

**Law
for Implementation of the EU-Outline Directive
Occupational Protection and additional Occupational Protection Regulations^{*)}**

dated 7 August 1996

The Bundestag has passed the following law with the approval of the Bundesrat:

Article 1

Law
for Implementation of Occupational Safety Measures for
Improvement of Safety and Health Protection
of Employees At Work
(Arbeitsschutzgesetz-ArbSchG)
(Occupational Safety Law)

First Section

General Requirements

§ 1

Goal and Range of Application

- (1) This law serves to secure and improve safety and health protection of employees at work by means of occupational protection measures. It applies to all fields of activity.
- (2) This law is not applicable to occupational protection of domestic employees in private households. It does not apply to occupational protection of employees on ocean vessels and in businesses subject to the Federal Mining Law, provided that applicable legal requirements exist for these.
- (3) Obligations of the employer to guarantee safety and health protection of employees at work in accordance with other legal provisions, remain unaffected. Sentence 1 applies to obligations and rights of employees accordingly. Unaffected are those laws that oblige other persons as employer to measurements of occupational protection.
- (4) In case of legal religious communities under public law, employer's representatives take the place of works or staff councils in accordance with the clerical law.

^{*)} This law serves the realization of the following EU-Guidelines:
- Guideline 89/391/EEG of the Council dated 12 June 1989 regarding execution of measures for improvement of safety and health protection of employees at work (Abl. EG No. L 183 Page 1) and
- Guideline 91/383/EEG of the Council dated 25 June 1991 to supplement the measures for improvement of safety and occupational health of employees with limited employment contract or temporary employment contract (Abl. EG No. L 206 Page 19)

§ 2

Definition of Terms

(1) Measures of occupational protection in the spirit of this law are measures for prevention of accidents at work and occupational health hazards, including measures for appropriate human working conditions.

(2) Employed persons in the spirit of this law are:

1. Female and male employees,
2. Persons employed for their professional training,
3. Persons similar to employees in the sense of § 5 para 1 of the Labor Court Law, with the exception of those persons employed in homework and those with equal status,
4. Female and male civil servants,
5. Female and male judges,
6. Female and male soldiers,
7. Those employed in workshops for the handicapped

(3) Employers in the spirit of this law are natural and legal persons and legal individual partnerships, who employ persons according to para 2.

(4) Other legal provisions in the spirit of this law are regulations for occupational protection measures in other laws, in legal ordinances and accident prevention regulations.

(5) Businesses for the public service in the spirit of this law are the offices. Offices are individual authorities, administrative agencies and federal administrative agencies, of states, communities and other corporations, institutions and foundations of the public law, federal and state courts and the applicable agencies of the armed forces.

Second Section

Obligations of the Employer

§ 3

Basic Obligations of the Employer

(1) It is the employer's obligation, to take all occupational protection measures in consideration of the conditions that influence safety and health of employees at work. He has to review the measures for their effectiveness and adapt them to changing

conditions, as required. He has to strive for an improvement of occupational protection of the employees.

(2) For planning and execution of measures as per para 1, and in consideration of the type of work and the number of employees, the employer has to:

1. provide a suitable organization and the required funds and

2. make provisions, that measures are observed in all activities and be incorporated into the management structure of the firm and the employees can fulfill their obligation to participate.

(3) The employer shall not pass on the costs for measures required under this law to the employees.

§ 4

General Principles

For occupational protection measures, the employer shall apply the following general principles:

1. The work shall be planned such, that danger to life and health is avoided wherever possible and the remaining hazard is reduced to a minimum;

2. Hazards are to be fought at their sources;

3. Measures shall consider the state of the technology, occupational medicine and hygiene as well as other proven working science findings;

4. Measures shall be planned with the goal of properly incorporating technology, working organization, other working conditions, social relationships and the influence of the environment upon the working place;

5. Individual protective measures have lower priority than other measures;

6. Special hazards for occupational groups in need of particular protection, must be considered;

7. Employees must be given proper instructions;

8. Direct and indirect sex-specifying working regulations are permissible only, if these are absolutely necessary for biological reasons.

§ 5

Evaluation of Working Conditions

(1) The employer has to determine which occupational protection measures are required by evaluating the hazards arising for the employees in connection with their work.

(2) The employer has to perform his evaluation based upon the type of activity. In case of similar working conditions, the evaluation of one work station or one activity is adequate.

