

1 Description of national OSH regulatory framework

1.1 Description of OSH regulatory framework

Summary/citation

The main Dutch OSH framework is based on the Working Conditions Act, Working Conditions Decree and the Working Conditions Regulation. Next to this occupational health and safety related rules can be found in many other laws such as the Works Councils Act and the Nuclear Energy Act and in other lower legislation such as the Building Decree 2012. The Working Conditions Act contains the main OSH framework with its general principles, obligations and procedures. It explains employers what to do but not how they have to do it. The Working Conditions Decree and Working Conditions Regulation give more detailed obligations on how to fulfil the obligations of the Working Conditions Act. Much of the Dutch occupational health and safety regulatory framework is based as well on transposed European Directives and European Regulations.

The Inspectorate SZW is responsible for the enforcement of the OSH legislation in the Netherlands.

References

Working Conditions Act

Working Conditions Regulation

Working Conditions Decree.

Works Councils Act

Nuclear Energy Act.

Website Inspectorate SZW

Website Ministry of Social Affairs and Employment

Besluit van 29 augustus 2011 houdende vaststelling van voorschriften met betrekking tot het bouwen, gebruiken en slopen van

2 Scope, coverage and exclusions

2.1 Health and safety covers physical and psychological health

Summary/citation

The employer shall take care of the employee's safety and health in every aspect related to the labour, both physical and psychosocial, and has a policy that is focused on the best working conditions possible, where he will take the following into consideration:

- a. Unless it cannot reasonably be demanded, to organise the labour in such a way that the employee's safety and health will not be influenced by it in a negative way.
- b. Unless it cannot reasonably be demanded, to prevent or restrict dangers or safety risks as much as possible at the source, or to take efficient measurements, preferably collective measurement, in case the problem cannot be prevented at the source.
- c. To adapt the work methods and tools as much as possible to the individual characteristics of the employee.
- d. To avoid monotonously and pace related labour as much as reasonably possible.
- e. To take efficient measurements related to emergencies, firefighting and evacuations and maintain connections with first assistance.

References

Working Conditions Act (Art. 3)

2.2 Definition of worker

2.2.1 Coverage of particular categories of workers

Summary/citation

In the Working Conditions Act and the definitions based on it:

a. An employer:

1. the party on whose behalf another person is required to perform work in accordance with a contract of employment or appointment under public law, except where the person is made available to a third party in order to perform work that the third party would normally make arrangements to have performed itself;
2. the party to which or to whom another person is made available to perform work as referred to in 1°.

b. The employee: the other person referred to in a.

2. The following definitions also apply to this Act and the provisions based on it:

a. employer:

1°. the party which or who, without being an employer or employee as defined in paragraph one, has work performed by another person under his, her or its authority;

2°. the party which or who, without being an employer or employee as defined in paragraph one, has work performed by another not under his, her or its authority in a dwelling, in cases to be designated by order in council;

b. employee: the other person referred to in a, with the exception of persons carrying out voluntary work

Restrictions / obligations

Workers are those who are performing labour under an employer's authority, with the exception of the one who performs labour voluntarily.

While volunteers are thus exempted in the Working Conditions Act, the Working Conditions Decree subsequently designates several parts of the Working Conditions Act as applicable to them. The parts applicable are those protecting employees against serious risks.

References

Working Conditions Act (Art. 1 clause 1 part b and Art. 1 clause 2 part b)

Working Conditions Decree. (Art. 9.5a)

2.2.1.1 Migrant workers

Summary/citation

When an employer requests a work permit for a migrant worker, the working conditions have to comply with the Working Conditions Act.

Remarks / comments

Furthermore the provisions of the Working Conditions Act do not exclude (illegal) migrants from the definition of worker.

References

Working Conditions Act (Art. 1 clause 1 part b and Art. 1 clause 2 part b))

Foreign Labour Act (Art. 8 clause d)

2.2.1.2 Domestic workers

Remarks / comments

Domestic workers are not specifically excluded from the Working Conditions Act.

References

Working Conditions Act

2.2.1.3 Home workers

Summary/citation

Working independent of location is meant as:

- work assigned by an employer as referred to in Article 1, first paragraph, under a, or second paragraph, under a, sub 1°, of the Working Conditions Act, to an employee as referred to in Article 1, first paragraph, under b, of the Working Conditions Act, or an employee as referred to in Article 1, second paragraph, under b, of the Working Conditions Act insofar as this employee carries out work for an employer as referred to in Article 1, second paragraph, under a, sub 1°, of the Act, in a home or a location outside the company or business premises chosen by this employee that is not the employer's place of business; or
- work assigned by an employer as referred to in Article 1, second paragraph, under a, sub 2°, of the Working Conditions Act, in the context of the exercise/operating of a profession or business pursuant to a contractor agreement or a contract for services, to an employee as referred to in Article 1, second paragraph, under b, of the Working Conditions Act, in a home, unless the other party independently exercises or operates a profession or business in which he/she frequently undertakes to carry out such work for third parties.

References

Working Conditions Decree. (Art. 1.43)

2.2.1.4 Self-employed persons

Summary/citation

Lower legislation, an order in council, can specify whether the obligations to oblige the requirements of this law or the requirements based on this law, as far as they relate to work that is associated with particular risks to health or safety, also applies to:

- a. A self-employed person
- b. An employer that performs this labour himself
- c. Someone who works with volunteers
- d. A volunteer

The Working Conditions Decree regulates this for self-employed persons.

References

Working Conditions Act (Art. 16)

Working Conditions Decree. (Art. 9.5)

2.3 Definition of employer

Summary/citation

The Working Conditions Act define employer as:

1. The following definitions apply to this Act and the provisions based on it:

a. employer:

1°. the party on whose behalf another person is required to perform work in accordance with a contract of employment or appointment under public law, expect where the person is made available to a third party in order to perform work that the third party would normally make arrangements to have performed itself;

2°. the party to which or to whom another person is made available to perform work as referred to in 1°.;

2. The following definitions also apply to this Act and the provisions based on it:

a. employer:

1°. the party which or who, without being an employer or employee as defined in paragraph one, has work performed by another person under his, her or its authority;

2°. the party which or who, without being an employer or employee as defined in paragraph one, has work performed by another not under his, her or its authority in a dwelling, in cases to be designated by order in council;

References

Working Conditions Act (Art. 1 clause 1 part a and Art. 1 clause 2 part a)

2.4 Exclusion of branches of economic activity

2.4.1 Agriculture

Remarks / comments

Agriculture is not explicitly excluded from the Working Conditions Act.

References

Working Conditions Act

2.4.2 Construction

Summary/citation

Construction is not explicitly excluded from the Working Conditions Act. The Working Conditions Decree contains some additional specific provisions addressing construction sites operating tower cranes, mobile cranes, foundation machines and scaffolding.

References

Working Conditions Act

Working Conditions Decree. (Chapter 7 section 5)

2.4.3 Services

Summary/citation

Provisions may be established by order in council specifying that this Act and the provisions based on it do not apply, in whole or in part, to:

a. work performed in or on an aircraft, ocean-going vessel or inland waterway vessel, or a vehicle on the public highway or a railway or tram line

References

Working Conditions Act (Art 16 clause 4a)

2.4.4 Public sector

Summary/citation

Provisions may be established by order in council specifying that this Act and the provisions based on it do not apply, in whole or in part, to:

- b. work performed in the course of military service

References

Working Conditions Act (Art. 16 clause 4b)

2.4.5 Other

Summary/citation

The Working Conditions Decree regulates which parts of the Working Conditions Act apply for several branches of economic activities such as education, civil public services, transport, judicial facilities and defence.

References

Working Conditions Act (Art. 16)

Working Conditions Decree. (Chapter 1)

2.5 Definition of occupational accident**Summary/citation**

An occupational accident is a labour related unwanted, sudden event, which causes damage to an employee's health as an immediate cause and has led to absence, or to death as an immediate cause.

References

Working Conditions Act (Art. 1 clause 3 part i)

2.6 Definition of occupational disease**Summary/citation**

An occupational disease is a disease or illness caused by a pressure that primarily occurred during labour or working conditions.

References

Working Conditions Regulation (Art. 1.11)

2.6.1 List of occupational diseases

Summary/citation

The Netherlands Centre for Occupational Diseases registers and reports on occupational diseases via the national notification and registration system.

References

Website Netherlands Centre for Occupational Diseases

List of occupational diseases

2.6.2 Mechanism for compensating other diseases as occupational ones

3 Institutions and programmes relating to OSH administration and/or enforcement**3.1 Competent national authority for safety and health at work**

Summary/citation

Based on the Working Conditions Act the monitoring institution is designated by the minister of Social Affairs and Employment (Sociale Zekerheid en Werkgelegenheid). The appointed monitoring institution is the Inspectorate SZW. The Ministry of Social Affairs and Employment has a role in the field of OSH. The Inspectorate is part of the Ministry of Social Affairs and Employment.

The Inspectorate is obliged to supervise the compliance with the Working Conditions Act and other OSH related legislation.

Also the compliance with other acts to fight illegal labour, circumvention of minimum wage, labour exploitation, mala fide job placement services and other labour market fraud.

The Inspectorate SZW is also responsible for offering an insight into the effectiveness of the system of work and income by studying the implementation of social security acts by the Employee Insurance Agency (UWV), the Social Insurance Bank (SVB) and municipalities. Besides that, the Inspectorate SZW monitors the risks and relevant developments in the policy fields of the Ministry of Social Affairs and Employment.

The Analysis, Programming and Monitoring (APS) department of the Inspectorate SZW is responsible for strategy development and programming of supervision and investigation activities, risk analyses, monitoring, measuring effects and the communication activities.

