

Law on Company Doctors, Safety Engineers and other Industrial Safety Advisers

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Section 1

§ 1 General

The employer shall appoint, in accordance with the provisions of this Law, company doctors and industrial safety advisers. These shall assist him in the fields of occupational safety and accident prevention to ensure that:

1. regulations concerning occupational safety and accident prevention are correctly applied to meet the special conditions of each enterprise,
2. proven findings of occupational medicine and safety engineering can be implemented to improve occupational safety and accident prevention,
3. occupational safety and accident prevention measures are as effective as possible.

Section 2: Company Doctors

§ 2 Appointment of Company Doctors

(1) The employer shall appoint company doctors in writing and shall assign them the duties listed in § 3 in so far as these are applicable in consideration of

1. the type of enterprise and the related accident and health hazards for the employees,
2. the number of persons employed and the structure of the labour force
3. the organization of the enterprise with special regard to the number and function of persons responsible for occupational safety and accident prevention.

(2) The employer shall ensure that the company doctors he has appointed discharge their duties. He shall render them such assistance as may be required in the performance of their duties; in particular, he shall provide, in so far as they may be dictated by these duties, auxiliary personnel, working spaces, equipment, appliances and other resources. He shall inform the company doctors of the employment of persons holding a fixed-term employment contract or persons hired out to him for work.

(3) The employer shall enable company doctors to undergo the further training essential to the performance of their duties with due regard to the requirement of the enterprise. A company doctor employed by the enterprise shall be released from his duties and shall continue to receive his normal remuneration for the duration of such further training. The costs of further training shall be borne by the employer. A company doctor not employed by the enterprise shall be released from his duties for the duration of such further training.

§ 3 Duties of Company Doctors

(1) Company doctors shall assist the employer in occupational safety and accident prevention measures relating to health protection. In particular they shall:

1. make recommendations to the employer and any other persons responsible for occupational safety and accident prevention, with special regard to
 - a) the planning, design and maintenance of plant and of social and sanitary facilities,
 - b) the acquisition of technical work equipment and the introduction of new work processes and materials,
 - c) the selection and testing of personal protective equipment,
 - d) the physiological, psychological and other ergonomic and hygienic factors of work, especially rhythm of work, working hours and breaks allowed, design of workplaces, work processes and working environment,
 - e) the organization of first aid facilities in the enterprise,
 - f) matters relating to change of employment as well as to the integration and reintegration of handicapped workers into work processes,
 - g) the evaluation of working conditions
2. examine employees, assess their suitability for work from the point of view of occupational medicine and so advise them as well as record and analyse the information obtained from such examinations,
3. observe the implementation of occupational safety and accident prevention measures to include
 - a) regularly inspecting workplaces and reporting any deficiencies to the employer or other persons responsible for occupational safety and accident prevention, proposing means of remedying these deficiencies and promoting corrective action,
 - b) ensuring that personal protective equipment is utilized,
 - c) investigating the causes of illness due to work, recording and analyzing the results of investigations and proposing to the employer means of preventing such illness,
4. encourage all employees to behave in accordance with occupational safety and accident prevention requirements, in particular instruct them in the health and accident hazards to which they are exposed in their work and in the ways and means of averting such hazards, and in the operational planning and training of first aid assistants and auxiliary medical personnel.

(2) Company doctors shall communicate the results of medical examinations to the employer at his request; the 3rd sentence of § 8, para. 1 shall not be affected.

(3) Company doctors shall not be responsible for determining whether notifications of illness from employees are justified.

§ 4 Requirements of Company Doctors

The employer shall appoint as company doctors only persons who are authorized to practise the medical profession and who have the necessary expert medical knowledge for the performance of their duties.