(3) A hazard can especially accumulate from:

1. Layout and equipment of the workplace and the work station.
2. Physical, chemical and biological affects,
3. Organization, selection and application of working means, especially materials, machinery, equipment and facilities as well as their handling,
4. Organization of work and fabrication process, work procedures and working hours and their interaction,
5. Inadequate qualification and insufficient instruction of employees.

§ 6

Documentation

(1) Depending upon the type of activities and number of employees, the employer must have all required documents reflecting the results of the evaluation of hazards, determined occupational protection measures and the result of their review. In case of a similar hazard situation, it is sufficient, if the documents contain summarized information. Unless mentioned otherwise in other legal provisions, sentence 1 does not apply to employers with ten and less employees; the applicable authorities can, if special hazardous situations exist, dictate, that documents are to be made available.

(2) The employer has to register accidents, in which an employee was killed or injured so badly, that he dies, or is completely or partially incapable of working or is disabled for service for more than three days.

§ 7

Assignment of Duties

In the assignment of duties to employees, the employer has to consider, depending upon the type of activities, whether the employee is capable of observing all safety and health protection regulations and measures required in the performance of his duties.

§ 8

Cooperation of Several Employers

(1) If employees of several employers work at one work place, the employers are obliged to cooperate in the performance of safety and health protection regulations. Where this is necessary for safety and health of employees at work, the employers must inform each other and their employees, depending upon the type of activities, about the hazards to safety and health connected with the work and coordinate measures for prevention of these hazards.

(2) The employer must confirm, depending upon the type of activity, that the employees of other employers working in his firm, were adequately informed regarding the hazards to their safety and health during their activities in his firm.

§ 9

Special Hazards

(1) The employer has to take measures to make sure, that only those employees gain access to especially hazardous work areas, who have previously been instructed accordingly.

(2) The employer has to take precautions to make sure, that all employees who are or who can be directly exposed to serious danger, are informed as early as possible of this danger and all protective measures previously taken or due to be taken. In case of direct, serious danger for the own safety or the safety of other persons, employees must be able to take suitable measures for deterring a danger and the limitation of damage, if the authorized supervisor cannot be reached; the skills of the employees and existing technical means must be considered. The employees shall not suffer disadvantages from their actions, unless they have acted intentionally or grossly negligent.

(3) The employer has to take measures, that allow employees to seek safety by immediately leaving the work place in case of direct severe danger. The employees shall not suffer any disadvantages from this. If the direct severe danger continues, the employer can request his employees to resume work only in specially founded exceptional cases. Legal obligations of the employees for deterring dangers to the public safety and §§ 7 and 11 of the Military Personnel Law remain unaffected.

§ 10

First Aid and Other Emergency Measures

(1) The employer, depending upon the type of work place and the activities as well as the number of employees, is obliged to take measures required for first aid, fire-fighting and evacuation of employees. He has to consider the presence of other persons. It is also his responsibility to make sure that, in case of emergency, connections to external stations, especially in the field of first aid, emergency medical care, rescue and fire-fighting are provided.

(2) The employer has to identify those employees, who assume duties in first aid, fire-

fighting and evacuation of employees. Quantity, training and equipment of employees identified in accordance with Sentence 1 must be in a reasonable relationship with the number of employees and existing special dangers. Prior to the assignment, the employer has to hear the works and staff council. Further worker participation of the rights of employees at the place of work remain unaffected. The employer can perform the duties identified in Sentence 1 himself, if he has been trained and provided with the equipment according to Sentence 2.

§ 11

Precautionary Working Medicine

The employer must allow the employees, upon their request, irrespective of duties from other legal provisions, depending upon dangers for their safety and health at work, to regularly be examined under the provisions of occupational medicine, unless, due to the evaluation of working conditions and introduced protective measures, health risks are not to be anticipated.

§ 12

Instructions

(1) The employer has to adequately and reasonably instruct the employees during their working hours about safety and health protection at work. These instructions comprise briefing and explanations addressing the work place or the task assignment of the employees. These instructions are necessary at the initial employment, changes in the fields of duty, introduction of new working means or a new technology prior to commencement of activities on behalf of the employees. The instructions must be adapted to the hazard development and be repeated regularly, as required.

(2) In case of temporary hiring of employees, the obligation for instruction according to para 1 is transferred to the hirer. He is responsible for the instruction in consideration of qualifications and experience of persons hired for performance of work. The other occupational protection obligations of the hirer remain unaffected.

§ 13

Responsible Persons

(1) Responsible for fulfillment of duties arising from this section in addition to the employer are:

1. His legal representative
2. The authorized representative organ of a legal person
3. The authorized representative of a partnership

4. Persons in charge of the management of a company or business, in the framework of assigned duties and authorities

5. Other persons, commissioned according to para 2 or a legal provision based upon this law or persons in charge according to the Accident Prevention Regulations, in the framework of their duties and authorities.

