.1 Right to withdraw with compensation when workers are not reassigned to non-hazard work

## 8 Consultation, collaboration and co-operation with workers and their representatives

### 8.1 National OSH committee, commission, council or similar body

#### Summary / Citation

Under the Safety, Health and Welfare at Work Act, 2005 the National Authority for Occupational Safety and Health is changed in title to the Health and Safety Authority (HSA), adopting and developing any existing powers of the former body. The HSA is responsible for ensuring legislative cooperation by employers and providing standards for the implementation of effective occupational health and safety measures.

The conferred functions of the Authority are outlined in the Safety, Health and Welfare at Work Act, 2005, providing also for the establishment by the Authority of an advisory committee from time to time “to advise it in relation to any of its functions and may determine the membership, term of office and terms of reference and regulate the procedure of any such committee.”

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 32(1)a, § 32(1)b, § 38(1))

#### 8.1.1 Objectives, roles and/or functions

##### Summary / Citation

Under the Safety, Health and Welfare at Work Act, 2005 the principal functions of the Authority include:

1. promoting good practices of health and safety at work;
2. inspecting places of work and ensuring compliance with relevant health and safety laws;
3. investigating accidents and other complaints related to health and safety in the workplace;
4. promoting research on health and safety in the workplace;
5. publishing codes of practice and information documents;

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 34(1)a-m)

#### 8.1.2 Constitution and chairmanship modalities

##### **Summary / Citation**

The Safety, Health and Welfare at Work Act, 2005 creates the position of chief executive officer of the Authority known as the Chief Executive. The Chief Executive is appointed and may be removed from office by the Authority with the consent of the Minister for Enterprise, Trade and Employment.

As per Section 38(1) of the 2005 Act, which provides for the establishment of an advisory committee on matters of occupational safety, health and welfare as it sees fit, the Authority will also appoint a chairperson and deputy chairperson of the advisory committee.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 38(1), § 39(1))

### 8.2 Employers' duty to consult workers on risks

##### **Summary / Citation**

For the purposes of fulfilling his or her duties to develop measures to ensure the safety, health and welfare at work and to ascertain the effectiveness of the measures being undertaken, under the 2005 Act, every employer must:

1. consult his or her employees for the purpose of making and maintaining arrangements which will enable the employer and his or her employees to co-operate effectively for those purposes;
2. in accordance with the arrangements referred to in paragraph (a), consult with his or her employees, their safety representatives or both, as appropriate, in advance and in good time regarding—
  - “(i) any measure proposed to be taken in the place of work which may substantially affect the safety, health and welfare of those employees, including measures to be taken under the relevant statutory provisions,
  - (ii) the designation of employees under section 11,
  - (iii) activities arising from or related to the protection from and the prevention of risks to safety, health and welfare at work,
  - (iv) the hazard identification and the risk assessment to be carried out under section 19,
  - (v) the preparation of a safety statement under section 20,
  - (vi) the information to be provided to employees under section 9,
  - (vii) the information required to be kept or notified to the Authority in respect of accidents and dangerous occurrences referred to in section 8 (2)(k),
  - (viii) the appointment of persons referred to in section 18,
  - (ix) the planning and organisation of the training referred to in section 10, or
  - (x) the planning and introduction of new technologies particularly in relation to the consequences of the choice of equipment and working conditions and the working environment for the safety, health and welfare of employees.”

##### **Restrictions / obligations**

The Safety, Health and Welfare at Work Act, 2005 further requires that, where reasonably practicable, any action considered necessary or appropriate be adopted further to any representation made to an employer by an employee in relation to the matters outlined above or any other matter relating to the occupational safety, health or welfare of workers.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 26(1), § 26(4))

### 8.3 Workers' right to select their representatives for health and safety matters



**Summary / Citation**

Employees may select and appoint a representative for occupational health and safety matters, known as a safety representative. On agreement with the employer, more than one safety representative may be appointed to make up a safety committee to represent employees at the place of work in consultation with the employer or a representative of the employer on matters relating to occupational health and safety.

**Restrictions / obligations**

Where one or a number of safety representatives have been appointed under provisions of the Safety, Health and Welfare at Work Act, 2005, at least one such safety representative must be appointed by the employees.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (Schedule 4 § 4, § 25(1))

## 8.3.1 Workforce size conditions for workers' representation in health and safety

**Summary / Citation**

Schedule 4 to the Safety, Health and Welfare at Work Act, 2005 outlines the required ratios for workforce size to safety representatives. The minimum number of safety representatives to make up a safety committee is three members and the number of safety representatives selected should not exceed the lesser of either one for every twenty persons employed in a place of work at the time the committee is formed, or a total of ten persons.

**Restrictions / obligations**

Where the number of members of which a safety committee is comprised is:

- (a) 4 or less, one member of the committee may be appointed by the employer, and the remaining members of the committee may be selected and appointed by the employees,
- (b) not more than 8 and not less than 5, 2 members of the committee may be appointed by the employer, and the remaining members may be selected and appointed by the employees, and
- (c) more than 8, 3 members of the committee may be appointed by the employer and the remaining members may be selected and appointed by the employees.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (Schedule 4 § 2, Schedule 4 § 3)

## 8.3.2 Conditions of eligibility to represent workers in health and safety

**Summary / Citation**

A member of a safety committee must, at any given time, be a current employee in the place of work concerned to be eligible to be a safety representative.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (Schedule 4 § 5(c))

**8.4 OSH representatives' functions, rights and powers**

## 8.4.1 Right to inspect the workplace

**Summary / Citation**

A safety representative may inspect the whole or any part of the place of work—

1. after giving reasonable notice to the employer, or
2. immediately, in the event of an accident or where there exists imminent danger to the health, safety or welfare of any worker

**Restrictions / obligations**

A safety representative may investigate accidents or dangerous occurrences provided that he or she does not interfere with the performance of any statutory obligation that is required to be performed by any person and that reasonable notice is given to the employer.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(2)a, § 25(2)b, § 25(2)c)

##### 8.4.2 Right to access OSH information

###### **Summary / Citation**

Safety representatives are entitled to receive advice and information from inspectors on matters relating to the occupational health, safety and welfare of workers and places of work.