Section 3: Advisers Industrial Safety

§ 5 Appointment of Industrial Safety Advisers

(1) The employer shall appoint industrial safety advisers (safety engineers, technicians and supervisors) in writing and shall assign them the duties listed in § 6 in so far as these are applicable in consideration of:

1. the type of enterprise and the related accident and health hazards for the employees,
2. the number of persons employed and the structure of the labour force,
3. the organization of the enterprise with special regard to the number and function of persons responsible for occupational safety and accident prevention,
4. the knowledge and training of the employer or the persons responsible in matters of occupational safety in accordance with § 13 paragraphs 1, 2 or 3.

(2) The employer shall ensure that the industrial safety advisers he has appointed discharge their duties. He shall render them such assistance as may be required in the performance of their duties; in particular, he shall provide, to the extent dictated by these duties, auxiliary personnel, working spaces, equipment, appliances and other resources. He shall inform the industrial safety advisers of the employment of persons holding a fixed-term employment contract or persons hired out to him for work.

(3) The employer shall enable industrial safety advisers to undergo the further training essential to the performance of their duties with due regard to the requirements of the enterprise. An industrial safety adviser employed by the enterprise shall be released from his duties and shall receive his normal remuneration for the duration of such further training. The costs of further training shall be borne by the employer. An industrial safety adviser not employed by the enterprise shall be released from his duties for the duration of such further training.

§ 6 Duties of Industrial Safety Advisers

Industrial safety advisers shall assist the employer in occupational safety and accident prevention measures in all matters relating to health protection, including the work humanization aspects. In particular they shall:

1. make recommendations to the employer and any other persons responsible for occupational safety and accident prevention, with special regard to:
 - a) the planning, design and maintenance of plant and of social and sanitary facilities,
 - b) the acquisition of technical working equipment and the introduction of new work processes and materials,
 - c) the selection and testing of personal protective equipment,
 - d) the design of workplaces, organization of work processes, nature of working environment and other ergonomic factors,
 - e) the evaluation of working conditions
2. carry out a safety check of plant and equipment, particularly before these are put into operation, and of work processes, particularly before these are introduced,

3. observe the implementation of occupational safety and accident prevention measures to include

a) regularly inspecting workplaces and reporting any deficiencies to the employer or other persons responsible for occupational safety and accident prevention, proposing means of remedying these deficiencies and promoting corrective action,

b) ensuring that personal protective equipment is utilized,

c) investigating the causes of industrial accidents, recording and analyzing the results of investigations and proposing to the employer means of preventing such accidents,

4. encourage all employees to behave in accordance with occupational safety and accident prevention requirements, in particular instruct them in the health and accident hazards to which they are exposed in their work and in the ways and means of averting such hazards and assist in the training of safety officers.

§ 7 Requirements of Industrial Safety Advisers

(1) The employer shall appoint as industrial safety advisers only persons who satisfy following requirements; the safety engineer must be entitled to use the professional designation engineer (Ingenieur) and have the necessary knowledge in the field of industrial safety for the performance of his duties. The safety technician or supervisor must have the necessary expert knowledge in the field of safety engineering for the performance of his duties.

(2) The competent authority may, in individual cases, approve the appointment of a safety engineer who is not entitled to use the professional designation engineer (Ingenieur). This person shall have the necessary expert knowledge for the performance of the duties referred to in § 6.

Section IV: Common Provisions

§ 8 Freedom of Action in the Application of Specialized Knowledge

(1) Company doctors and industrial safety advisers shall not be subject to the instructions of others in the application of their specialized knowledge pertaining to occupational medicine and industrial engineering. Company doctors are subject only to their professional conscience and shall observe the rules of professional secrecy. They may not suffer any disadvantage on account of the performance of the duties assigned to them.

(2) Company doctors and industrial safety advisers, or, where several company doctors or industrial safety advisers are appointed to one enterprise, the senior company doctor and the senior industrial safety advisers, shall be directly responsible to the manager of the enterprise.