References

Working Conditions Act (Art. 24 clause 1)

Organogram of the Inspectorate SZW

What does the Inspectorate SZW do?

3.1.1 Objectives, roles and/or functions**Summary/citation**

The core tasks of the Inspectorate related to OSH legislation are the following:

- Supervising the compliance with the working conditions legislation and the Working Hours Act.
- Supervising the compliance with the Foreign Labour Act.
- Supervising the compliance with the Major Accidents (Risks) Decree.
- Supervising the compliance with the Plant Protection Products and Biocides Act.
- Supervising the compliance with the Commodities Act partly, for the part related to the safety of products on the professional market.
- Supervising the compliance with the Economic Offences Act.
- The Inspectorate is also obliged to supervise the compliance with collective agreements.

The Inspectorate supervises the compliance with the Acts and related legislation. In order to do that the Inspectorate is granted certain authorities by the acts they are supervising. For example, by the Working Conditions Act the authority to start an investigation at all times in case of an accident at work.

It is granted inspection powers by the Working Conditions Act such as the power to enter dwellings without the inhabitant's consent. The inspectorate can impose a penalty for a violation of these acts. If employees do not comply with the regulations contained for them in the Working Conditions Act, they can also be imposed a penalty. The penalty report contains the violation(s) based on which you'll receive the penalty.

Furthermore, the Inspectorate has to draw attention to developments and risks in the field of social affairs and employment.

The Ministry of Social Affairs and Employment also has OSH-related functions, such as:

- Supporting employers and employees in creating healthy and safe work environments.
- Establishing frameworks (legislation, regulations and working conditions catalogues).
- Setting the agenda and stimulating a healthy and safe working environment, with for example the sustainable employability programme, commissioning project and a focus on corporate culture.
- Monitoring and enforcing via the Inspectorate SZW.

References

Working Conditions Act (Art. 24)

Foreign Labour Act (Art. 19a)

Economic Offences Act (Art. 17)

Major Accidents Risks Decree 2015 2015-07-07 (Art. 13)

Dutch vision and strategy for occupational safety and health

3.1.2 Chairperson and composition

Summary/citation

The chair of the inspectorate is the inspector general.

The Inspectorate SZW is divided in seven departments, 2 general departments and 5 operational departments.

General departments:

- Analysis, Programming and Monitoring (APS)
- Inspectorate Support and Information Management

Operational departments:

- Work and Income
- Investigations
- Major Hazard Control
- Working Conditions
- Labour Market Fraud

The department Working Conditions is responsible for the supervision of OSH legislation.

The headquarter of the inspectorate is at the Ministry of Social Affairs and Employment in The Hague:

Parnassusplein 5
2511 VX Den Haag
The Netherlands

References

Website Inspectorate SZW

Organogram of the Inspectorate SZW

Organogram of the Ministry of Social Affairs and Employment

English description of the Organisational structure of the Ministry of Social Affairs and Employment

3.2 National OSH research programme or institute

- 3.2.1 Objectives, roles and/or functions
- 3.2.2 Governance board constitution and chairmanship
- 3.2.3 Source of funding

3.3 National OSH programme

Reference

Inspectorate SZW annual plans and reports

Dutch vision and strategy for occupational safety and health 2016-06

- 3.3.1 Consultation on the national OSH programme

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

The employer is obliged to ensure that the health and safety conditions are respected for the sake of his employees. The employer shall produce a written inventory and assessment of the risks to which employees are exposed as a result of their work. The employer shall take the measures required to prevent and limit serious accidents involving dangerous substances.

References

Working Conditions Act (Art. 3)

Working Conditions Decree. (Art. 4.1b)

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

Summary/citation

If the safety or health of persons other than employees can be put at risk as a result of, or in direct connection with, the work that the employer has done by his/her/its employees in a business or establishment, or in the immediate surroundings, the employer shall take appropriate measures to prevent that hazard.

References

Working Conditions Act (Art. 10)

4.3 Collaboration among two or more employers at the same workplace

Summary/citation

If more than one employer has work performed in a business or establishment, they shall cooperate appropriately in order to ensure compliance with the provisions established in or by virtue of this Act. Before work falling under a category specified in an order in council starts, the employers shall ensure that a written description of how they are to cooperate is produced, what action is to be taken in respect of cooperation and how this is to be monitored.

References

Working Conditions Act (Art. 19)

4.4 Surveillance of workers' health in relation to work

Summary / Citation

Employers have the obligation to provide workers with the opportunity to undergo a medical examination in order to ensure that their health is up to the standard required for the work they will be doing.

Remarks / comments

Workers that work with asbestos, who might be exposed to biological agents and those who are entrusted with diving work, caisson work or other work under excess pressure have more extensive rights to undergo medical examinations. Another example of a group that has stricter medical rights are workers who can come into contact with radiation. The employer is obliged to arrange medical supervision and prevent that employees are exposed to a maximum dosage of radiation during their work.

References

Working Conditions Act (Art. 18)

Working Conditions Decree. (Art. 4.1, 4.10a, 4.23, 4.52, 4.91 and 6.14a)

Radiological Protection Decree (paragraph 7.4)

4.4.1 Specific hazards for which surveillance is required**Summary / Citation**

There are specific hazards for which surveillance is required. Please find below some examples: Employers have the obligation to provide workers that can come into contact with asbestos with the opportunity to undergo a medical examination prior to carrying out any work involving exposure to asbestos and at least once every three years for as long as the exposure to asbestos lasts.

Workers who are entrusted with diving work, caisson work or other work under excess pressure are obliged to have a medical health examination that focusses on the specific risks for their health related to working under excess pressure before the start of the work. After a period of no more than 12 months the employer is obliged to repeat the examination.

Employers have the obligation to provide workers with the opportunity to periodically undergo a medical examination when they are exposed to loud sounds above a certain threshold level.

Employers have the obligation to provide workers with the opportunity to undergo a medical examination when they start when they are exposed to biological agentia and vibrations. Workers who are exposed to biological agentia can also undergo such a research in case they came into contact with the biological agentia.

Employers have the obligation to provide workers with the opportunity to undergo a medical examination when they are exposed to optical radiation or electromagnetic radiation above a certain threshold.

References

Working Conditions Decree. (Art. 4.52, 4.91, 6.10, 6.11e, 6.12g, 6.12n, 6.14a)

Radiological Protection Decree (Art. 98 and Art. 99)

4.5 Surveillance of the working environment and working practices**Summary / Citation**

For the creation of its working conditions policy, the employer shall produce a written inventory and assessment of the risks to which employees are exposed as a result of their work. This risk assessment and evaluation also includes a description of the measures aimed at limiting hazards and risks, and risks affecting particular groups of employees. The Working Conditions Decree gives a more detailed description of specific risks that have to be assessed pertaining to dangerous substances and major accidents.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 2.5b)

4.6 Duty to provide personal protective equipment

Summary / Citation

Employers are obliged to ensure that employees have sufficient personal protective equipment if there is a hazard or a potential hazard to the safety or health of an employee.

References

Working Conditions Decree. (Art. 8.3)

4.7 Duty to ensure the usage of personal protective equipment

Summary / Citation

Employers are obliged to ensure that employees use the personal protective equipment available to them when there is a hazard or potential hazard to the safety or health of an employee.

In certain situations the Working Conditions Decree directly obliges that personal protective equipment is used. Such situations are for example when dealing with loud noises, vibrations and exposure to dangerous substances.

References

Working Conditions Decree. (Art 8.3 clause 2, 4.1c and 6.8)

4.8 Duty to provide first-aid and welfare facilities

Reference

Working Conditions Act (Art. 3 clause 1e and 15)

Working Conditions Decree. (Art. 3.25)

4.8.1 Arrangements for first-aid

Summary / Citation

First-aid stations are obliged to comply with the following requirements:

1. If the nature of the work or the associated hazards make it necessary, in addition to the minimum requirements needed to fulfil the obligations coming forth from the risk assessment that an employer is obliged to make, there should be sufficient first aid stations available in the business or establishment.
2. Clearly visible instructions for first aid for accidents should be present in the first aid stations.
3. An alarm number should be clearly visible in the first aid station.
4. The first aid stations should be provided with the necessary first aid equipment.
5. First aid stations should be easily accessible with stretchers.
6. First aid stations and first aid equipment should be supplied with a sign that makes it adequately visible.

References

Working Conditions Act (Art. 3 clause 1e and 15)

Working Conditions Decree. (Art 3.25)

4.8.2 Sanitary installations

Summary / Citation

Employers shall make sure that there is a workplace hygiene strategy and that employees can eat and drink without any hazard of exposure. Protective hygiene measures shall also be taken into account regarding working clothes. If the employees are exposed to dirt, dust or high temperatures to such an extent that the necessary cleaning of their bodies involves more than washing their hands and face or because of the nature of their work or the care of their health, there should also be a shower room with a sufficient number of showers. The shower room must have sufficient room, be effectively fitted out and separated according to the sexes; the showers must have cold and hot running water.

References

Working Conditions Decree. (Art. 3.22, 3.23, 3.24, 4.20 and 4.51)

4.8.3 Drinking water

Summary / Citation

There is no specific obligation for employers to provide drinking water except that employers shall ensure that there is sufficient drinking water or other soft drinks on a construction site.

References

Working Conditions Decree. (Art. 3.27)

4.8.4 Rest and eating areas

Summary / Citation

An easily accessible area should be available in the business or the establishment or in its direct vicinity where the employees can spend their breaks. This area should be suitable for this purpose and also - depending on the number of employees - sufficiently spacious in size and equipped with sufficient tables and chairs.

For employees who usually stay over in the business or the establishment in which they are working during the time between the end and the beginning of their daily working hours, a night room should be available. A night room should be fitted out adequately and should only be intended for persons of the same sex.

