HEALTH AND SAFETY IN THE WORKPLACE IN ITALY

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Introduction

According to the official data collected by the National Institute for Insurance against Accidents at Work (INAIL), the social costs directly associated to work-related accidents in Italy amount to €45 billion every year. More than 700,000 work-related accidents are reported yearly, 900 of which are deadly. However, these figures are gradually declining, due to a fall in the activity rates resulting from the recession. Further, while the number of occupational diseases and accidents resulting from "dangerous behaviour" (related to inadequate organization of work) is on the rise, the injuries related to "structural" (e.g. collapses) or "technological" factors (e.g. any equipment malfunction) are decreasing.

1. Which national provision implements Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work? What obligations does your country's legislation on health and safety in the workplace establish?

In Italy, the Council Directive 89/391/EEC was transposed into national law by Legislative Decree n. 626/1994 (September 19, 1994). This way, all the provisions contained in this and in other directives relating to workers' health and safety were grouped into a single piece of legislation. However, the result was a fragmented regulatory framework which merely overlapped the previous one.

Subsequently and on several occasions, the foregoing decree had to be amended, not least to meet the Community requirements. This aspect further exacerbated its overly general nature and the lack of coordination between different provisions on health and safety at work. For this reason, the Italian government implemented Article 1 of Act n. 123/2007 –which gave the Government law-making powers in this area– and passed Legislative Decree n. 81/2008 (May 9, 2008) with the aim of bringing together all the

main provisions on occupational health and safety. This is why this piece of legislation is known as the "Consolidated Act on Health and Safety at Work" (*Testo Unico sulla salute e sicurezza nei luoghi di lavoro*) which is still in force today, even though it was subsequently amended by Legislative Decree n. 106/2009 (August 3, 2009). Despite the Legislator's attempts, this provision still fails to include all the laws on occupational health and safety, although the Consolidated Act marks a turning poit in this area. While the previous rules dealt with health and safety at work from an individual perspective, focusing on workers' behaviour –and the behaviour of those involved in production– the new text adopts a perspective based on work organization. Work organization does not only refer to the production of goods and services, but also to the protection of workers' health and safety.

The Consolidated Act widens the scope of health and safety provisions, which now applies to all the workers in the work environment, without making any distinction in formal terms. This is because the principle of effectiveness applies to prevention measures and it also concerns apprentices and trainees. Art. 15 of the Consolidated Act sets some general obligations for the employer in the area of health and safety at work, among others: the provision of a risk assessment for health and safety and a related prevention plan; the elimination of risks or their reduction; compliance with ergonomic rules; workers' health monitoring, information, training, participation and consultation.

2. Is the obligation to prevent occupational hazards a relative rather than an absolute one?

It is an absolute obligation, since the Consolidated Act provides the measures to be taken to ensure workers' health and safety and the sanctions applying in the event of non-compliance, the seriousness of which depends on the role of the defaulting party.

3. According to legislation in your country, how can the employer organize or manage the prevention of occupational hazards in the company? Specifically, can the company manage its prevention internally or must hire external services?

According to art. 16 of Legislative Decree n. 81/2008 and in line with Art. 15.1.b) of Legislative Decree n. 81/2008, the employer can fulfil the obligation to devise a prevention plan for occupational hazards by delegating certain functions to other bodies, provided that the following conditions are met: compliance with the law as regards delegation; the tasks which are delegated must comply with certain legal requirements; delegation should be formalised through a written document bearing a specific date; the entity that has been given delegation powers shall meet all the obligations in terms of competence and expertise required by the specific nature of the assigned tasks; all the

necessary organizational, management and control powers should be conferred to the other party; delegation should also concern the authority to decide on budgetary issues; the party should accept delegation in writing. Delegation also includes the employer's obligation to monitor the proper execution of the assigned functions through the use of verification and control measures.

Art. 17 of Legislative Decree lists the cases in which delegation is expressly prohibited and the employer is obliged to personally carry out these functions: risk assessment, document preparation as laid down in Article 28, and the appointment of the person in charge of prevention and risk protection. Even if delegation is possible, the employer can decide to autonomously manage the prevention of occupational risks, provided he has appropriate and sufficient training.