(3) Where company doctors or industrial safety advisers are unable to reach agreement with the manager of the enterprise concerning a proposal made by them relating to matters of occupational medicine and safety engineering, they may submit their proposal to the employer directly, and, if the latter is a legal personality, to the competent member of the statutory representative body. If a senior company doctor or senior industrial safety adviser is appointed to one enterprise, he shall have the right of proposal in accordance with the first sentence of this provision. If the employer or the competent member of the statutory representative body does not accept the proposal, this decision and reasons therefor shall be communicated to the originators of the proposal in writing; a copy shall be submitted to the Works Council.

§ 9 Cooperation with the Works Council

(1) Company doctors and industrial safety advisers shall cooperate with the Works Council in the performance of their duties.

(2) Company doctors and industrial safety advisers shall inform the Works Council of important matters relating to occupational safety and accident prevention; they shall communicate to the Works Council the substance of the proposal submitted to the employer pursuant to § 8, paragraph 3. They shall advise the Works Council on matters relating to occupational safety and accident prevention at its request.

(3) Appointment and release of company doctors and industrial safety advisers shall require the approval of the Works Council. The same shall apply to extension or restriction of their duties; § 87 in conjunction with § 76 of the Works' Constitution Act (Betriebsverfassungsgesetz) shall otherwise apply. The Works Council shall be consulted on the engagement or release of a doctor or industrial safety adviser employed on his own account or of a service outside of the enterprise.

§ 10 Cooperation between Company Doctors and Industrial Safety Advisers

Company doctors and industrial safety advisers shall cooperate in the performance of their duties, to include in particular joint inspections of installations. In the performance of their duties company doctors and industrial safety advisers shall cooperate with other persons in the company in charge of matters relating to technical safety and health and environmental protection.

§ 11 Occupational safety Committee (Arbeitsschutz-Ausschuss)

Unless otherwise provided elsewhere, an employer employing more than 20 employees shall establish an occupational safety committee.; in determining the number of employees 0.5 shall be counted for a part-time employee with a regular working time of not more than 20 hours; and 0.75 for a part-time employee with a regular weekly working time of not more than 30 hours. The composition of this committee shall be:

the employer or another person delegated by him, two members of the Works Council designated by the Works Council, company doctors, industrial safety advisers and safety representatives within the meaning of § 719 of the Reich Insurance Code (Reichsversicherungsordnung)

The occupational safety committee shall discuss matters relating to occupational safety and accident prevention. It shall meet at least once quarterly.

§ 12 Orders issued by authorities

(1) The competent authority may determine in individual cases which measures the employer shall take to fulfil the obligations arising from this Law and from secondary legislation and accident prevention regulations, with special regard to the appointment of company doctors and industrial safety advisers.

(2) Before issuing an order, the competent authority shall:

1. consult the employer and the Works Council and deliberate on which measures appear appropriate and
2. give the institution responsible for the statutory accident insurance the opportunity of participating in the discussion with the employer and expressing an opinion on the order envisaged by the authority.

(3) The competent authority shall grant the employer a suitable period in which to carry out the order.

(4) The competent authority shall inform the Works Council in writing of any order imposed on the employer.

§ 13 Right to Information and Inspection

(1) The employer shall furnish the competent authority at its request any other information required for the implementation of this Law. He may refuse to furnish information relating to certain questions in those cases where the answer would render either himself or a member of his family as specified by § 383 paragraph 1, nos. 1 to 3, of the Code of Civil Procedure (Zivilprozeßordnung) liable to prosecution or to legal action pursuant to the Regulatory Offences Act (Gesetz über Ordnungswidrigkeiten).

(2) The persons so designated by the competent authority shall be allowed access to the workplaces during the normal operating times and working hours and shall be entitled to inspect these workplaces; outside these periods, or should the workplaces be located in a dwelling, they may only be entered and inspected to prevent imminent dangers to public safety and order. The constitutional right of inviolability of the home (Article 13 of the Constitution) shall be restricted to this extent.