(2) The employer can commission reliable and expert persons in writing with the performance of his duties from this law, within his sphere of responsibility.

§ 14

Instructions and Hearing of Employees in the Civil Service

(1) Employees of the civil service shall be instructed prior to commencement of their employment and in case of changes to their scope of work, about dangers to safety and health to which they can be exposed at work and about measures and facilities for prevention of these dangers and measures taken in accordance with § 10, para 2.

(2) If offices of the civil service have no work council, the employer has to hear the employees regarding all measures that could affect safety and health of employees.

Third Section

Rights and Obligations of Employees

§ 15

Obligations of Employees

(1) The employees are responsible for their own safety and health at work, as far as possible and in accordance with the employer's instructions and directives. As per Sentence 1, the employees are also responsible for the safety and health of those persons who are affected by their activities or omissions at work.

(2) With reference to para 1, the employees have to especially use machines, equipment, tools, materials, transport means and other working material and protective devices as well as personal protective equipment in accordance with the regulations.

§ 16

Special Assistance Obligations

(1) It is the employee's responsibility to immediately inform the employer or the applicable supervisor of each detected direct serious danger for safety and health and all defects at any of the protection systems.

(2) The employees, together with the company doctor and the expert for occupational safety, have to assist the employer in securing safety and health protection of employees at work and fulfill his duties in accordance with official requirements. Irrespective of their duty as per para 1, the employees are required to notify the expert for occupational safety, the company doctor or the safety representative of detected dangers to safety and health and defects of protective systems in accordance with § 22 of the Seventh Code of Social Law.

§ 17

Employees' Rights

(1) Employees are authorized to submit suggestions to the employer regarding all safety and health protection at work. § 171 of the Federal Civil Service Act is applicable in case of female and male civil servants. § 60 of the Civil Service Outline Law and applicable state law remains unaffected.

(2) If, based upon existing evidence, employees have the impression, that measures and means provided by the employer are inadequate to guarantee safety and health protection at work and the employer does not take remedial action regarding the complaint, the employees can turn to the applicable authorities. The employees shall not suffer any disadvantages from this. Regulations in para 1, sentence 2 and 3 of the mentioned requirements, the regulations for complaints by members of the armed forces and the law for the Defense Commissioner of the German Bundestag remain unaffected.

Fourth Section

Ordinance Authorizations

§ 18

Ordinance Authorizations

(1) The Federal Government is, upon Bundesrat approval, authorized to dictate the measures to be taken by the employer and other responsible persons and the behavior of employees in fulfilling their duties arising from this law. It can be determined in these ordinances, that certain requirements of the law are applicable for the protection of persons other than those mentioned in § 2 para 2.

(2) In particular, ordinances as per para 1 can determine:

1. that and how time or location of employees or the number of employees must be limited in order to deter certain dangers,

2. that application of certain working means or procedures causing special hazards to the employees, is prohibited or the applicable authorities must be notified or must be allowed by these authorities, or that especially endangered persons shall not be occupied in this work,

3. that certain, especially dangerous plants including working and fabrication process prior to start-up, must be professionally inspected at regular intervals or upon official request,

4. that employees must undergo occupational medicine examinations, and the special obligations that the doctor must observe prior to commencement or continuation of especially hazardous activities, or upon their completion.

§ 19

Legal Instruments of the European Communities and Bilateral Agreements

Ordinances as per § 18 can be enacted as required for execution of legal instruments of the Council or the Commission of European Communities or decrees of international organizations or bilateral agreements with reference to sections of this law, especially the occupational protection obligations for persons other than those mentioned in § 2 para 3.

§ 20

Regulations for Civil Servants

(1) The state law regulates, whether and to what extent issued ordinances as per § 18 are applicable for civil servants of states, communities and other corporations, institutions and foundations.

(2) The Federal Chancellery can decide by means of ordinance, without Bundesrat approval, that requirements of this law are not or partially not applicable for certain activities in the federal civil service, especially the armed forces, the police, civil and disaster services, the customs, the Federal Ministry of the Interior, the Federal Ministry for Transport, the Federal Ministry of Defense or the Federal Ministry of Finance, where applicable, and if required by public interest, especially the maintenance or the restoration of public safety. Ordinances according to Sentence 1 are issued in cooperation with the Federal Ministry for Labor and Social Affairs, and, if the Federal Ministry of the Interior is not authorized, in coordination with this ministry. Other means of securing safety and health protection at work in consideration of the goals of this law must, simultaneously be determined in these ordinances. Applicable regulations can be implemented by means of state law for activities in the civil service of states, communities and other corporations institutions and foundations directly under the state law.