Subject to the place of work and occupational hazard in question, such information and documents obtained in the process of a safety inspection may be privileged.

###### **Restrictions / obligations**

Information and documentation will not be privileged to the extent that their disclosure is required for the purpose of an emergency involving public safety.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(2)(i))

Chemical Weapons Act 1997 (§ 11(1), § 11(2), § 11(3), )

##### 8.4.3 Right to be present at interviews

###### **Summary / Citation**

At the discretion of the inspector concerned, where an employee is interviewed by an inspector with respect to an accident or dangerous occurrence at a place of work, a safety representative may attend the interview where the employee so requests.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(2)f)

##### 8.4.4 Right to receive professional assistance from OSH experts

##### 8.4.5 Right to accompany inspectors

###### **Summary / Citation**

A safety representative may, at the discretion of the inspector concerned, accompany an inspector who is investigating an accident or dangerous occurrence. A safety representative may also accompany an inspector who is carrying out an inspection of the place of work for purposes other than investigating a dangerous occurrence.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(2)d, § 25(2)e)

##### 8.4.6 Right to use facilities

###### **Summary / Citation**

On a request being made by a safety committee, an employer shall consult with the safety committee for the purpose of reaching an agreement concerning:

1. facilities for holding meetings of the safety committee, and
2. the frequency, duration and times of meetings of the safety committee

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (Schedule 4 § 6)

#### 8.4.7 Right to have time off work with pay to perform duties

##### **Summary / Citation**

A safety representative shall be permitted to have such time off his or her work, without loss of remuneration, as is reasonable to perform his or her duties. Reasonable time includes time to acquire the knowledge and training necessary to discharge his or her duties as a safety representative and to discharge those functions.

##### **Restrictions / obligations**

"Subject to the terms of any agreement between the employer and a safety committee, meetings of the safety committee shall be held from time to time on such days as the committee shall decide and such meetings may be held during normal working hours, without loss of remuneration to the members of the committee if the following conditions are satisfied, namely:

- (i) except in the case of an emergency such meeting shall not be held more frequently than once every three months;
- (ii) the duration of each such meeting shall not exceed one hour;
- (iii) the number of members of the safety committee attending such a meeting shall be at least such as is required to form a quorum, and
- (iv) the times at which the meetings of the safety committee are held shall be compatible with the efficient operation of the place of work."

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(5), Schedule 4 § 7 )

#### 8.4.8 Right to issue remedial notices

#### 8.4.9 Right to resolve OSH issues in consultation with employers

##### **Summary / Citation**

"Every employer shall consider any representations made to him or her by the safety representative in relation to the matters specified in this section or any other matter relating to the safety, health and welfare at work of his or her employees and, so far as is reasonably practicable, take any action that he or she considers necessary or appropriate with regard to those representations."

- "(d) the employer shall be entitled to attend personally, or to nominate a person or persons to attend on his or her behalf at each meeting of the safety committee,
- (e) the employer or his or her nominee or nominees shall attend the first meeting of the safety committee and shall, as soon as may be after it is available, present to the members of the safety committee the statement required under section 20 , and
- (f) the safety committee shall consider any representations made to it by the employer on matters affecting the safety, health and welfare of persons employed in the place of work."

In a situation in which arrangements for a process of joint decision-making, involving the employer and employees, exists, such consultation as is necessary to reach conclusion is statutorily required.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (Schedule 4 § 5(d), Schedule 4 § 5(e), Schedule 4 § 5(f), § 25(4

8.4.10 Right to direct that dangerous work cease

## 8.5 Right of workers' representatives from outside the undertaking to address OSH issues at the workplace

8.5.1 Right to enter the workplace

8.5.2 Right to investigate suspected non-compliance with OSH legislation

8.5.3 Right to consult with workers

8.5.4 Right to advise workers

8.5.5 Right to initiate enforcement action

## 8.6 Joint OSH Committee

8.6.1 Participation of workers' representatives in joint OSH committee

### Summary / Citation

"Where, in a place of work by agreement of the employer, there is a group of persons (by whatever name known) representative of the employer and the employees that constitutes a safety committee in compliance with Schedule 4 and that exists for the purpose of consultation regarding the safety, health and welfare at work of the employees, consultation within that group of persons may, to such extent as may be agreed between the employer and his or her employees, fulfil the requirements of subsections (1) and (2)."

In addition to the above, an employer must consult safety representatives relating to any proposed measures which will affect the health and safety of employees. Lastly, Schedule 4 addresses this, it states; "Should they so wish the employees employed in a place of work to which section 26 applies may select and appoint from amongst their number members of a safety committee to perform the functions assigned to safety committees under this Act."

### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 26(1)b, § 26(3), Schedule 4(1))

8.6.2 Conditions for establishing a joint OSH committee

### Summary / Citation

Employees may consult their employer on matters relating to health and safety at work. A consultation conducted by a safety committee which is representative of the employer and the employees may fulfill the obligations set forth in Section 26(1) and (2) of the 2005 Act. Additionally, an employer is obliged to give employees involved in such an arrangement time off for their duties.

The workplace size threshold for establishing committees is addressed in Schedule 4 of the Safety, Health and Welfare at Work Act 2005, it states;

"2. The number of members of a safety committee shall not be less than 3 and shall not exceed one for every 20 persons employed in a place of work at the time when the committee is appointed or 10, whichever is the less.

3. Where pursuant to paragraph 2 the number of members of which a safety committee is to be comprised is—  
(a) 4 or less, one member of the committee may be appointed by the employer, and the remaining members of the committee may be selected and appointed by the employees,  
(b) not more than 8 and not less than 5, 2 members of the committee may be appointed by the employer, and the remaining members may be selected and appointed by the employees, and  
(c) more than 8, 3 members of the committee may be appointed by the employer and the remaining members may be selected and appointed by the employees.

5. Where a safety committee is appointed under section 26 the following provisions shall have effect—

(d) the employer shall be entitled to attend personally, or to nominate a person or persons to attend on his or her behalf at each meeting of the safety committee."