§ 14 Authority to Issue Ordinances

(1) The Federal Minister of Labour and Social Affairs may, with the consent of the Federal Council, determine by ordinance which measures the employer shall adopt to fulfil the obligations arising from this Law. Where institutions responsible for the statutory accident insurance are empowered to specify legal obligations through the issue of accident prevention regulations, the Federal Minister of Labour and Social Affairs shall not make use of this authority unless the institution responsible for statutory accident insurance has failed to issue a pertinent accident regulation, or has not amended an accident prevention regulation that has become inadequate, within a suitable time-limit to be determined by him.

(2) With the consent of the Federal Council, the Federal Minister of Labour and Social Affairs may by ordinance:

1. determine that for certain types of enterprises, the duties listed in §§ 3 and 6, in due consideration of the circumstances referred to in § 2, paragraph 1, No. 2 and 3, and § 5, paragraph 1, No. 2, need not be wholly or partially performed,
2. determine that the duties referred to in §§ 3 and 6 need not be wholly or partially performed in certain types of enterprises if such non-performance is unavoidable owing to the lack of sufficient company doctors or industrial safety advisers.

§ 15 Authority to Issue General Administrative Regulations

The Federal Minister of Labour and Social Affairs, with the consent of the Federal Council, shall issue general administrative regulations relating to this Law and to orders arising from this Law.

§ 16 Public Authorities

A standard of occupational medicine and safety engineering equivalent to the principles provided for in this Law shall be maintained in administrative bodies and installations of the Federal Republic, the Federal Länder and the municipalities and other public corporations, institutions and foundations.

§ 17 Non-application of this Law

(1) This Law shall not be applicable when employees are engaged in households.

(2) To the extent that the Ordinance concerning Seaworthiness (Verordnung über die Seediensttauglichkeit) and the Ordinance pertaining to the Care of Sick on Merchant Vessels (Verordnung über die Krankenfürsorge auf Kauffahrteischiffen) contain provisions equivalent to those of this Law, they shall apply to captains, crew members and other persons employed on German sea-going ships. Where this Law cannot be applied to sea navigation, details shall be regulated by ordinance.

(3) To the extent that mining law contains provisions equivalent to those of this Law, they shall apply. This Law shall apply in all other cases.

§ 18 Exceptions

The competent authority may grant the employer permission to appoint company doctors and industrial safety advisers who do not have the necessary expert knowledge within the meaning of § 4 or § 7 provided that the employer undertakes to have the company Doctor or industrial safety Adviser appropriately trained within a certain time limit.

§ 19 Outside Services

The employer may also meet his obligation to appoint company doctors and industrial safety advisers by engaging an outside service of company doctors or industrial safety advisers to perform the duties referred to in § 3 or § 6.

§ 20 Regulatory Offences

(1) Persons who, deliberately or through negligence,

1. violate an executive order pursuant to § 12, paragraph 1,
2. violate § 13, paragraph 1, 1st sentence by not submitting a report, by submitting an incorrect or incomplete report or
3. violate § 13 paragraph 3, 1st sentence by refusing inspection, shall be guilty of a regulatory offence.

(2) A regulatory offence under paragraph 1, No 1 may be liable to a fine up to DM 50,000; regulatory offences under paragraph 1, Nos. 1 to 3 to a fine up to 1,000 DM

§ 21 Amendment of the Reich Insurance Code (Reichsversicherungsordnung)

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§ 22 Berlin Clause

(obsolete)

§ 23 Entry into Force

(1) This Law, with the exception of § 14 and § 21, shall enter into force on the first day of the twelfth calendar month following promulgation. § 14 and § 21 shall enter into force on the day following promulgation.

(2) § 6, paragraph 3, 2nd sentence and §7 of the Berlin Law on the Implementation of Occupational safety and Health (Berliner Gesetz über die Durchführung des Arbeitsschutzes) of 9 August 1949 (VOBl.I. p.265) last amended by Article LVIII of the Law of 6 March 1970 (GVBl.I. p.247) shall become ineffective. In all other respects the Law shall remain unaffected.