A suitable, lockable, enclosed space should be available for pregnant and breast-feeding employees in which there is an opportunity to take a rest or one can be made immediately available. In such a space a proper, folding or non-folding bed or a suitable couch should be available.

References

Working Conditions Decree. (Art 3.20, 3.21 and 3.48)

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

The employer must protect the health and safety of employees with respect to all employment-related aspects. To this end the employer must conduct a policy aimed at achieving the best possible working conditions. Further, when operating a working conditions policy, the employer shall produce a written inventory and assessment of the risks to which employees are exposed as a result of their work. This risk assessment and evaluation also includes a description of the measures aimed at limiting hazards and risks, and risks affecting particular groups of employees.

References

Working Conditions Act (Art. 3, 4 and 5)

5.1.2 Appointment of a person for health and safety

Summary/citation

Companies have to appoint one or more "competent persons" providing support to employees to ensure suitable working conditions and health protection. However, in smaller companies (with less than 15 employees), the employer can act as a "competent person".

References

Working Conditions Act (Art. 14 and Art. 15)

5.1.3 Written risk assessment

Summary/citation

When operating a working conditions policy, the employer shall produce a written inventory and assessment of the risks to which employees are exposed as a result of their work. This risk assessment and evaluation shall include a description of the measures aimed at limiting hazards and risks, and risks affecting particular groups of employees. Certain companies storing hazardous substances (not classed as major hazard facilities) are obliged to establish a so-called "additional risk inventory and evaluation" (ARIE), specifying how risks of major accidents can be reduced as far as possible.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 2.5b)

5.1.4 Safe operating work systems and procedures

Summary/citation

When operating a working conditions policy, the employer shall produce a written inventory and assessment of the risks to which employees are exposed as a result of their work. This risk assessment and evaluation shall include a description of the measures aimed at limiting hazards and risks, and risks affecting particular groups of employees.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 2.5b)

5.1.5 Training and information on risks

Summary/citation

The employer shall ensure that the employees are given information on risks and measures to prevent them. Where there is a danger of being exposed to psycho-social workload, information and instructions should be given to employees who carry out such work about the risks of psycho-social workload as well as the measures aimed at preventing or restricting this load.

References

Working Conditions Act (Art. 8)

Working Conditions Decree. (Art. 2.15 and 2.42h)

5.1.6 Review or assessment of the results of preventive measures

Summary/citation

In order to effectively determine the exposure level, suitable, normalised measuring methods must be used or other measuring methods or quantitative evaluation measures suitable for the purpose. After assessing the results the measures can be adjusted if necessary.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 2.5b)

5.1.7 Consultation with workers in health and safety

Summary/citation

The employer shall consult the works council or staff representation body in relation to matters affecting the working conditions policy and its implementation. This process shall involve an active exchange of information. The employer shall also seek the assistance of one or more expert employees in connection with compliance with his/her/its obligations under the Working Conditions Act.

References

Working Conditions Act (Art. 12 and Art. 13)

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 must seek the assistance of one or more expert employees with regard to his/her compliance with the obligations he/she has under the Working Conditions act. When he/she does not have the required expertise within his/her business then he/she is obliged to consult other experts.

References

Working Conditions Act (Art. 13, 14, 14a and 15)

6.1.1.1 Qualifications of experts or professional services

Summary / Citation

Employees and external experts are obliged to have such knowledge, experience and resources to be able to provide proper assistance with regard to fulfilling their obligations under the Working Conditions act. They must hold the necessary certificates to that effect.

Company doctors need to be registered in an acknowledged specialist register. A company doctor must be a qualified doctor, but also needs to have received special qualification to be a company doctor.

Remarks / comments

To qualify as a "competent person" the following certificates have to be obtained:

- Certificate of Professional Competence Occupational Hygiene (Certificaat van vakbekwaamheid arbeidshygiene) that complies with the requirements of Version 1 of the Rules SAH (Occupational Hygiene Manager), SVK (Occupational Health and Safety) ref nr. SKO/03034S of the Association for the Certification of Professional Competence (Stichting voor de Certificatie van Vakbekwaamheid - SKO) concerning occupational hygienists, established on 19 November 2003. SKO provides this certificate;
- Certificate of Professional Competence Safety (Certificaat van vakbekwaamheid veiligheidskunde) that complies with the requirements of Version 1 of the Rules SAH (Occupational Hygiene Manager), SVK (Occupational Health and Safety) ref nr. SKO/03034S of the SKO concerning safety specialists, established on 19 November 2003. SKO provides this certificate; and
- Certificate of Professional Competence Labour and Organisation (Certificaat van vakbekwaamheid arbeids- en organisatiekunde) that complies with Version 3.0 of the Certification scheme Person certification Labour- and Organisation experts (Certificatiescheme Persoonscertificatie Arbeids- en Organisatiedeskundigen) of the Foundation Registration Labour and Organisation experts (Stichting Registratie Arbeids- en Organisatiedeskundigen), established on 26 April 2005. KIWA is the institute that provides this certificate.

It is also possible that there are three "competent persons" and each has one of the aforementioned certificates, or there are "competent persons" and one has two of the aforementioned certificates and the other one has just one of the aforementioned certificates. In other words, the certificates can be spread over different competent persons.

References

Working Conditions Act (Art. 13 clause 4 and Art. 20)

Working Conditions Decree. (Art. 2.7)

Healthcare Professionals Act (Art. 14)

6.2 Appointment of an OSH practitioner

Summary/citation

The employer must appoint someone to assist him to comply with his obligations under the Working Conditions Act. When a company has less than 25 employees the employer himself can fulfil assistance related tasks if he has sufficient knowledge, experience and resources.

References

Working Conditions Act (Art. 13)

6.2.1 Workforce size threshold for the appointment of OSH practitioners

Summary/citation

There is no minimum threshold before OSH experts need to be consulted. However, when a company has less than 25 employees the employer himself can fulfil assistance related tasks if he has sufficient knowledge, experience and resources.

References

Working Conditions Act (Art. 13 clause 10)

7 Workers' rights and duties

7.1 Duty to take reasonable steps to protect their own safety and health

Summary / Citation

Workers are provided with all the necessary tools and knowledge they need in order to avoid situations that could jeopardize their safety and health. Accordingly, workers are obliged to comply with instructions given to them as laid down in the Act.

References

Working Conditions Act (Art. 11)

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

Summary / Citation

Every individual worker is obliged to perform his work with utmost care towards every individual concerned and accordingly not jeopardize others health and safety. In order to do so, every worker is obliged to comply with instructions, related to his/her performance, given by his/her employer. Furthermore, when they act as emergency response experts after being trained for it, they are obliged to prevent accidents from happening and make sure that, in case of emergency situations, workers safety and health is not negatively affected by the accident.

References

Working Conditions Act (Art. 11 and Art. 15)

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

Summary / Citation

Employers are obligated to take appropriate measures needed in order to protect others from hazards they might suffer as a result from a risk taken in the course of business. Supervisors protect the safety and health of others by issuing orders which employers and/or employees need to comply with. Under certain conditions, they are obliged to cooperate with other agencies, by way of data exchange, in order to ensure the health and safety of workers. Supervisors' are obliged to investigate every information that they receive from a therefore competent body regarding violations. During their investigation they have the right to do what is necessary to gather information insofar as their actions are proportional to the aim they want to achieve.

References

Working Conditions Act (Art. 10, 27, 28 and 29a)

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

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

Summary / Citation

Employers are obligated to take appropriate measures needed in order to protect others from hazards they might suffer as a result from a risk taken in the course of business.

The Working Conditions Decree also extends this obligation to self-employed persons.

References

Working Conditions Act (Art. 10)

Working Conditions Decree. (Art. 9.5 clause 1 sub g)

7.6 Duty to comply with OSH-related requirements

Summary / Citation

Every worker has the obligation to comply with OSH-related requirements such as:

- use tools and dangerous substances properly;
- use personal protective equipment supplied to them properly, and return it to the proper storage place after use;
- not to modify protective devices fitted to tools or other objects or to remove them without need, and to use them correctly;
- to participate properly in the trainings for their particular tasks in respect of the working conditions;
- to notify the employer or their local manager immediately of any hazards to safety or health of which they become aware;

If they fail to do so than this is seen as a violation of the Working Conditions Act.

References

Working Conditions Act (Art. 11)

Working Conditions Decree. (Art. 9.3)

7.7 Right to enquire about risks and preventive measures

Summary / Citation

The employer shall ensure that every employee can take notice of the risk assessment and evaluation.

References

Working Conditions Act (Art. 5 clause 6)

7.8 Right to remove themselves from a dangerous situation

Summary / Citation

The workers have a right to stop work and not to resume if they have reason to assume there is a serious threat to individuals and the threat is imminent. During those hours, the workers are entitled to the normal hourly wage for the time they are not working. The workers should not be disadvantaged and able to stop working in a dangerous situation as a result of stopping work.

References

Working Conditions Act (Art. 29 clause 1)

7.9 Right to be reassigned to non-hazard work

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

There shall be a Health Council.

References

Health Act (Art. 21 clause 1)

8.1.1 Objectives, roles and/or functions

Summary / Citation

The Health Council is an independent scientific advisory body whose legal task it is to advise ministers and Parliament in the field of public health and health/healthcare research. The Health Council can be asked by Ministers for advice which can be used to substantiate policy decisions, as well as give unsolicited advice.

References

Health Act (Art. 22)

8.1.2 Constitution and chairmanship modalities

Summary / Citation

The board of the Health Council consists of a President and Vice President. There is no upper limit for the amount of members of the Health Council. The members are appointed by Royal decree.