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 26(2), § 26(3), § 26(5)d, Schedule 4(2),Schedule 4(3),Sched

#### 8.6.3 Objectives, roles and/or functions of joint OSH committees

##### **Summary / Citation**

The functions of the safety committee are outlined in Schedule 4 of the Safety, Health and Welfare at Work 2005 - it states;

"5. Where a safety committee is appointed under section 26 the following provisions shall have effect—

(a) the safety committee shall assist the employer and employees concerned in relation to the relevant statutory provisions

(f) the safety committee shall consider any representations made to it by the employer on matters affecting the safety, health and welfare of persons employed in the place of work."

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (Schedule 4(5)a,Schedule 4(5)f)

#### 8.6.4 Keeping record of the work of joint OSH committees

#### 8.6.5 Sharing the minutes of joint OSH committees meetings

### 8.7 Mandatory training for members of joint OSH committee(s)

##### **Summary / Citation**

"An employer shall give to a safety representative such time off from his or her work as is reasonable having regard to all the circumstances, without loss of remuneration, to enable the safety representative—

(a) to acquire, on an ongoing basis, the knowledge and training necessary to discharge his or her functions as a safety representative, and

(b) to discharge those functions."

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 25(5))

### 8.8 Protection against reprisals

##### **Summary / Citation**

Section 27 of the Safety, Health and Welfare at Work Act, 2005 protects employees generally against penalisation for any involvement in safety and health measures. This includes an employee acting as a safety representative or involved in the safety consultation and safety-committee processes.

“An employer shall not penalise or threaten penalisation against an employee for—

- (a) acting in compliance with the relevant statutory provisions,
- (b) performing any duty or exercising any right under the relevant statutory provisions,
- (c) making a complaint or representation to his or her safety representative or employer or the Authority, as regards any matter relating to safety, health or welfare at work,
- (d) giving evidence in proceedings in respect of the enforcement of the relevant statutory provisions,
- (e) being a safety representative or an employee designated under section 11 or appointed under section 18 to perform functions under this Act, or
- (f) subject to subsection (6), in circumstances of danger which the employee reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, leaving (or proposing to leave) or, while the danger persisted, refusing to return to his or her place of work or any dangerous part of his or her place of work, or taking (or proposing to take) appropriate steps to protect himself or herself or other persons from the danger.”

Penalisation by the employer includes:

- “(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2001), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.”

#### **Restrictions / obligations**

The dismissal of an employee shall be deemed to be an unfair dismissal for the purposes of the Unfair Dismissals Act if it results wholly or mainly from penalisation as referred to above.

“Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (3)(f), the employee shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he or she took (or proposed to take) that a reasonable employer might have dismissed him or her for taking (or proposing to take) them.”

#### **References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 27)

### **8.9 Immunity from civil and criminal liability for exercising OSH related rights and duties**

#### **Summary / Citation**

§ 27(2) of the Safety, Health and Welfare at Work Act 2005 refers only to the protection of safety representatives from penalisation by the employer through penalties including coercion or intimidation.

#### **References**

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 27(2))

## **9 Specific hazards or risks**

### **9.1 Biological hazards**

#### **Summary / Citation**

In regards to Biological Safety Hazards, the prominent piece of legislation is the Safety, Health and Welfare at Work (Biological Agents) Regulations 2013. This lays down the minimal requirements for protection of workers against biological agents. This is applicable in any scenario, in which, a worker is exposed to biological agents as a direct result of their work.

This Act (Safety, Health and Welfare at Work (Biological Agents) Regulations 2013) lays out the duties of the employee and employer, the protective and preventive measures which must be taken, a notification procedure, special measures for health care, veterinary care, and laboratory facilities.

#### References

Safety, Health and Welfare at Work (Biological Agents) Regulations 2013 (S.I. No. 572 of 2013)

### 9.2 Chemical hazards

#### Summary / Citation

Ireland has a range of legislation addressing chemical hazards in the work place. The listed legislation holds prevention and control as paramount when address this issue. More specifically, the preferred method of control appears to be elimination and substitution in regards to protecting employees from dangerous substances.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Chemicals Act 2008 (No. 13 of 2008).

Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006

#### 9.2.1 Handling, storage, labelling and use

##### Summary / Citation

As is the case in EU Member States, Ireland has implemented the Classification, Packaging and Labelling Regulation. This includes a number of measures that can be taken in regards to labelling of chemicals and related materials. The main methods highlighted in the Regulation are as follows; Pictograms (outlined in Article 19 and 26), Hazard Statements (Article 21 and 27), Precautionary Statements( Article 22 and 28), and Supplemental Information (Article 25).

#### References

European Communities (Classification, Packaging and Labelling) (Revocation) Regulations 2015 (S.I. No. 196/2015)

#### 9.2.2 Duty of manufacturers, suppliers and importers of chemicals in relation to the safety and health of users

##### Summary / Citation

Our legislative engagement on this issue derives from the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation and the Classification, Packaging and Labelling Regulation. Under the above Regulations the main duties relating to importers are as follows;

The importer must;

1. submit registration to the European Chemical Agency for each substance imported in to the EU exceeding 1 tonne per year.
2. make an inquiry to the European Chemical Agency to confirm whether another company has already imported the substance in question.
3. supply safety data sheets for all hazardous chemicals placed on the EU Market.
4. notify the Irish National Poison Centre in order to use their emergency number for the purposes of the Safety Data Sheets highlighted in Point 3.
5. not import substances contained within Annex XVII of the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation unless granted prior approval from the EU Commission. Additionally, the importation of a chemical highlighted in Annex XVII is prohibited, unless it is for a purpose outlined in the same.
6. package, label and classify all hazardous substances.
7. must notify the European Chemical Agency of the labelling and classification of the substance within the first month of importation.

The Regulations mentioned above, also outline the duties of the supplier as follows;

The distributor must;

1. pass important health and safety information down the supply chain.
2. ensure all substances they bring to market have been registered by their suppliers.
3. Ensure if the substance they are providing contains 0.1% or more of a substance of very high concern, outlined by the European Chemicals Agency, they must provide customer with adequate information relating to the safe use of the substance.
4. Keep all information needed to carry out duties under the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation for at least a 10-year period.
5. Label and package the substance correctly in accordance with the requirements set forth in the Classification, Packaging and Labelling Regulation.