4. In your country, does the company have the obligation to periodically monitor workers' health in relation to the risks and hazards at the workplace? If the answer is yes, does the worker have an obligation to comply with these health surveillance measures?

Monitoring workers' health, which must be performed by an occupational doctor, is one of the obligations the employer has to fulfil according to art. 41 of the Consolidated Act. Health monitoring may consist of: a medical check-up taking place before the recruitment process to assess the lack of any issue that might prevent the employee from performing his work; regular medical check-ups to monitor the worker' health and his/her suitability to perform job duties; medical exams in case of new functions or tasks; medical examinations when the contract is terminated and before returning to work after being absent for more than 60 days for health reasons to verify the worker's fitness for work.

Health monitoring is compulsory for both the employer and the employee, who cannot refuse to undergo medical check-ups in the cases specifically set by current legislation (the Consolidated Act) and by the indications provided by the permanent Advisory Committee for Health and Safety at Work. These cases include: the manual handling of loads, display screen equipment, noise, vibrations, electromagnetic fields, artificial optical radiation, chemical agents, carcinogenic agents and asbestos. In addition to this, undergoing medical exams is mandatory for the employer if the employee requests them and if the occupational doctor thinks they are useful to avoid occupational hazards. Legislative Decree n. 81/2008 specifically regulates those activities where there is a high risk of accidents or where the health of third parties is in danger. In this case, various types of medical examinations are available to assess workers' addiction to drugs or alcohol. They cannot refuse to undergo examinations. Otherwise, they

will breach Art. 20 of Legislative Decree n. 81/2008 and this might result in just cause dismissal. Apart from these expressly mentioned cases, workers are not required to undergo medical check-ups, as also stated in Art. 5 of the Workers' Statute (*Statuto dei lavoratori*), which prohibits that the employer evaluates the worker's suitability for a certain position considering disability or other statuses (e.g. pregnancy).

5. What prevention obligations does the legal regulation establish regarding pregnant workers or female workers during breastfeeding?

Art. 183 of the Consolidated Act states that the employer is obliged to adopt the measures for the reduction or the elimination of risks to the needs of pregnant women. The employer, when undertaking the risk evaluation concerning the exposure to physical, chemical, biological agents or particular working conditions as referred to in Annex C of the Consolidated Act will have to take into account the possible presence of pregnant or breastfeeding women at the workplace. Specifically, regarding the evaluation of workers' exposure to noise during working time, art. 190 of the Consolidated Act states that the employer must take into account all the effects of such exposure on the health and safety of workers who are particularly noise-sensitive, such as pregnant women. Art. 202 includes the same obligations regarding the assessment of exposure to vibrations.

Specific provisions for pregnant women are laid down in Legislative Decree n. 151/2001 (26 March 2001). This provision provides that once the employer knows that the employee is pregnant, the employer must immediately keep her away from potential risk and assign her duties compatible with her status, or even change her working conditions or hours. If this adaptation is not feasible due to organizational reasons, the employer must notify the labour inspection in writing and suspend the employment relationship with the pregnant woman. Article 53 of this Decree prohibits pregnant women to carry out night work or activities in hazardous areas that may endanger the unborn child (Article 8.1), or work that implies the handling of weight in unhealthy conditions (art. 7). Pregnant women and breastfeeding mothers have the right to spaces where they can rest. They cannot be assigned to tasks that entail the risk of contamination (art. 8.3 Legislative Decree n. 151/2001)

6. Does the regulation on health and safety in the workplace in your country establish the obligation to adopt preventive measures for the most vulnerable workers? Which are these obligations?

Art. 183 of the Consolidated Act establishes the employer's obligation to adopt measures to eliminate or reduce any occupational risks laid down in art. 182 of the Act,

with a special emphasis on the most vulnerable groups of workers, including pregnant women. These workers should also be taken into account when implementing measures concerning their health surveillance. Art. 63 establishes that the workplace must be organized taking into account the needs of workers with disabilities, in particular their workstation and access points.