The President can appoint Committees from its Members.

Remarks / comments

Two of the Committees of the Health Council are related to OSH: the Dutch Expert Committee on Occupational Safety (DECOS) and the Committee on the Identification of Workplace Risks.

DECOS focusses on advising on protection against harmful substances, carcinogenic substances and reproductive toxins while the Committee on the Identification of Workplace Risks focusses on the identification of risks at the workplace.

References

Health Act (Art. 21 and 24)

Advisory Bodies Framework Act (Art. 10)

8.2 Employers' duty to consult workers on risks

Summary / Citation

The employer and the workers must co-operate in the implementation of the working conditions policy. The employer is obliged to consult the Works Council or staff representative body in relation to matters affecting the working conditions policy and its implementation

The endorsement of the Work Council shall be required for every proposed decision on the part of regulations relating to working hours and rest periods or holidays and on the part of regulations relating to working conditions, sick leave or reintegration.

Besides that, the Works Council shall do all within its power to ensure any regulation applying to the enterprise regarding terms of, amongst others, working conditions and working and resting hours are respected.

Restrictions / obligations

A Works Council is only required by law for enterprises with at least 50 persons working in the enterprise.

In case the enterprise has 10 - 50 workers, but no Works Council or staff representative body, the employer must give the workers the opportunity of meeting with the employer at least twice a year. The employer shall give the workers the opportunity in this meeting to render advice about any proposed decision on the part of the entrepreneur that make major changes in the terms of, amongst others, working conditions.

If the enterprise has 10 - 50 workers, but no Works Councils, the employer may set up a staff representative body. At the request of the majority of the workers, the employer is obliged to set up such a body. The employer has a duty to submit any proposed decision regarding the working conditions to the staff representative body. The staff representative body shall notify the employer in writing of its standpoint on the proposal. This applies as well to the staff representative body in an enterprise with 10 or less workers.

If there is no Works Council or staff representative body, the employer has to consult the affected workers. In the absence of a Works Council or staff representative body the employer has a duty to notify the affected workers of a decision. This decision shall not take effect with regard to the workers before the employer has complied with its duty to notify.

References

Working Conditions Act (Art. 12)

Works Councils Act (Art. 2 clause 1, 27, 28, 35b, 35c and 35d)

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

Summary / Citation

Based upon the Works Councils Act, enterprises with at least 50 persons working, are obliged to have a Works Council to ensure the proper consultation and representation of the persons working in the enterprise.

The Works Councils Act shall regulate the procedure of nomination and election. It states that members of the Works Council shall be elected by secret written ballot from one or more lists of candidates.

The list of candidates may be submitted by any employees' organisation whose membership includes persons working in the enterprise who are eligible to vote. The employees' organisation can only submit a list of candidates if the composition of the list has been consulted with its members in the enterprise.

That employees' organisation also has to live up to certain formal standards. The employees' organisation has as goal to protect the interests of its members as employees based upon its Articles of Association. Furthermore, the employees' organisations shall have had fu

ll legal competence for the last two years.

A list of candidates can also be submitted by any person (or group of persons) working in the enterprise who is eligible to vote, but who is not a member of an employees' organisation.

The Works Council shall lay down additional rules in its Rules of Procedure relating to candidature, elections and the determination of election results, and to the filling of interim vacancies in the Works Council.

Restrictions / obligations

A Works Council is only an obligation by law for enterprises with at least 50 persons working in the enterprise.

Therefore, this procedure only applies if the enterprise has a Works Council.

References

Works Councils Act (Art. 2 clause 1, 9 clause 2 and 10)

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

Summary / Citation

The size of the Works Council is based upon the number of persons working in the enterprise.

50 or less: 3 members in the Works Council

50 - 100: 5 members

100 - 200: 7 members

200 - 400: 9 members

400 - 600: 11 members

600 - 1000: 13 members

1000 - 2000: 15 members

For every further 1000 persons, two additional members should be add to the Works Council, up to a maximum of 25 members.

References

Works Councils Act (Art. 6)

8.3.2 Conditions of eligibility to represent workers in health and safety

Summary / Citation

The Works Councils Act regulates who is eligible to vote and who is eligible to stand for election.

Persons who have been working in an enterprise for at least 6 months have the right to vote, persons who have been working in the enterprise for at least 12 months have the right to stand for election. The Works Council is allowed to incorporate rules that differ from this if it is in the interest of proper implementation of the Act within the enterprise.

Restrictions / obligations

These regulations only apply to enterprise's with an (voluntarily set) Works Council.

References

Works Councils Act (Art. 6)

8.4 OSH representatives' functions, rights and powers

8.4.1 Right to inspect the workplace

Summary / Citation

The Works Council or staff representative body can request an investigation of the workplace by the Inspectorate SZW.

References

Working Conditions Act (Art. 24 clause 7)

8.4.2 Right to access OSH information

Summary / Citation

The supervisor of the Inspectorate SZW is obliged to send his report to the employer, as well as to the Works Council or staff representative body.

The employer can seek assistance of one or more expert workers to comply with the OSH-regulations. The employer shall ensure that workers who are experts can be made aware of certain aspects of the OSH-information.

The information the expert workers can access, is:

- the accident reports and list of accidents at work;
- a requirement issued by a designated supervisor to an employer with an order specifying how they must comply with one or more provisions adopted under or by virtue of this Act;
- an order to suspend work and an order to suspend work because of a repeated offence;
- a ruling instructing that the infringement be rectified under threat of administrative coercion or imposing an order subject to a penalty;
- a request for dispensation as referred to in article 30, second paragraph Working Conditions Act;
- a report of an administrative fine;
- an injunction imposing a fine.

The right to access the aforementioned information also applies to the expert workers and expert individuals, company emergency response staff and the health and safety service.

In some specific cases the Works Council or staff representative body must be informed, for example in cases of an accident with biological agents.

References

Working Conditions Act (Art 13, 14, 15, 15a and 24 clause 5)

Working Conditions Decree. (Art. 4.92 and 4.93)

8.4.3 Right to be present at interviews

Summary / Citation

The Works Council or staff representative body does have the right to hold confidential discussions with the supervisor when he/she visits the enterprise.

References

Working Conditions Act (Art. 12 clause 4)

8.4.4 Right to receive professional assistance from OSH experts

Summary / Citation

The Works Council is allowed to invite experts related to particular subjects. The experts can be invited to join a meeting of the Works Council, as well as to submit advice in writing.

The staff representative body also has the right to invite experts

References

Works Councils Act (Art. 16 and 35c clause 5)

8.4.5 Right to accompany inspectors

Summary / Citation

The Works Council / staff representative body is allowed to accompany the supervisor of the Inspectorate when he/she visits the enterprise.

Restrictions / obligations

The members of the Works Council / staff representative body do not have this right if the supervisor indicates that that would impede him/her in the proper performance of his/her duties.

References

Works Councils Act (Art. 12 clause 4)

8.4.6 Right to use facilities

Summary / Citation

The Works Council is allowed to use any facility that the employer has at his disposal in his capacity as employer and which the Works Council may reasonably require in order to perform their duties.

The staff representative body in smaller enterprises, have this right as well.

References

Works Councils Act (Art. 17 clause 1, 35c clause 3 and 35d clause 2)

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

Summary / Citation

The Works Council shall, as far as possible, hold their meeting during normal working hours. During this time, the members retain their entitlement to full pay remuneration for the time they do not perform the work specified in their employment contract. Members of the staff representative bodies have the same rights.

Besides that, the members of the Works Councils have the opportunity - for a specified total number of hours per year - to meet in mutual consultation and to consult with other persons relating to the performance of their duties, with full pay or remuneration. Members of the staff representative bodies have the same rights.

References

Works Councils Act (Art. 17 clause 2, 17 clause 3, 18 clause 1, 35c clause 3 and 35d clause 2)

8.4.8 Right to issue remedial notices

8.4.9 Right to resolve OSH issues in consultation with employers

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**Summary / Citation**

Based upon the Works Councils Act, enterprises with at least 50 persons working, are obliged to have a Works Council to ensure the proper consultation and representation of the persons working in the enterprise.

Remarks / comments

The Works Council is not a joint council.

References

Works Councils Act (Art. 2)

8.6.1 Participation of workers' representatives in joint OSH committee

Summary / Citation

To be eligible for election to a position on the Works Council one has to be working at the enterprise for 12 months, to be eligible to vote one has to be working at the enterprise for 6 months.

Remarks / comments

The Works Council is not a joint council.

References

Works Councils Act (Art. 6)

8.6.2 Conditions for establishing a joint OSH committee

Summary / Citation

The size of the Works Council is based upon the number of persons working in the enterprise.

50 or less: 3 members in the Works Council

50 - 100: 5 members

100 - 200: 7 members

200 - 400: 9 members

400 - 600: 11 members

600 - 1000: 13 members

1000 - 2000: 15 members

For every further 1000 persons, two additional members should be add to the Works Council, up to a maximum of 25 members.

Remarks / comments

The Works Council is not a joint council.

References

Works Councils Act (Art. 6)

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

Summary / Citation

The overall goal of the Works Council is to ensure the proper consultation and representation of the persons working in the enterprise.

Remarks / comments

The Works Council is not a joint council.

References

Works Councils Act (Art. 2 clause 1)

8.6.4 Keeping record of the work of joint OSH committees

Summary / Citation

The Works Council shall have Rules of Procedure which govern the taking of the minutes of Works Council meetings and the drawing up of the annual report of the Works Council, and the manner in which these are to be made available to the entrepreneur, the members of the Works Council and the other persons working in the enterprise.

Remarks / comments

The Works Council is not a joint council.