## References

European Communities (Classification, Packaging and Labelling) (Revocation) Regulations 2015 (S.I. No. 196/2015)

### 9.2.3 Pesticides

#### **Summary / Citation**

The primary regulatory body in relation to pesticides in Ireland is the Pesticide Control Service, which falls under the Department of Agriculture. This body established regulatory systems which prove to ensure relevant EU Law is respected in relation to pesticides, in particular the below Regulation and Directive.

## References

European Communities (Sustainable Use of Pesticides) Regulations 2012 (S.I. No. 155/2012)

### 9.3 Ergonomic hazards

#### **Summary / Citation**



The Safety, Health and Welfare at Work (General Application) Regulations 2007, is the primary form of address to Ergonomic Hazards. Section 31 outlines the employers obligations in relation to display screen equipment. These obligations extend to; evaluating workstations to identify risks to eye sight and physical problems, remedy any risks identified during the evaluation, ensure workstations are compliant with minimum requirements, plan the schedule of employees who periodically use display screens in order to reduce such a workload, provide relevant information regarding measures applicable to the workstations, and to provide training to employees before they commence their work on the workstations.

Section 28 addresses the handling of loads and the associated responsibilities of the employer. These duties include; to implement mechanical equipment to avoid the need for manual handling, in circumstances where manual handling cannot be avoided the employer must take appropriate measures to reduce the associated risks, organise workstations pursuant to reducing manual handling risks, and employers must provide employees engaging in manual handling with information relating to the weight of the load and the centre of gravity of each of the same.

In addition to the above, employers have further obligations to ensure protection against ergonomic hazards. Employers must provide suitable facilities in the event an employee has a reasonable opportunity for sitting without detriment to their work, such facilities should be provided (Section 18(c)). In addition to this, the working posture of an employee should be accounted for when having regard for the health and safety of employees (Section 28(g)). If a seat is provided, appropriate accessories, depending on the duration of the ergonomic constraints on the job, should be included (Section 111(b)). Employers have a duty to ensure employees do not pass over fragile surfaces, when work can be carried safely in more appropriate ergonomics conditions (Section 115(a)). Lastly, an employer has a responsibility to must take account of appropriate ergonomic design when choosing work equipment (138(b)).

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 18(c), § 28(g), § 58, § 69, §

### 9.4 Physical hazards

#### 9.4.1 Ionising radiation

##### **Summary / Citation**

The Radiological Protection act 1991 acts as the paramount authority in regards to ionising radiation. The act addresses;

1. Regulation of Practices and Work Activities
2. Justification, Optimisation and Dose Limitation
3. Estimation of Effective Dose
4. Protection of Exposed Workers, Apprentices and Students
5. Work Activities involving Natural Radiation Sources
6. Radiation Protection of the Population for Practices in Normal Circumstances
7. Intervention and Emergency Preparedness
8. Notifications, Notices and Revocations

#### References

Radiological Protection Act, 1991 (Ionising Radiation) Order, 2000. (S.I. No. 125 of 2000).

#### 9.4.2 Vibration and noise

##### **Summary / Citation**

The Safety, Health and Welfare at Work (Control of Vibration at Work) Regulations 2006 is the primary method of address to the risk of vibration and noise. The Act provides oversight in the following areas in relation to vibration and noise;

1. Exposure Limit Values and Action Values.
2. Determination and Assessment of Risks.
3. Provisions aimed at Avoiding or Reducing Exposure.
4. Employee Information and Training.
5. Health Surveillance.
6. Transitional Periods.

#### References

Safety, Health and Welfare at Work (Control of Vibration at Work) Regulations 2006 (S.I. No. 370 of 2006)

##### 9.4.3 Working at height

###### **Summary / Citation**

The Safety, Health and Welfare at Work (Work at Height) Regulations 2006 is the relevant piece of legislation dealing with working at height. The Act provides guidance in relation to the following aspects of working at height;

1. Weather conditions.
2. Avoidance of risks from work at height.
3. Selection of work equipment for work at height.
4. Requirements for particular work equipment.
5. Fragile surfaces.
6. Falling objects.
7. Danger areas.
8. Inspection of work equipment.
9. Checking of places of work at height.

#### References

Safety, Health and Welfare at Work (Work at Height) Regulations 2006 (S.I. No. 318 of 2006)

##### 9.4.4 Working in confined spaces

###### **Summary / Citation**

The Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001 is the most relevant piece of legislation in Ireland in relation to working in confined spaces. Section 5, more specifically, outlines the regulation of work in confined spaces. This section states;

5.1 A person shall not enter a confined space to carry out work or any duty connected with that work (which work or duty is referred to in this Regulation and in Regulation 6 as a “work activity”) for any purpose unless it is not reasonably practicable to achieve that purpose without such entry.

5.2 Without prejudice to paragraph (1), a person shall not enter a confined space to carry out a work activity in that confined space unless an identification and evaluation of the risks to safety and health arising from such entry or such work activity have been made.

5.3 (a) Without prejudice to paragraph (1), a person shall not enter a confined space to carry out a work activity in that confined space unless there has been provided a system of work, which has been planned, organised, performed and maintained so as to render that work safe and without risks to health.

(b) Any person involved in carrying out the system of work required under subparagraph (a) of this paragraph, shall be provided with adequate information, instruction and training appropriate to the particular characteristics of the work activity involved.

In addition to the above, the Act outlines the duties of the employer and emergency arrangements.

#### References

Safety, Health and Welfare at Work (Confined Spaces) Regulations, 2001 (S.I. No. 218 of 2001).