Fifth Section

Final Provisions

Applicable Authorities; Cooperation with the Institution of the Official Accident Insurance

(1) Control of occupational safety according to this law is a governmental obligation. The applicable authorities must supervise adherence with this law and ordinances issued on the basis of this law and advise employers in the fulfillment of their duties.

(2) Duties and authorities of the institution of the official accident insurance, unless determined otherwise, depend upon the requirements of the code of social law. Where the institution of the official accident insurance also performs duties according to the code of social law in the course of the order for prevention to secure safety and health protection of employees, they act exclusively in the framework of their autonomous authority.

(3) The applicable state authorities and the institution of the official accident insurance cooperate closely in the supervision and encourage the exchange of experience. They inform each other about performed inspections of firms and their basic results.

(4) The highest state authority responsible for occupational safety can arrange with the official accident insurance, to supervise adherence with the law in fields of activity to be closer determined, certain regulations of this law or ordinances issued on the basis of this law. This agreements includes type and scope of supervision and cooperation with the official occupational protection authorities.

(5) Unless determined otherwise below, the central agency for occupational protection within the Federal Ministry of the Interior is the applicable authority for execution of this law and ordinances based upon this law in federal offices and administrative organizations. The federal executive authority for accident insurance, subject to the supervision of the Federal Ministry of the Interior, acts on behalf of the central agency, unless decided otherwise. The executing authority for accident insurance of the Federal Ministry for Transport and the railway accident insurance (Eisenbahn-Unfallkasse), where it is an institution of the accident insurance, execute this law in the civil service, in the sphere of business of the Federal Ministry for Transport. For offices and administrations in the sphere of business of the Federal Ministry of Defense and the Department for Foreign Affairs for the diplomatic representations and for the Federal Intelligence Service, the applicable federal ministry or the Federal Chancellery, if authorized, or each determined agency, execute this law. The Accident Insurance for Post and Telekom (Unfallkasse Post und Telekom) executes this law in the sphere of business of the Federal Ministry for Post and Telecommunications. Sentences 1 thru 4 also apply to offices and administrations belonging to the federal administration, for which, however, a trade association acts as institution of the accident insurance. The applicable federal ministries can arrange with the trade associations for these offices and administrations, that this law is executed by the trade associations; expenditures will not be reimbursed.

§ 22

Authorizations of Applicable Authorities

(1) The applicable authority can request information and submittal of applicable documents required for execution of the supervision obligation from the employer or responsible persons. The person liable for disclosure can refuse to answer such questions or submittal of such documents that would expose him/her or a relative as per § 383 para 1, No. 1 thru 3 of the Code of Civil Procedure to the risk of prosecution for a criminal offense or an administrative offense. The person liable for disclosure disclose must be informed accordingly.

(2) Persons commissioned with the supervision are authorized to enter places of businesses, offices and operational premises during business and operation hours, inspect and investigate them and inspect business documents of the person liable for disclosure, as required for execution of their duties. Furthermore, they are authorized to inspect installations, machinery and personal protective equipment, to investigate the working process and working procedures, perform measurements and determine occupational health risks and investigate the source of an occupational accident, an occupational disease or a damage case. They are authorized to demand to be accompanied by the employer or a person assigned by him. The employer or the responsible person must assist the persons commissioned with the supervision in exercising their authorization as per Sentence 1 and 2. Outside those hours as described in Sentence 1, or if the work place is located in an apartment, the persons commissioned with the supervision can give instructions for prevention of urgent dangers for public safety or order, to execute measures as per Sentence 1 and 2 without the employer's consent. The person liable for disclosure must tolerate the measure in accordance with Sentences 1, 2 and 5. Sentences 1 and 5 apply accordingly, if it could not be determined, whether persons are employed at the work place, if, however, given facts substantiate this assumption. The fundamental right of the inviolability of the home (Article 13 of the constitution) is thereby compromised.

(3) The applicable authority can direct in the individual case,

1. which measures must be taken by the employer and the responsible persons or the employees for fulfillment of their obligations resulting from this law and ordinances issued as a result of this law,

2. which measures must be taken by the employer and the responsible persons to deter a particular hazard to life and health of the employees.