References

Works Councils Act (Art. 14 clause 2h)

8.6.5 Sharing the minutes of joint OSH committees meetings

Summary / Citation

The Works Council shall have Rules of Procedure which govern the taking of the minutes of Works Council meetings and the drawing up of the annual report of the Works Council, and the manner in which these are to be made available to the entrepreneur, the members of the Works Council and the other persons working in the enterprise.

Remarks / comments

The Works Council is not a joint council.

References

Works Councils Act (Art. 14 clause 2h)

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

8.8 Protection against reprisals

Summary / Citation

An employer shall ensure that no employee is placed at any disadvantage with respect to his or her position in the enterprise on the grounds of any candidature for or membership of the Works Council or a Works Council committee. An employee may not be let of on the grounds of any candidature for or membership of the Works Council or a Works Council committee.

The Works Council may not be ordered to pay the costs of any legal proceedings between the employer and the Works Council.

References

Works Councils Act (Art. 21 and 22a)

Civil Code. (Art 7:670 clause 4)

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

9 Specific hazards or risks

9.1 Biological hazards

Summary / Citation

If an employee is or might be exposed to one or more biological agents specifically occurring or expected to occur at his workplace, with respect to the risk assessment and evaluation that an employer is obliged to make, the nature, extent and duration of the exposure must be assessed in order to determine the hazard for the employee. The assessment must be regularly reviewed, in any event each time there is a change in circumstances which might affect the exposure of employees to biological agents.

If employees are exposed to biological agents effective technical or organisational steps must be taken to prevent any exposure to biological agents and reduce the risks to exposure. An appropriate register must be kept at the facility of all workers exposed to biological agents.

Further, every employee that is or can be exposed to biological agents must be given the possibility to undergo a medical examination.

All work areas where work is carried out with biological agents must be clearly defined and marked with the appropriate safety signs. Also, hygienic protection measures must be taken and facilities have to provide appropriate instruction and training to those employees exposed to biological agents.

Finally, each accident or incident that occurred, almost did occur or possibly did occur with biological agents leading to the release, almost release or possible release of certain biological agents must be notified to the relevant bodies, authorities and employees.

The Working Conditions Decree furthermore contains the following definitions:

Biological hazards: genetic modified micro-organisms or otherwise, cellcultures and human endoparasites which can cause infection, allergy or toxicity.

Celculture: the artificial cultivating of cells of multicellular organisms.

Micro-organisms: a cellular or non-cellular microbiological entity with the ability to multiplication or transferring genetic material.

Remarks / comments

Directive 2000/54 is transposed into Dutch Law

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 4.84-4.101)

9.2 Chemical hazards

9.2.1 Handling, storage, labelling and use

Summary / Citation

The Globally Harmonised System of Classification and Labelling of Chemicals (GHS) has been implemented in the EU by Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (the 'CLP Regulation'). The CLP Regulation replaces previous rules on classification, labelling and packaging of substances (Directive 67/548/EEC) and preparations (Directive 1999/45/EC) after this transitional period.

In line with the GHS standard, CLP allows for the identification of hazardous chemicals and the communication of these hazards to users through labelling. It also provides the basis for safety data sheets (SDS) regulated under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation, and sets requirements for the packaging of hazardous chemicals. Since it is an Regulation its obligations are directly applicable in Dutch law and employers must follow them.

Restrictions / obligations

In the Netherlands the EC Regulation 1272/2008, on classification, labelling and packaging of substances and mixtures, has been implemented as follows:

1 Situation: Substance or mixture brought to market before 1 December 2010

If: Categorized in accordance to the EU-GHS

Than: Labeling and package in accordance to EU-GHS obliged

-

2 Situation: Substance brought to market after 1 December 2010

If: Delivered before 1 December 2010

Than: Labelling and package in accordance to Environmental Management Act allowed

Comment: Exemption till 1 December 2012

-

3 Situation: Substance brought to market after December 2010

If: Delivered after 1 December 2010

Than: Labelling and package in accordance to EU-GHS obliged

Comment: Exceptions 6,7,8 could be applicable

-

4 Situation: Mixture brought to market before 1 June 2015

If: Delivered before 1 June 2005

Than: Labelling and package in accordance to Environmental Management Act allowed

Comment: Exempted till 1 June 2017

-

5 Situation: Mixture brought to market after 1 June 2015

If: Delivered after 1 June 2005

Than: Labelling and package in accordance to EU-GHS obliged

-

6 Situation: Combination packaging (Outer-, Inner- and intermediate packaging)

If: Outer package needs to comply in accordance to the transportation legislation concerning labelling requirements

Than: Only for the inner- and intermediate packaging in accordance to EU-GHS

Comment: EU-GHS pictograms on the outer package are allowed

-

7 Situation: Outerpackage

If: Outer package does NOT need to comply in accordance to the transport legislation

Than: Only for the Inner- and intermediate packaging in accordance to EU-GHS is required

Comment: If the inner and or intermediate package are clearly visible than a labelling on the outerpackage is not required

-

8 Situation: Single Packages

If: Single package needs to comply to the Conditions of Carriage in accordance to the transport legislation

Than: Packaging in accordance to EU-GHS is required as well as the requirements in accordance to the transport legislation

Comment: It is allowed to omit the labelling if the Hazards are the same.

References

Working Conditions Decree. (Art 1.1 clause 5)

Classification and Labelling (CLP/GHS)

Règlement (CE) n° 1272/2008 du Parlement européen et du Conseil du 16 décembre 2008 relatif à la classification, à l'étiqueta

Accord européen du 30 septembre 1957 relatif au transport international des marchandises dangereuses par route (ADR), fait :

Accord européen relatif au transport international des marchandises dangereuses par voies de navigation intérieures (ADN), si

Dangerous Goods Transport Act

Directive 96/49/CE du Conseil du 23 juillet 1996 relative au rapprochement des législations des Etats membres concernant le t

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

Summary / Citation

Activities which manufacture, import or use chemical substances or preparations shall also comply with the stipulations in the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation. According to the regulation, manufacturers, importers and downstream users are obliged to provide a Material Safety Data Sheet (MSDS). Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (the CLP Regulation) provides the basis for these MSDS.

References

Règlement (CE) n° 1272/2008 du Parlement européen et du Conseil du 16 décembre 2008 relatif à la classification, à l'étiqueta

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registratic

Decree of 6 April 1994 to amend the Decree on packaging and indication of substances and preparations hazardous to the env

Environmental Management Act (Chapter 9)

9.2.3 Pesticides

Summary / Citation

The regulation of the European Union (EG) Nr. 1107/2009, applies to substances classified as an active substance, safeners or synergists and which are meant for the following use:

- (a) protecting plants or plant products against all harmful organisms or preventing the action of such organisms, unless the main purpose of these products is considered to be for reasons of hygiene rather than for the protection of plants or plant products;
- (b) influencing the life processes of plants, such as substances influencing their growth, other than as a nutrient;
- (c) preserving plant products, in so far as such substances or products are not subject to special Community provisions on preservatives;
- (d) destroying undesired plants or parts of plants, except algae unless the products are applied on soil or water to protect plants;
- (e) checking or preventing undesired growth of plants, except algae unless the products are applied on soil or water to protect plants.

It is forbidden to use a working substance which is not regulated in an admitted plant protection product, unless the substance is approved as a basic substance through Art. 23 of the regulation.

References

Plant protection products and pesticides Act 2007-04-10 (Art. 19 and 20)

Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of pla

9.3 Ergonomic hazards

Summary / Citation

The Working Conditions Act obliges the employers to ensure that the design of the workstations, the working methods, tools, and the actual work required are adapted to employees' individual characteristics. The Working Conditions Decree furthermore gives more detailed rules according to which the employer must organise workspaces, such as visual screen equipment and manual handling of loads.

Remarks / comments

Council directive 90/270/CEE, Directive 90/269/CEE are transposed into Dutch Law.

References

Working Conditions Act (Art 3 clause 1 sub c)

Working Conditions Decree. (Chapter 5)

9.4 Physical hazards**9.4.1 Ionising radiation****Summary / Citation**

The Nuclear Energy Act is the main legal instrument. It regulates the use of nuclear energy and radioactive techniques and lays down rules for the protection of the public and workers against the associated risks. Based on this act, the most important decree in relation to the safety aspects of working with ionizing radiation is the Decree Radiation Protection. The Decree requests that all exposure is kept to an absolute minimum. Work and monitoring with radiation sources must only be carried out by competent persons. Employees working with radiation must have received appropriate information and instruction.

References

Nuclear Energy Act.

Radiological Protection Decree

9.4.2 Vibration and noise**Summary / Citation**

The risk inventory and evaluation must determine the nature, extent and the duration of vibration and noise exposure in order to assess the risk to the health and safety of the worker in question.

The assessment and measurement of exposure to vibrations and noise must be carefully planned and carried out. If the limit values are exceeded the necessary measures must be taken, such as providing protect equipment and reduction of the duration and intensity of the exposure.

Employees who are exposed to risks from vibrations and noise at work must receive information and instruction on the outcome of the risk assessment and have the possibility to undergo medical examination when they carry out the work (for the first time – applies only to vibration).

Remarks / comments

Council Directive 2003/10/EC and 2002/44/EC are transposed into Dutch Law.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 6.6, 6.7, 6.8, 6.9, 6.10, 6.10a, 6.11a, 6.11b, 6.11c, 6.11d and 6.11e)

9.4.3 Working at height

Summary / Citation

In case temporary work activities at height cannot be performed safely and under fitted ergonomical circumstances on an appropriate work floor, the most suitable work tools will be chosen to safeguard and maintain safe working conditions. To achieve this

- a. Collective safety measures are prioritised above personal safety measures.
- b. The dimensions of the work tools
 1. Is adjusted to the nature of the work
 2. Is adjusted to the foreseeable pressure, and
 3. In such a way that passing through without danger is possible
- c. The most suitable tools will be chosen for the temporary work place at height depending on traffic, the height and the duration.
- d. The chosen access tool has the possibility of evacuation when there is the threat of danger.
- e. Transferring from an access tool onto a platform, floor or bridge and vice versa does not bring any extra fall risk.