##### 9.4.5 Risks arising from poor maintenance of workplace facilities

###### **Summary / Citation**

The Safety, Health and Welfare at Work (General Application) Regulations 2007 place a duty on employers to ensure the workplace is clean and maintains appropriate level of health and safety. Additionally, there is an obligation to ensure the floor is cleaned by a suitable method.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 18(a), § 18(b))

##### 9.4.6 Exposure to extreme temperatures

###### **Summary / Citation**

Employers have a duty to ensure that the temperature of the work place is 'appropriate for human beings' and the working methods and physical demands are included in this consideration. The Safety, Health and Welfare at Work (General Application) Regulations 2007 set out the minimum temperature for different working environments; 17.5°C for sedentary office work and 16°C for offices where a substantial amount of work is done sitting. Temperature measuring facilities must be available to employees.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 7)

##### 9.4.7 Fire risks

###### **Summary / Citation**

The Safety, Health and Welfare at Work Act 2005 is the leading authority on the subject of fire risks from an occupational safety perspective. The Act addresses this risk in these instances; Section 11, and Section 58.

Section 11 states that employers must prepare and revise emergency plans and measure for firefighting and the evacuation of the workplace. Plans for first aid, fire fighting, and evacuation must be made. Employees must be designated roles in this process and the employer holds the duty to ensure the training and equipment is adequate.

Section 58 notes the Minister for Enterprise, Trade and Employment may make regulations relating to the necessary precautions relating to the risk of 'fire, fire-safety rules and procedures and the provision and maintenance of fire-protection equipment in places of work.'

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 11(1), § 58)

### 9.4.8 Tobacco

#### **Summary / Citation**

Section 47(1) of the Public Health (Tobacco) Act, 2002 as amended by Section 16 of the Public Health (Tobacco) (Amendment) Act, 2004 is highly relevant when address tobacco in an occupation health and safety context. This Section prohibits the smoking of a tobacco product in a specified place. For the purposes of this act the following qualify as a specified place;

1. a place of work,
2. an aircraft, train, ship or other vessel, public
3. service vehicle, or a vehicle used for the
4. carriage of members of the public for reward
5. other than a public service vehicle, insofar as
6. it is a place of work,
7. a health premises, insofar as it is a place of work,
8. a hospital that is not a health premises, insofar as it is a place of work,
9. a school or college, insofar as it is a place of work,
10. a building to which the public has access, either as of right or with the permission of the owner or occupier of the building, and which belongs to, or is in the occupation of—
  - (i) the State,
  - (ii) a Minister of the Government,
  - (iii) the Commissioners of Public Works in Ireland, or
  - (iv) a body established by or under an Act of the Oireachtas, insofar as it is a place of work,
11. a cinema, theatre, concert hall or other place normally used for indoor public entertainment, insofar as it is a place of work,
12. a licensed premises, insofar  
as it is a place of work, or
  - (i) a registered club, insofar as it is a place of work.

## References

Public Health Tobacco (Amendment) Act, 2004 (No. 6 of 2004).

### 9.4.9 Asbestos

#### **Summary / Citation**

The Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations, 2006, (S.I. No. 386 of 2006) as amended by The Safety, Health and Welfare at Work (Exposure to Asbestos) (Amendment) Regulations, 2010 (S.I. No. 589 of 2010) is the leading piece of legislation in Ireland which address asbestos in the workplace. The most relevant provision contained within the act are as follows;

1. The Act applies to all places of work where asbestos containing materials may be present.
2. The Act relates to all employees and non-employees who are at risk of exposure.
3. Employers must prevent exposure via the use of written risk assessment. (Section 6 & 7)
4. Employers are required to introduce preventative measures, for example reducing the number of personnel. (Section 10, 11, 12, 14, & 17)
5. Air Monitoring is required.
6. Employers must take all reasonable steps to identify asbestos-containing materials prior to demolition, maintenance or repair. (Section 6)

In addition to the above there are requirements relating to medical professionals for health assessments, retaining records of risk assessments, and providing adequate information and training to employees liable to be exposed to asbestos.

#### References

Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006

9.4.10 Risks related to nanotechnology

9.4.11 Contraction of HIV in the workplace

### 9.5 Psychosocial hazards

9.5.1 Psychosocial risks

9.5.2 Occupational violence

#### **Summary / Citation**

Under the Safety Health and Welfare at Work Act 2005 and the Safety Health and Welfare (General Application) Regulations 2007, employers are required to ensure the safety, health and welfare of their employees via;

1. Identifying hazards.
2. Assessing the risks to health and safety from violence at work.
3. Implementing appropriate safeguards.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007)

### 9.6 Other hazardous substances

#### **Summary / Citation**

Safety, Health and Welfare at Work (General Application) Regulations 2007 address a number of hazardous substances. For example Regulation 62(4) address the need for respiratory protection in order to prevent harm from hazardous fumes emitted from blast furnaces or harmful dusts.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (Regulation 62(4))

## 9.7 Machineries

### 9.7.1 Risks related to machinery and tools

#### **Summary / Citation**

Section 8(2)(c)iii of the Safety, Health and Welfare at Work Act 2005 requires employers to ensure machinery is maintained to a standard which would be safe and would not present a risk to the health of the user.

Additionally, the Minister for Enterprise, Trade and Employment may make regulations dealing with requirements imposed on employers to ensure health and safety relating to the maintenance and design of machinery and other articles. 'Articles' is defined in the Safety, Health and Welfare at Work Act 2005 as "any plant, machine, machinery, appliance, apparatus, tool or any other work equipment for use or operation (whether exclusively or not) by persons at work, (b) any article designed for use as a component in, part of or to control any such plant, machine, machinery, appliance, apparatus, work equipment, tool or any other work equipment." In turn, this means any provision referring to 'articles' is also relating to machinery.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1), § 8(2)(c)iii, Schedule 7 Section 59(1)(b)iii)

### 9.7.2 Duty of designers and/or manufacturers of machineries in relation to the occupational safety and health of operators of machineries

#### **Summary / Citation**

Duties are imposed onto designers, manufacturers, and importers these duties extend to; ensure the article is free from risk to health when used in a proper manner and comply with the relevant statutory provisions. In addition to this, there is a duty to ensure the article undergoes appropriate levels of testing.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 16(1)a, § 16(1)b)