7. Does the regulation of health and safety in the workplace provide specific obligations regarding psychosocial risks?

In the Italian legal system, art. 2087 of the Civil Code requires the employer to protect workers' physical and moral integrity. Thus, it is possible to argue that the employer is obliged to protect workers' psychosocial risks. Specifically, art. 28 of the Consolidated Act states that the employer performing the evaluation of occupational risks must take into account all those regarding workers' health and safety.

Legislative Decree N. 81/2008 also specifies that any risk assessment includes work-related stress, as defined by the European Agreement signed on October 8, 2004, according to the guidelines approved by the Advisory Committee on health and safety at work on November 17, 2010. Pursuant to art. 6 of the Consolidated Act, the permanent Advisory Committee for Health and Safety at Work is in charge of providing the required information for the evaluation of any forms of work-related stress. This has to be done in all the companies, regardless of production and size. The work-related stress assessment is part of the general evaluation plan and is performed by those concerned without the involvement of experts in the field of psychology or of an occupational doctor.

8. What special provisions does your country's legislation establish regarding the prevention of occupational hazards in the event of different business entities?

Art. 26 of the Consolidated Act establishes the regulation of workplace health and safety in the event of outsourcing, either through procurement or self-employment (art. 2222 Civil Code). The contractor has the obligation to give detailed information about the specific risks of the workplace where outsourced workers will operate and the prevention and emergency measures to be adopted. The contractor must promote cooperation and coordination between all the parties concerned. The contractor must also produce a document containing the measures adopted to eliminate or reduce possible risks.

9. Does the regulation of health and safety at the workplace provide for the participation of workers' representatives in the prevention of occupational hazards in the company?

Legislative Decree n. 81/2008 further promotes workers' representation rights and the creation of joint representative bodies. The Consolidated Act includes a system based on the participation of those involved in the protection of workers' health and safety. In this sense, one of the most innovative aspects of Legislative Decree n. 81/2008 is Art. 47, which provides for the appointment of one or more health and safety representatives (*rappresentante per la sicurezza*) at the territorial, branch, or company level. The election system varies depending on the size of the company (art.47).

Article 50 attributes the following tasks to workers' representatives: they can access workplaces in which manufacturing and other production processes are performed; they can be consulted in advance with reference to the risk assessment, the identification, planning, implementation and verification of prevention plans in the company or in the production unit; they can be consulted for the appointment of the head and persons in charge of prevention, fire prevention activities, first aid, evacuation of the workplace and of the occupational doctor; they can receive information and business documentation related to risk assessment and any related measures to prevent risks; they can receive information from the security services, make proposals for prevention activities, appeal to relevant authorities if measures concerning the prevention and protection of risks taken by the employer or by the managers are not suitable for ensuring health and safety at work.

In general, all the functions attributed to the representative are ascribable to the rights of information and consultation, while his/her power to influence the management of prevention is limited (it is one of the employer's duties). Representatives have a more powerful role when they can access workplaces in which manufacturing and other production processes are performed and when they can make a complaint to relevant authorities concerning non-compliance with health and safety rules. Decree n. 81/2008 also assigns workers' representatives some other institutional functions, such as their participation in the management of prevention at the workplace. In connection with their participation at the institutional system, workers' representatives can promote consultation with the Committee in charge of the evaluation of active health and safety policies, also at the national level.

10. Which responsibilities –tort, administrative or criminal– can arise as a consequence of the employer's non-compliance with health and safety legislation?

The Italian legal framework establishes the employers' criminal and administrative liability in case of any violation of health and safety provisions included in the Consolidated Act and in art. 2087 of the Civil Code.

As for criminal liability, this might arise if the violation of health and safety legislation is the result of employers' negligence, for which they can either face detention or a fine. Detention is provided by the law as an alternative to a pecuniary sanction. For example, employers and managers violating art. 29.1 (obligation to perform a risk assessment) are punished with 3 to 6 months of detention, or with a fine of €2,500 to €6,400. Administrative liability applies in the event of minor violations of occupational health and safety legislation.