Where there is a risk of falling from heights or a risk from falling objects, the area in question is appropriately sign posted and access thereto is restricted. Where there is a risk of falling, safe scaffolding, frameworks, platforms or work floors are erected or the hazard is averted by mounting effective screens, railings or other such provisions.

Remarks / comments

Directive 92/57 is transposed into Dutch Law.

References

Working Conditions Decree. (Art. 3.15, 3.16 and 7.23)

9.4.4 Working in confined spaces

Summary / Citation

Risks that working in confined spaces can bring along are to be assessed in a risk assessment and suitable preventative measures shall be taken to minimise them.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 3.5g)

9.4.5 Risks arising from poor maintenance of workplace facilities

Summary / Citation

Workplaces need to be properly designed, constructed, equipped, taken into operation, used and maintained in such a way that danger to the health and safety of employees is prevented as much as possible. Employees must have sufficient work space to ensure their health, safety and well-being and to enable them to carry out their work effectively.

References

Working Conditions Decree. (Art. 3.1b, 3.2, 3.3 and 3.19)

Besluit van 29 augustus 2011 houdende vaststelling van voorschriften met betrekking tot het bouwen, gebruiken en slopen van

9.4.6 Exposure to extreme temperatures

Summary / Citation

The temperature at a workplace must not damage the health of employees. Otherwise, measures must be taken, such as providing personal protective equipment or limit the duration of the work.

References

Working Conditions Decree. (Art. 6.1)

9.4.7 Fire risks

Summary / Citation

The Working Conditions Decree requires that sufficient fire-detectors and alarm systems to be installed at the workplace if necessary. In addition, the Building Decision 2012 contains technical requirements for the fire safety of buildings.

References

Working Conditions Decree. (Art. 3.8)

Besluit van 29 augustus 2011 houdende vaststelling van voorschriften met betrekking tot het bouwen, gebruiken en slopen van

9.4.8 Tobacco

Summary / Citation

There is a ban on smoking at work places. The employer is obliged to enforce this ban.

References

Tobacco Act 1988-03-03 (Art. 10 clause 1 sub c)

9.4.9 Asbestos

Summary / Citation

Asbestos is the collective name for a number of minerals that are made up of long, thin and microscopic fibers. It is defined by the Working Conditions Decree as:

Asbestos: substances containing one or more of the following fibrous silicates:

- 1°.actinoliet (CAS-number 77536-66-4);
- 2°.amosiet (CAS-number 12172-73-5);
- 3°.anthofylliet (CAS-number 77536-67-5);
- 4°.chrysotiel (CAS-number 12001-29-5);
- 5°.tremoliet (CAS-number 77536-68-6);
- 6°.crocidoliet (CAS-number 12001-28-4);

The risk inventory and evaluation must determine the nature, extent and the duration of asbestos exposure in order to assess the risk to the health and safety of the worker in question.

Employee exposure to asbestos must not exceed certain occupational exposure limits of asbestos fibers. If the limit values are exceeded the necessary measures must be taken, such as providing protect equipment and reduction of the duration and intensity of the exposure. Employers have the obligation to provide workers that can come into contact with asbestos with the opportunity to undergo a medical examination prior to carrying out any work involving exposure to asbestos and at least once every three years for as long as the exposure to asbestos lasts. They also must receive suitable instruction and training when working with asbestos and having the risk to be exposed to it.

Remarks / comments

Directive 2009/148 is transposed into Dutch Law.

References

Working Conditions Decree. (Art. 4.10a, 4.11, 4.12, 4.13, 4.17, 4.18, 4.19, 4.20 and 4.37-4.52)

Asbestos Removal Decree 2005 2005-12-27

9.4.10 Risks related to nanotechnology

9.4.11 Contraction of HIV in the workplace

Summary / Citation

Contraction of HIV is covered by the Dutch legal framework. Employers are obliged to take action to prevent needlestick injury through measures of using safety needle devices and using needle containers for the safe disposal of sharp materials.

Employers have a duty to educate, train, and supervise on safe needle practices, as well as what to do if an injury occurs. This includes drawing up an emergency plan that is required by the Working Conditions Decree and is placed at the workplace.

The Emergency Plan includes:

Perform a risk assessment within two hours after any injection accident and, if necessary, the employee may undergo treatment. If there is a risk of HIV infection, the employee must receive PEP (post-exposure prophylaxis).

Record the risk of needlestick injuries in the risk assessment and evaluation.

Providing hepatitis B vaccination to all staff that are at risk of a needlestick injury.

Employees are also responsible for their safety and shall follow safe needle procedures and instructions of use and ask their employers for safe needle systems.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art 4.85 and 4.97)

9.5 Psychosocial hazards

9.5.1 Psychosocial risks

Summary / Citation

The employer is obliged to create a general working conditions policy that is aimed at preventing, or if this is not possible limiting, employment-related psychosocial pressure. This includes psychosocial risks.

If employees are or can be exposed to a psycho-social workload, the risks with regard to the psycho-social workload must be assessed in connection with the risk assessment and evaluation the employer is obliged to make under the Working Conditions Act, and, with due observance of the latest technological and scientific insights, measures be determined and implemented in the plan of action meant in based on this risk assessment in order to prevent the psycho-social workload or – if this is not possible – to restrict this.

Where there is a danger of being exposed to psycho-social workload, information and instructions should be given to employees who carry out such work about the risks of psycho-social workload as well as about the measures aimed at preventing or restricting this load.

References

Working Conditions Act (Art. 3)

Working Conditions Decree. (Art. 2.15 and 5)

9.5.2 Occupational violence

Summary / Citation

The employer is obliged to create a general working conditions policy that is aimed at preventing, or if this is not possible limiting, employment-related psychosocial pressure. This includes sexual intimidation, aggression and violence, discrimination aggravation and pressure of work in the employment situation that cause stress.

If employees are or can be exposed to a psycho-social workload, the risks with regard to the psycho-social workload must be assessed in connection with the risk assessment and evaluation the employer is obliged to make under the Working Conditions Act, and, with due observance of the latest technological and scientific insights, measures be determined and implemented in the plan of action meant in based on this risk assessment in order to prevent the psycho-social workload or – if this is not possible – to restrict this.

Where there is a danger of being exposed to psycho-social workload, information and instructions should be given to employees who carry out such work about the risks of psycho-social workload as well as about the measures aimed at preventing or restricting this load.

References

Working Conditions Act (Art. 3)

Working Conditions Decree. (Art. 2.15 and 5)

9.6 Other hazardous substances

Summary / Citation

Dangerous substances are defined as substances or mixtures to which employees can be exposed to during labour that because of their characteristics or the circumstances, under which the substances or mixtures exist, can be dangerous for the safety of health.

In the risk assessment and evaluation that an employer is obliged to make, the risks of accidents with dangerous substances will be systematically identified and evaluated on the basis of procedures determined to this end by the employer both during the normal operations as well as the abnormal operations of the installation or the industrial process. In this respect the presence of other substances are taken into account that in a specific situation can contribute to the risk of a major accident. The scenarios for possible major accidents shall be described. In choosing the scenarios, external hazards for the installation are taken into account. The chance of a major accident occurring and the effect of a major accident having taken place will be quantified as much as possible in the scenarios.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 2.5b)

9.7 Machineries

9.7.1 Risks related to machinery and tools

Summary / Citation

With respect to the choice of the work equipment which the employer makes available, the employer shall take into account the specific characteristics of the work as shown in the risk assessment and evaluation he is obliged to make under the Working Conditions Act, the circumstances under which it is carried out, together with the hazards already existing in the workplace and the additional hazards which might result from the use of the respective work equipment.

In order to prevent the use of the work equipment creating a hazard to the health and safety of the employees, the work equipment being made available to the employees in the workplace shall be used exclusively for the purpose, and in the manner and the place for which they have been fitted out and intended. Moreover, the work equipment should be suitable for the work to be carried out or suitably adjusted to this end. Insofar as it is not reasonably possible to avoid the hazards when using the work equipment, such measures should be taken that the hazards are restricted as much as possible. In order to achieve this the Working Conditions Decree contains provisions relating to the installation, testing, maintenance and operation of machinery, as well as requirements regarding machine guarding, alarm signals, control systems and mobile work equipment.

Remarks / comments

Directives 2006/42 and 2009/104 are transposed into Dutch Law.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art 7.3)

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

The Commodities Act Decree Machines applies to the design, manufacture, conformity assessment and the operation of machines. Manufacturers need to carry out a risk assessment to identify which health and safety requirements apply to their machinery and identify the hazards. Further, they need to ensure that their machinery complies with the essential health and safety requirements of Directive 2006/42. In the end the machinery needs to have a CE mark and must also be accompanied by a certificate of conformity, and user instructions on safe use/installation/maintenance before it can be placed on the EU market.

Remarks / comments

Council Directive 2006/42/EC is transposed into Dutch Law.

References

Decree to lay down rules concerning the safety of machines. (Art. 3, 3a, 3b, 3c, 4, 5, 5a, 6, 6a)

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

Summary / Citation

Designers, manufacturers, importers or suppliers of machineries need to ensure that machinery has a CE mark and is accompanied by a certificate of conformity, and user instructions on safe use/installation/maintenance before being placed on the EU market.

Remarks / comments

Council Directive 2006/42/EC is transposed into Dutch Law.