### 9.7.3 Duty of designers, manufacturers, importers or suppliers of machineries to provide machineries information

#### **Summary / Citation**

Designers, manufactures and importers are under a duty to provide adequate information about the article to the person it is supplied in order to ensure the safe use of the article. Any revisions made to the information must also be provided to the person who the article is supplied. Adequate information for the purposes of the above includes information about the operation of the article for which it has been designed, manufactured or tested and any conditions to ensure its safe installation, maintenance, disposal, cleaning, dismantling, and use.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 16(1)c, § 16(1)d, § 16(2)a, § 16(2)b)

### 9.7.4 Duty to purchase machineries from authorised/certificated suppliers or only if approved/certificated

### 9.7.5 Maintenance of machinery and equipment

#### **Summary / Citation**

Articles must be maintained to a safe condition and be compliant with relevant statutory provisions.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 16(1)e)

#### 9.7.5.1 List of equipment where applicable

## 9.8 Provisions to protect workers in specific condition of vulnerability

### 9.8.1 Protection of pregnancy at work

#### **Summary / Citation**

The Safety, Health and Welfare at Work (General Application) Regulations 2007, Part 6, Chapter 2, Protection of Pregnant, Post Natal and Breastfeeding Employees is highly relevant for the purposes of the protection of pregnancy at work. This Act is application in the circumstance where the employee has informed their employer they are pregnant, or have recently given birth. In this scenario, the employer is obliged to conduct a risk assessment in order to identify any hazards relevant to a pregnancy.

A number of protective and preventative measures are outlines in the 2007 Regulations. When a risk assessment previously mentioned highlights a risk to an employee's safety and it is not feasible to ensure the safety of the employees, adjustments must be made to the working conditions or working hours.

Schedule 8 of the 2007 Regulations highlight a number of biological and chemical agents which fall within the definition of 'agents' within Section 149- 151. Different agents are relevant depending on the employee is pregnant, post natal and breastfeeding.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 149, § 150, Schedule 8)

### 9.8.2 Protection of lactating women at work

#### **Summary / Citation**

The Safety, Health and Welfare at Work (General Application) Regulations 2007, Part 6, Chapter 2, Protection of Pregnant, Post Natal and Breastfeeding Employees is highly relevant for the purposes of the protection of pregnancy at work. This Act is application in the circumstance where the employee has informed their employer they are pregnant, or have recently given birth. In this scenario, the employer is obliged to conduct a risk assessment in order to identify any hazards relevant to a pregnancy.

A number of protective and preventative measures are outlines in the 2007 Regulations. When a risk assessment previously mentioned highlights a risk to an employee's safety and it is not feasible to ensure the safety of the employees, adjustments must be made to the working conditions or working hours.

Schedule 8 of the 2007 Regulations highlight a number of biological and chemical agents which fall within the definition of 'agents' within Section 149- 151. Different agents are relevant depending on the employee is pregnant, post natal and breastfeeding.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 149, § 150, Schedule 8)

### 9.8.3 Limits to women's access to specific occupations, undertakings or shifts

#### **Summary / Citation**

An employer is under an obligation to transfer an employee to day time work if a medical practitioner certifies that it is necessary for the health and safety of the employee. If such a transfer is not feasible, the employer must grant and employee leave or extend the period of maternity leave.

#### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 151(2)a, § 151(2)b)

#### 9.8.4 Limits to workers' access to specific occupations, undertakings or shifts by reason of age

##### **Summary / Citation**

A child within the meaning of the Safety, Health and Welfare at Work (General Application) Regulations 2007 is a resident in the State who is under 16 years of age. An employer cannot employ such a person where a risk assessment reveals that; the work is beyond the physical or psychological capabilities of said person, the work involves harmful exposure to agents, involves exposure to radiation, involves risks which cannot be avoided by a child, or involves a risk to health resulting from extreme heat or cold. Schedule 7 further addresses what form of agents Section 145 is concerning.

##### References

Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299/2007) (§ 143, § 145)

## 10 Recording, notification and investigation of accidents/incidents and diseases

### 10.1 Duty to record and/or investigate the causes of work accidents, near misses incidents and cases of occupational diseases

#### 10.1.1 Work-related accidents

##### **Summary / Citation**

The employer shall record the details of the accident as per section 8(2)(k) of the Safety, Health and Welfare at Work Act 2005.

An accident is defined by the Health and Safety Authority as an unplanned event resulting in personal injury or property damage. For example: laceration, broken bone, concussion, unconsciousness, ill-health or immediate sickness due to exposure to dangerous substances, fumes or gases, fire, explosion, chemical spill where there is a risk of environmental pollution, building or property damage.

Per section 26 of the 2005 Act, employers are required to consult with their employees and safety representatives in good time regarding the info to be kept recorded or notified to the Authority in respect of accidents or dangerous occurrences.

##### References

Safety, Health and Welfare at Work (General Application) Regulations, 1993 (S.I. No. 44 of 1993) (§ 59(1)a, § 59(1)b, § 61)

Ibec For Irish Business, 'Accident Investigation'.

#### 10.1.2 Near miss incidents

##### **Summary / Citation**

An incident, commonly referred to as a "near miss", is defined as an incident where there was no injury or property damage but where the potential for serious consequences existed.

Per schedule 12 of the General Application Regulations 1993, a dangerous occurrence is defined as an incident that results in:

- the collapse, overturning, failure, explosion, bursting, electrical short circuit discharge or overload, or malfunction of any work equipment,
- the collapse or partial collapse of any building or structure under construction or in use as a place of work,
- the uncontrolled or accidental release, the escape or the ignition of any substance,
- any unintentional ignition or explosion of explosives.



Per section 26 of the 2005 Act, employers are required to consult with their employees and safety representatives in good time regarding the info to be kept recorded to the Authority in respect of accident or dangerous occurrences.

#### References

Safety, Health and Welfare at Work (General Application) Regulations, 1993 (S.I. No. 44 of 1993) (§ 59(1)c)

The Health and Safety Authority, 'Dangerous Occurrence Reporting'.

#### 10.1.3 Occupational diseases

##### **Summary / Citation**

The current list of occupational diseases is as follows: prescribed diseases, International Labour Office (ILO) list, the European schedule, and the list associated with the European Occupational Diseases Statistics project.