Unless danger is imminent, the applicable authority can set a reasonable time for execution of the order. If an order as per Sentence 1 was not executed within the set time frame, or an order to be executed immediately, was not executed immediately, the applicable authority can prohibit work or use or operation of the working means affected by the order. Measures of the applicable authority in the sphere of the civil service, that severely affect the operation, should be taken in agreement with the highest federal or state authority or the highest administrator of the community.

§ 23

Operational Data, Cooperation with Other

Authorities; Annual Report

(1) It is the employer's responsibility to submit to the applicable authority, by a given date, information about

1. the number of employees and those who are commissioned with homeworks, broken-up into sex, age and nationality,
2. name or identification and address of business, in which they are employed,
3. his name, his firm and his address as well as
4. the branch of industry, to which his business belongs

The Federal Ministry for Labor and Social Affairs, upon Bundesrat approval, is authorized to determine by means of ordinance, that those agencies of the federal administration, to which the employer has submitted the information mentioned in Sentence 1, have to transfer this information to the highest state authority as per Sentence 1, as letter or machine-usable data carriers or by means of data transfer. Ordinances can contain details about the form of information to be transferred as well as the time frame for transfer. Transferred information shall only be used for fulfillment of occupational protection obligations in the responsibility of authorities as per § 21, para 1, and stored or processed in data processing systems.

(2) Persons commissioned with supervision shall disclose business and operational secrets observed in the course of their supervision activities, only in legally provided cases or for the prosecution of illegalities or for fulfillment of legally provided duties for the protection of insured persons, to the institutions of official accident insurers or for the protection of the environment to the applicable authorities. Where business and operational secrets concern information about the environment in the spirit of the environmental information law, the authority for disclosure is based upon the environmental information law.

(3) If the individual case leads to definite clues for the applicable authorities for

1. an employment or activity of non-German employees without the required permit as per § 19 para 1 of the Employment Promotion Act,
2. violations against the obligation of participation towards an office of the Federal Employment Office as per § 60 para 1, No. 2, First Volume of the Code of Social Law
3. violations against the Law for Suppression of Illicit Work,
4. violations against the Law on Temporary Employment,
5. violations against the requirements of the Fourth Volume of the Code of Social Law regarding the obligation of payment of dues where they are in connection with violations described in Items 1 thru 4,

6. violations against the Aliens Act,
7. violations against tax laws,

they inform the authorities responsible for prosecution and punishment of violations according to items 1 thru 7 and the authorities as per § 63 of the Aliens Act. In cases of Sentence 1, the applicable authorities cooperate particularly with the Federal Employment Office, the health insurances as collecting agents for social insurance contributions, the institutions of the official accident insurance, the authorities responsible according to state law for prosecution and punishment of violations against the Law for Suppression of Illicit Work as well as both the authorities and the tax authorities identified in § 63 of the Aliens Act.

(4) The applicable highest state authorities have to publish an annual report covering the supervision activities of subordinate authorities. The annual report also includes information for fulfillment of information obligations from international agreements or legal instruments of the European Communities, where they affect occupational protection.

§ 24

Authorization to Issue General Administration Regulations

The Federal Ministry for Labor and Social Affairs can, upon Bundesrat approval, issue general administration regulations

1. for implementation of this law and ordinances issued on the basis of this law, provided that the Federal Government has authorized the decree,
2. for the composition of annual reports as per § 23, para 4 and
3. for information to be forwarded for the Accident Prevention Report as per § 25 para 2 of the Seventh Volume of the Code of Social Law by the applicable highest state authorities to the Federal Ministry for Labor and Social Affairs, at a certain date.

Administration regulations incorporating fields of civil service shall be issued in agreement with the Federal Ministry of the Interior.

§ 25

Administration Fine Regulations

- (1) An administrative offense is committed by a person who intentionally or negligently
1. acts contrary to an ordinance as per § 18, para 1 or § 19, where it refers to these administration fine regulations for certain facts of a case, or

2. a) as employer or as responsible person acts contrary to an enforceable order as per § 22 para 3

b) as employee who acts contrary to an enforceable order as per § 22 para 3, sentence 1 No. 1.

(2) The administrative office can be punished with a fine of up to ten thousand Deutsche Mark in cases of 1 No. 1 and 2, letter b; in cases of para 1 No. 2 letter a with a fine of up to fifty thousand Deutsche Mark.

§ 26

Penal Provisions

Punished with imprisonment of up to one year or with a fine will be, who

1. continuously repeats an act identified in § 25 para 1 No. 2, letter a, or
2. risks life and health of an employee by an intentional act described in § 25 para 1, No. 1, letter a.