References

Decree to lay down rules concerning the safety of machines. (Art. 3, 3a, 3b, 3c, 4, 5, 5a, 6, 6a)

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

Summary / Citation

Companies have to ensure that they only buy machinery that has a CE mark and is accompanied by a certificate of conformity, and user instructions on safe use/installation/maintenance.

Remarks / comments

Council Directive 2006/42/EC is transposed into Dutch law.

References

Decree to lay down rules concerning the safety of machines. (Art. 3, 3a, 3b, 3c, 4, 5, 5a, 6, 6a)

9.7.5 Maintenance of machinery and equipment

Summary / Citation

The necessary measures shall be taken to ensure that the work equipment is sufficient maintained over its full useful life so as to remain in such a condition that a hazard to the health and safety of the employees is prevented as much as possible. Maintenance, repair and cleaning activities to work equipment, or to production and adjustment activities with or to work equipment, shall only be carried out if the work equipment is switched off and has been de-pressurised or is dead. If this is not possible, suitable measures should be taken in order to be able to carry out those activities safely.

Maintenance books belonging to work equipment must be kept properly up-to-date.

Assembly and disassembly of work equipment shall take place in a safe manner with due observance of any instructions from the manufacturer.

With respect to work equipment the use of which might create a specific hazard to the safety of the employees, their use must be reserved to employees who have been entrusted with this.

Employees entrusted with the conversion, maintenance, repair or cleaning of such work equipment must have specific expertise and experience to this end

Remarks / comments

Directive 2009/104/EC is transposed into Dutch Law.

References

Working Conditions Decree. (Art. 3.2, 7.5 and 7.6)

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

When carrying out the risk assessment pregnant workers are taking into account and the specific risks that they might be exposed to are addressed. A pregnant employee's labour is organized in such a way, that her specific circumstances are taken into consideration. A pregnant employee is allowed to take more breaks in between labour. The extra break time can be no more than 1/8 of the total working hours per shift.

The pregnant employee has the right to perform the labour in a stable and regular work- and rest patron.

The pregnant employee of 18 years of age or older cannot be obligated to perform more labour than:

- o 10 hours per shift

- o An average of 50 hours per week in every period of 4 joint weeks

- o An average of 45 hours per week in every period of 16 joint weeks

The pregnant employee cannot be obligated to perform labour on the night shift, unless the employer makes it credible this cannot reasonably be demanded of him/her.

The employer gives the pregnant employee the oc

casion to undergo the necessary pregnancy examinations. She maintains her salary established by time, in case she is prevented to perform her labour due to such an examination.

They also may not be exposed to certain biological agents and special rest rooms must be available.

Restrictions / obligations

The employer organises the labour of a pregnant employee and a lactating employee in such a way, and organises the work place in such a way, adapts a production- and work method in such a way and allows such tools, so the labour cannot bring any danger to the employee's safety and health and cannot cause repercussions to the pregnancy or the lactation.

References

Working Conditions Act (Art. 5)

Working Conditions Decree. (Art. 1.41, 3.48, 4.108 and 4.109)

Working Hours Act 1995 (Art. 4.5, 4.6, 4.7 and 4.8)

9.8.2 Protection of lactating women at work**Summary / Citation**

A female employee who lactates, has, when she has informed the employer of this, the right to interrupt her labour in the first 9 months of the child's life, in order to take the necessary rest and seclusion to nurse her child or to express breastmilk. The employer offers her occasion and in case needed, a closable space at her disposal.

Restrictions / obligations

The interruptions, as meant in the first clause, happen as often and as long as needed, yet take at the highest $\frac{1}{4}$ of the working time per shift. Determining the time and duration of the interruption happens by the female employee involved after deliberation with the employer.

The duration of the interruptions is applicable to this Act [Working Hours Act] and the resting acts of labour time, on which the female employee retains her salary set per time.

References

Working Conditions Decree. (Art. 3.48 and 4.108)

Working Hours Act 1995 (Art. 4:8)

9.8.3 Limits to women's access to specific occupations, undertakings or shifts**Summary / Citation**

Pregnant employees are prohibited to carry out diving work, caisson work and other work under excess pressure, work in the underground mining industry and being exposed to certain noise levels and vibrations.

References

Working Conditions Decree. (Art. 6.29, 6.29a, 6.29b and 6.29c)

9.8.4 Limits to workers' access to specific occupations, undertakings or shifts by reason of age**Summary / Citation**

Since 1874 child labour is not allowed for children till the age of 12. In accordance to the current rules and regulations it is forbidden that children between the ages 13 to 15 work. There are exceptions for, for example, the movie industry but under strict rules.

At the age of 15 children are allowed to do light non-industrial work, which means they are not allowed to work in:

- Factories
- Activities which require the use of machines (or be in its vicinity)
- Work with hazardous materials
- Lift materials heavier than 10 kg
- Push materials heavier than 20 kg
- Work behind a cash register
- Work that requires one to be at least 18 years of age
- In hospitality if they serve alcohol

The maximum working hours for a 15 year old are:

- 2 hours (Per school day)
- 8 hours (Per non-school day or holiday)
- 12 hours (Per school week)
- 40 hours (Per week of holiday)

The required rest of a 15 year old is at least 12 hours per day (of which at least between 19.00 and 7.00 (for regular days) and 21.00 to 7.00 (during holidays)) after working 4.5 hours straight they are required to have a break of 30 minutes.

Children at the age of 15 are not allowed to work on Sunday unless:

- The work requires it to do so and it is stated in the labour agreement
- Parents have given clear consent

Children between the ages of 16 to 17 are allowed to do a few risky activities, but only under competent supervision. Which means the supervisor knows the risks of the activities is, keeps a close eye on the activities and if the child does not cause any hazardous situations within these activities.

Amongst these activities are:

- Working in an environment in risk of collapse
- Working on or in the vicinity of high voltage
- Working with exploding, caustic or corrosive substances
- Working with pressurised gasses (or the chamber where it is maintained)
- Working with wild or venomous animals or animals which can cause a dangerous situation
- Working in a slaughter house
- Monotonous work
- Working behind a machine in the form of a conveyor belt in which he/she cannot determine its pace
- Ride a tractor (not on the public road) and hitching or unhitching machines

Children between the ages of 16 to 17 are not allowed to do activities which can cause a danger to the safety or health of the child at hand such as working in loud environments or working with (very) hazardous materials/ toxic substances or materials.

The maximum working hours for a child between the ages of 16 to 17 are:

- 9 hours a day
- 45 hours per week
- 160 hours per 4 weeks

There is a minimum daily rest of 12 hours of which at least between 23.00 till 6.00. After working 4.5 hours straight they are required to have a break of 30 minutes. (Note: School hours are also considered as working hours)

Working on Sundays is only allowed if the following conditions are met:

- The work requires it to do so and it is stated in the labour agreement
- The (individual) employee has given implicit consent
- Circumstances that require the company to work on Sundays this needs to be in compliance to:
 - o The Work Council or,
 - o Employee representation or,
 - o The workers involved

References

Working Hours Act 1995 (Art. 1:1 clause 3, 1:2, Chapter 3, Art. 4:4, 5:3, 5:4, 5:5, 5:7, 5:15)

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 must keep a record of any notified accidents at work, and of accidents at work leading to employees taking more than three days off work.

The employer shall ensure that the expert employees and other experts have access to these records. In addition to this obligation, the employer is also obliged to notify the supervisor about unusual events occurring in traffic which have or might have jeopardised safety, situations when safety is threatened in any way and about all incidents during the use of explosive substances which jeopardised or could have jeopardised safety. The employer shall do this every month.

References

Working Conditions Act (Art. 9 clause 2 and 15a)

Working Conditions Decree. (Art 2.42c)

10.1.2 Near miss incidents

Summary / Citation

The employer has a duty to notify the supervisor of near miss incidents. There is a specific duty for the employer to do so in case of major and unusual events in traffic or transport that might have jeopardised safety, situations that endangered the lives of persons and in case of incidents that occurred during the use of explosive substances that could have jeopardised safety.

References

Working Conditions Decree. (Art. 2.42c)

10.1.3 Occupational diseases

Summary / Citation

The responsible person, being a company doctor or the health and safety service, shall notify occupational diseases to the OSH authorities. Notification of an occupational disease shall contain at least the following information, presented in such a way that the identity of the individual concerned cannot be deduced:

- a. the diagnosis;
- b. the employee's gender and his or her year of birth;
- c. the nature and extent of the pressure at work or in working conditions;
- d. the nature of the work being done when the occupational disease arose;
- e. the employee's profession at the time of exposure, and
- f. the employer's economic activity at the time of exposure.

References

Working Conditions Act (Art. 9 clause 3 and 14)

Working Conditions Regulation (Art. 1.11)

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

Summary / Citation

The employer must notify the OSH authorities of any work related incident leading to death, lasting injury or hospital admission.

Any accident leading to death, shall be reported immediately by phone. Accidents leading to hospital admission shall be reported immediately after admission or when it is clear that the accident will result in hospital admission. Accidents leading to lasting injury shall be reported immediately after the occurrence or when it is clear the accident will result in lasting injury.

References

Working Conditions Act (Art. 9 clause 1)

Working Conditions Decree. (Art. 2.1)

11 OSH inspection and enforcement of OSH legislation

11.1 Appointment of OSH inspectors

Summary / Citation

Officials in the department of Social Affairs and Employment are in charge of the inspection and are designated by the Minister of Social Affairs and Employment by resolution.

References

Working Conditions Act (Art. 24)

11.2 OSH inspectors' powers

11.2.1 Power to enter workplaces

Summary / Citation

These are based on the General Administrative Law Act:

An inspector is empowered to enter any place with the exception of a dwelling if he does not have the occupant's consent, taking with him the necessary equipment. If necessary, he may gain entrance with the assistance of the police. He may be accompanied by persons he has designated for the purpose.