Defined in Ireland in the Social Welfare (Consolidated Occupational Injuries) Regulations 2007, Occupational disease is defined by the ILO as 'a disease contracted as a result of an exposure over a period of time to risk factors arising from work activity'.

Occupationally related diseases need to be identified as early as possible through periodically conducted health surveillance.

The cause for the occupational accident or injury resulting in a prescribed occupational disease should be notified as soon as is practicable after its occurrence, as per section 49(1) of the Social Welfare (Consolidated Occupational Injuries) Regulations 2007.

A notice must contain record of: the injured person's name, address, occupation of the injured person, the date and time of the accident or signs of illness noted, the place where the accident occurred, the cause and nature of the injury. If the person giving the notice is not the injured person, he or she must also provide his or her name, address and occupation particulars

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 2(1), § 23(3), § 23(4))

Social Welfare (Consolidated Occupational Injuries) Regulations 2007. (§ 49(2))

#### 10.2 Employers' duty to notify OSH authorities of work related death and/or injuries to health

##### **Summary / Citation**

The person responsible for reporting the accident is the person having control of the place of work at which the accident/incident occurred. The law imposes obligations on an employer not only to take all such actions as are reasonably printable to safeguard the health and safety of their employees, but also to be able to show that they are doing so, by producing adequate written policies and procedures.

Per section 26 of the 2005 Act, employers are required to consult with their employees and safety representatives in good time regarding the information to be notified to the Authority in respect of accidents or dangerous occurrences.

The responsible person, as defined by section 58(1)(a) of the Safety, Health and Welfare at Work (General Application) Regulations 1993, must report all accidents in the workplace to the employer.

Where general injuries are sustained at a place of work as a result of which a person cannot perform their normal work for more than three consecutive days, excluding the day of the accident, the incident is notified and reported to the Occupational Health and Safety Authority.

Where injuries sustained are related to a place of work and the person requires medical treatment, the incident is reported to the Occupational Health and Safety Authority if it is not related to a pre-existing medical condition and treatment.

Where injuries are sustained as a result of a road traffic accident at work involving members of the public, the accident is reported only if it relates to vehicle loads or to the construction or maintenance of roads or structures adjacent to roads.

Should the outcome of a dangerous occurrence be death, the responsible person shall supply the Authority with the deceased's name, the location and the particulars of the accident. As soon as possible, the responsible person shall also send a written report in the approved form to the Authority of the death, injury, condition, accident or dangerous occurrence.

Schedule 12, General Application Regulations 1993 lists 'dangerous occurrences' of the kind which is not reportable by reason of death or injury occurs, an employer/self-employed person must, as soon as practicable, send in the Incident Report Form (IR1) to the Health and Safety Authority.

The Department of Social Protection in Ireland is responsible for the available benefit scheme insuring against prescribed occupational diseases, and must be notified and receive the Injury Benefit application within 21 days of the employee becoming ill.

Health and Safety Authority: The Minister may make regulations under section 58 of the 2005 Act, prescribing the Authority and the persons to report to the Authority that in turn may undertake investigations and monitoring compliance with set standards.

The employee must notify the employer concerned or a registered medical practitioner nominated by that employer who shall in turn inform both the employer and the employee of his opinion 'by the quickest practicable means'.

Consequently, the employer shall immediately take appropriate action per his or her duties under section 8 of the Safety, Health and Welfare at Work Act 2005 and section 50 of the Social Welfare (Consolidated Occupational Injuries) Regulations 2007.

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 26, § 58, § 63)

## 11 OSH inspection and enforcement of OSH legislation

### 11.1 Appointment of OSH inspectors

#### Summary / Citation

The Health and Safety Authority (HSA) is responsible for enforcing and promoting safety and health at work. HSA is a state-sponsored body and it reports to the Minister for Enterprise, Trade and Employment.

HSA inspectors are appointed by the HSA or by a person prescribed under Part 5, Chapter 1, section 33 (Safety, Health and Welfare at Work Act, 2005).

## References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 33, § 62)

## 11.2 OSH inspectors' powers

### 11.2.1 Power to enter workplaces

#### **Summary / Citation**

Inspectors have the power to enter in any place "which he or she has reasonable grounds for believing is used as a place of work".

#### **Restrictions / obligations**

However, an inspector cannot enter in a dwelling place without "the consent of the occupier" or without a warrant from a District Court." This warrant can be issued under Section 64(7) of the Safety, Health and Welfare at Work Act 2005.

In some cases, the inspector also needs to be accompanied by a member of the Gardaí.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 64(1)a, § 64(5), § 64(7), § 64(8))

### 11.2.2 Power to inspect and carry out any examination, test or enquiry

#### **Summary / Citation**

OSH inspectors can make "inquiry into, search, examine and inspect that place and any work activity, installation, process or procedure at that place which is subject to the relevant statutory provisions".

#### **Restrictions / obligations**

Their powers include to:

- Direct that the premises, or anything in it, be left undisturbed for as long as is reasonably necessary for the purpose of any inspection or investigation
- Take copies of any records in paper or electronic format and require reasonable assistance to access any records held on a computer system or can take the original records.
- Require that assistance and facilities to enable the inspector to exercise his/her powers are provided.
- Summon a person by written notice at a specified time and place to give such information (e.g. any article, substance, work activity, installation or procedure) or produce records required by the inspector.
- Require any person, whom the inspector reasonably believes to be able to give information, to answer such questions relevant for the inspection or the investigation and to sign a declaration of the truth of the answers;
- Examine and investigate any relevant circumstances, including taking samples, measurements, photographs/recordings, secure evidence/statements, requiring access to documents/records;
- Require removing or dismantling articles/substances appearing to be a source of danger.
- Install, where appropriate, use and maintain in, at or on the place monitoring instruments, systems and seals for the purposes of the relevant statutory provisions
- Require a person they consider may have committed an offence to provide their name and address to him/her, and of their supplier.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 64(1)a)

### 11.2.3 Power to investigate

#### **Summary / Citation**

In cases of accident, incident, personal injury or situation or any other matter, the HSA can direct any of its staff or any other competent person to undertake an investigation and/ or to make a report (a "special report") of the investigation to the Authority.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 70)

#### 11.2.4 Duty to provide advice on OSH

##### **Summary / Citation**

The Health and Safety Authority (HSA) must “make any arrangements that it considers appropriate for providing information and advice on matters relating to safety, health and welfare at work”: section 33 of the Work Act 2005. In addition, the HSA inspectors also provide advice during the inspections.

#### References

A Short Guide to The Safety, Health and Welfare at Work Act, 2005 (Page 14)

### 11.3 OSH inspectors' enforcement powers

#### 11.3.1 Power to issue orders or notices

##### **Summary / Citation**

If an inspector is of the opinion that an activity involves or is likely to involve a risk to the safety, health or welfare of persons, s/he may give a written direction for an 'Improvement Plan'. The employer has a month to submit an 'Improvement Plan' explaining the proposed remedial actions. The inspector has a month to confirm whether the 'Improvement Plan' is adequate or to direct to revise it in a period specified in the notice. Once accepted the 'Improvement Plan' must be implemented.

If an inspector believes that a statutory provision has been contravened or a Direction was not respected, s/he “may serve a written notice”. An Improvement Notice identifies the relevant statutory provision contravened, and requires remedying the contravention or the matters occasioning that notice in a period of time not less than 14 days.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 65, § 66)

Chemicals Act 2008 (No. 13 of 2008). (§ 14)

Chemicals (Amendment) Act 2010 (No. 32 of 2010). (§ 12, § 15)

#### 11.3.2 Power to impose financial penalties

##### **Summary / Citation**

The Occupational Safety and Health inspector can impose “On-the Spot” fines of up to €1,000 per offence for certain offences to be prescribed in the Regulations. If the fine is not paid in due time, the inspector may institute a prosecution against this person.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 79)

#### 11.3.3 Power to revoke or suspend licenses or authorisations

##### **Summary / Citation**

The Occupational Safety and Health inspector can revoke authorisations. Indeed, an 'authorisation under this section shall cease when the Authority or a person prescribed under section 33, as the case may be, revokes the authorisation'.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 62(3))

#### 11.3.4 Power to require the cessation of dangerous work

##### **Summary / Citation**

The Occupational Safety and Health inspector has the power to require a temporary cessation of work or activity under some conditions. When an inspector is of the opinion that an activity involves, or is likely to involve, a risk of serious personal injury to any person, the inspector may serve a Prohibition Notice.

Prohibition Notice requires the immediate cessation of the activity that has created the risk, from the reception of the Prohibition Notice until the risk is remedied. If there is an appeal, the Notice takes effect "on the later of the day next following the day on which the notice is confirmed on appeal". When activities are carried on in contravention of the Notice, the Authority may also apply to the High Court for an order prohibiting the continuance of such activities.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 67)

Chemicals Act 2008 (No. 13 of 2008). (§ 16)

#### 11.3.5 Power to initiate prosecutions

##### **Summary / Citation**

The Occupational Safety and Health inspectors can initiate prosecutions when activities are carried on in contravention of a Prohibition Notice. The Authority may apply to the High Court for an order prohibiting the continuance of such activities.

In addition, an inspector may institute a prosecution against a person who did not pay "On-the Spot" fines.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 68, § 79)

#### 11.3.6 Power to conduct prosecutions

##### **Summary / Citation**

The Health and Safety Authority has the power to conduct prosecution.

Indeed, 'summary proceedings in relation to an offence under any of the relevant statutory provisions may be brought and prosecuted by the Authority'.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 82(1))

#### 11.3.7 Other enforcement powers

##### **Summary / Citation**

Inspectors' enforcement duties extend beyond the provisions of 'the Safety, Health and Welfare at Work Act 2005' to include duties under other health and safety related Acts, such as the Chemicals Act 2008, and the ADR Carriage of Dangerous Goods by Road Regulations.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005).

Chemicals Act 2008 (No. 13 of 2008).

### 11.4 Application of sanctions by courts

#### 11.4.1 Financial penalties for legal persons

##### **Summary / Citation**

Financial penalties imposed to a company are addressed towards employers. Therefore, financial penalties for legal persons are the same than the ones mentioned for natural persons in Section 78 of the Safety, Health and Welfare at Work Act 2005. The penalties for legal persons are as follow:

For summary proceedings the maximum penalty is 3,000 and/or up to six months of imprisonment. These offences are tried in the District Court.

For indictment proceedings the maximum penalty is 3,000,000 and/or up to two years of imprisonment. These offences are tried in Circuit Courts.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 39(7), § 77(1), § 77(2), § 77(8), § 77(9)a, § 78)

#### 11.4.2 Financial penalties for natural persons

##### **Summary / Citation**

Penalties for natural persons are as follow:

For summary proceedings the maximum penalty is 3,000 and/or up to six months of imprisonment. These offences are tried in the District Court.

For indictment proceedings the maximum penalty is 3,000,000 and/or up to two years of imprisonment. These offences are tried in Circuit Courts.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 39(7), § 77(1), § 77(2), § 77(8), § 77(9)a, § 78)

#### 11.4.3 Non-financial sanctions

##### **Summary / Citation**

The Health and Safety Authority may compile a list of names and addresses and the description of business or other activity of every person who received a fine or any other penalty concerning the safety and health legislation.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 85)

#### 11.4.4 Criminal liability

##### **Summary / Citation**

Every employer and "person in control" are subject to criminal liability. Indeed, [e]very employer shall manage and conduct his or her undertaking in such a way as to ensure, so far as is reasonably practicable, that in the course of the work being carried on, individuals at the place of work (not being his or her employees) are not exposed to risks to their safety, health or welfare.

In addition, on persons in control of a non-domestic place of work made available as a place of work to persons [...]; the means of access to or egress from that place of work, or any article or substance provided for the use of persons at that place of work, other than employees of the person who has control of the article or substance.

##### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 12, § 15)

#### 11.4.5 Terms of imprisonment for natural persons

##### **Summary / Citation**

Persons who contravened to the safety and health legislation risk a term of imprisonment up to six months for a summary offence, or up to two years for an indictment offence.

#### References

Safety, Health and Welfare at Work Act, 2005 (No. 10 of 2005). (§ 78)