Additional powers can be found in the Workers Conditions Act:

Supervisors are entitled to enter dwellings, using the necessary equipment, without the inhabitant's consent.

References

Working Conditions Act (Art. 24 clause 3)

General Administrative Law Act 1992-06-04 (Art. 5:15)

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

Summary / Citation

1. An inspector is empowered to inspect, survey and take samples of goods or land.
2. He is empowered to open packaging for this purpose.
3. Unless otherwise provided by or pursuant to law, the inspector shall, if possible, take a second sample at the request of the interested party.
4. If it is impossible to inspect, survey or sample goods on-site, the inspector may take the goods away for a short time for this purpose, giving a written receipt for them.
5. Where possible, the samples taken shall be returned.
6. The interested party shall at his request be informed as soon as possible of the results of the inspection, surveying or sampling

References

General Administrative Law Act 1992-06-04 (Art. 5:18)

11.2.3 Power to investigate

Summary / Citation

Supervisors are entitled to initiate an investigation into an accident at work at any time. They must produce a report of the investigation. The power to investigate is based on the rules of the General Administrative Law Act with additional powers being regulated in specific laws such as the Working Condition Act.

The investigative powers in the General Administrative Law Act are the right to enter places, to demand information, business information and documents and inspect means of transport. In specific laws these powers can be expanded or limited.

References

Working Conditions Act (Art. 24)

General Administrative Law Act 1992-06-04 (Chapter 5.2)

11.2.4 Duty to provide advice on OSH

Summary / Citation

Supervisors shall consider as rapidly as possible all requests to start an investigation submitted by a works council or a staff representation body, or by an association of employees which under its articles of association has been set up in order to defend the interests of its members as employees and acts in this capacity in the business or sector in question and has full legal capacity.

This advice can be given by either the Inspectorate SZW or by a government certified organisation ('Arbodienst'). In most of the cases the certified organisation is asked to provide advice on the matter since there is an in-depth knowledge of the specific sector.

The inspectorate gives general advice and this is provided on their website (www.arboportaal.nl).

Remarks / comments

The inspector is allowed to make use of an administrative enforcement order to empower the Inspectorate SZW to carry out an order it has given or if it is not carried out in time.

References

Working Conditions Act (Art. 12, 13, 24)

General Administrative Law Act 1992-06-04 (Chapter 5.1)

11.3 OSH inspectors' enforcement powers**11.3.1 Power to issue orders or notices****Summary / Citation**

1. Designated supervisors may issue employers with an order specifying how they must comply with one or more provisions adopted under or by virtue of the Working Conditions Act.
2. Such orders mention the rules to which the method of compliance applies and lay down a date by which this must be done.
3. Employers are obliged to obey the order. Employees are required to obey the order if this is specified in the order. Employers shall ensure that employees are informed of their obligations as rapidly as possible.
4. For the purposes of the preceding paragraphs, the word 'employers' also applies to the individuals such as self-employed persons, volunteers and others for as far as the the Working Conditions Act applies to them.

References

Working Conditions Act (Art. 27)

11.3.2 Power to impose financial penalties**Summary / Citation**

The power to impose financial penalties is based on the General Administrative Law Act with additional powers being regulated in specific laws such as the Workers Conditions Act. In these specific laws these powers can be expanded or limited.

Either an administrative fine, which works incremental, or a financial penalty may be imposed by the inspector depending on the severity of the infringement.

A designated official who answers to Our Minister may, in the event of a violation of any regulation or prohibition pursuant to the Working Conditions Act which has been made an administrative finable offence or a punishable offence under the Economic Offences Act, issue a warning in writing to the employer that, in the event of a repeated violation or a subsequent violation of the statutory obligations or prohibitions as specified in the warning, or similar obligations or prohibitions designated by order in council, an order will be imposed to the effect that the work specified by him will

be shut down for not more than three months or may not commence.

References

Working Conditions Act (Art. 28a)

Asbestos Removal Decree 2005 2005-12-27 (Chapter 5.3.1, 5.3.2 and 5.4)

11.3.3 Power to revoke or suspend licenses or authorisations

Summary / Citation

The power to revoke or suspend licenses or authorisations is based on the General Administrative Law Act with additional powers being regulated in specific laws such as the Workers Conditions Act. In these specific laws these powers can be expanded or limited.

References

General Administrative Law Act 1992-06-04 (Chapter 5.3)

11.3.4 Power to require the cessation of dangerous work

Summary / Citation

Designated supervisors may give verbal or written and dated orders requiring individuals to leave locations designated by them, or requiring activities designated by them to be stopped (or not to be started), if they have good grounds to believe that individuals would be at serious risk if they remained in these locations or if the activities in question were carried out.

If a warning has been issued, and the violation is repeated or a subsequent violation the official referred to in the first paragraph, may make an administrative decision to issue the employer an order which will commence with effect from the point in time specified in the administrative decision. This administrative decision will not be issued as long as no administrative fine has been imposed for the first violation referred to in the first paragraph and no official report has been drawn up.

References

Working Conditions Act (Art. 28 and 28a)

11.3.5 Power to initiate prosecutions

Summary / Citation

The enforcement of the Workings Conditions act is essentially done by the Inspectorate SZW. However in certain cases, such as a fatal workplace accident, the public prosecutor will perform inquires and collaborates with the Inspectorate SZW.

References

Working Conditions Act (Art. 32)

Criminal Proceedings Act (Art. 167 and 242)

11.3.6 Power to conduct prosecutions

Summary / Citation

The enforcement of the Workings Conditions act is essentially done by the Inspectorate SZW. However in certain cases, such as a fatal workplace accident, the public prosecutor will perform inquires and collaborates with the Inspectorate SZW.

References

Working Conditions Act (Art. 32)

Criminal Proceedings Act (Art. 167 and 242)

11.3.7 Other enforcement powers

Summary / Citation

The inspector is allowed to make use of administrative enforcement. The employer concerned has to follow the instructions/remarks by the inspector.

References

Economic Offences Act (Titel III)

General Administrative Law Act 1992-06-04 (Chapter 5.1, 5.3.1, 5.3.2 and 5.4)

11.4 Application of sanctions by courts

11.4.1 Financial penalties for legal persons

Summary / Citation

The power to impose financial penalties is based on the Criminal Code with additional powers being regulated in specific laws such as the Workers Conditions Act. In these specific laws these powers can be expanded or limited. The maximum financial penalty for the criminal act under the Working Conditions Act is a fine of the sixth category (2016; € 820.000/\$906.584) and for an infringement of the Working Conditions Act the penalty is a fine of the fifth category (2016; € 82.000/\$90.077).

Suspects who have committed a crime or offence under the Working Conditions Act will be subpoenaed for the financial criminal division of the court; however, depending on the crime they can also be subpoenaed for other criminal divisions of the court.

References

Working Conditions Act (Art. 34)

Economic Offences Act (Art. 1 and 36 clause 2)

Criminal Code (Art. 23)

11.4.2 Financial penalties for natural persons

Summary / Citation

The power to impose financial penalties is based on the General Administrative Law Act and the Criminal Code with additional powers being regulated in specific laws such as the Workers Conditions Act. In these specific laws these powers can be expanded or limited.

The inspector may impose either an administrative fine, which works incremental, or a financial penalty depending on the severity of the infringement.

The maximum financial penalty for the criminal act under the Working Conditions Act is a fine of the sixth category (2016; € 820.000/\$906.584) and for an infringement of the Working Conditions Act the penalty is a fine of the fifth category (2016; € 82.000/\$90.077).

Suspects who have committed a crime or offence under the Working Conditions Act will be subpoenaed for the financial criminal division of the court; however, depending on the crime they can also be subpoenaed for other criminal divisions of the court.

References

Working Conditions Act (Art. 34)

Economic Offences Act (Art 1 and Art 36 clause 2)

Criminal Code (Art. 23)

11.4.3 Non-financial sanctions

Summary / Citation

Non-financial sanctions are dependent on the severity and type of the infringement. In the event that the infringement of the Working Conditions Act is seen as an economic offence it will be seen as a crime if it is proven to be intentional. Possible non-financial sanctions are:

- A term of community service
- Partial or full suspension of the activities of the convicted employer
- Confiscation of objects
- Disqualification from certain rights
- Publication of the judgment
- Withdrawal from circulation
- Special confiscation of unlawfully obtained gains and compensation

References

Economic Offences Act (Art. 6 clause 1 sub 1, 6 clause 1 sub 3, 7 and 8)

11.4.4 Criminal liability

Summary / Citation

In the event that the infringement of the Working Conditions Act is seen as an economic offence it will be seen as a crime if it is proven to be intentional. Criminal intent is the case if the repeated violation or a subsequent violation of the statutory obligations or prohibitions as specified in the warning, or similar obligations or prohibitions designated by order in council. The burden of proof is on the employer.

References

Economic Offences Act (Art. 1)

Criminal Proceedings Act (Art. 167)

11.4.5 Terms of imprisonment for natural persons

Summary / Citation

The maximum penalty for a criminal act under the Working Conditions Act is a prison sentence of six years and for an infringement of the Working Conditions Act the penalty is a prison sentence of six months.

Suspects who have committed a crime or offence under the Working Conditions Act will be subpoenaed for the financial criminal division of the court; however, depending on the crime they can also be subpoenaed for other criminal divisions of the court.

In the case the infringement has led to involuntary manslaughter the maximum penalty is four years imprisonment.

References

Economic Offences Act (Art 1 clause 1 and 6 clause 1 sub 1)

Criminal Code (Art. 307)