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Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists

Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists of 12 December 1973 (Federal Gazette I p. 1885), last amended by Article 3 (5) of the Act of 20 April 2013 (Federal Gazette I p. 868)

Introductory Clause

The Bundestag adopted the following Act with the approval of the Bundesrat:

Part One

Section 1

Basic principle

Employers shall appoint occupational physicians and occupational safety specialists subject to the provisions of this Act who will support them in occupational safety and health as well as accident prevention matters. This is meant to ensure that

1. the provisions encouraging occupational safety and health as well as accident prevention are implemented with special regard to the individual conditions of the establishment,
2. sound knowledge in the fields of occupational medicine and safety technology can be applied to improve occupational safety and health as well as accident prevention,
3. the measures encouraging occupational safety and health as well as accident prevention achieve the highest possible efficiency.

Part Two

Occupational Physicians

Section 2

Appointment of occupational physicians

(1) The employer shall appoint occupational physicians in writing and assign them the duties specified in section 3 hereof, if this is necessary in view of

1. the type of establishment and the accident risks and health hazards workers may be exposed to,
2. the number of workers employed and the composition of the workforce, and

3. the organization of the establishment, in particular, as regards the number and type of persons who are responsible for occupational safety and health and for accident prevention.

(2) Employers shall ensure that the occupational physicians appointed by them comply with their obligations. Employers shall support them in the fulfilment of their duties, in particular, they shall provide them with the auxiliary personnel and rooms, facilities, equipment and means necessary to fulfil their duties. Employers shall inform them of the activities of persons who are working under a fixed-duration contract of employment or have been assigned to them for performing work.

(3) Employers shall give occupational physicians the opportunity to participate in further training as necessary to fulfil their duties and with due regard to the interests of the establishment. If occupational physicians are employed as workers, they shall be released from performing their duties for the time of further training while continuing to receive their remuneration. The costs of the further training shall be borne by the employer. If occupational physicians are not employed as workers, they shall be released from performing their duties for the time of further training.

Section 3 Duties of occupational physicians

(1) Occupational physicians shall support employers in all matters of health protection in connection with occupational safety and health as well as accident prevention. In particular, they shall

1. provide guidance to the employer and other persons responsible for occupational safety and health and for accident prevention, especially as regards
 - a) the planning, construction and maintenance of operating facilities and of social and sanitary facilities,
 - b) the procurement of technical work equipment and the introduction of processes and agents at work,
 - c) the selection and testing of body protection equipment,
 - d) issues associated with the physiological and psychological aspects of work and other ergonomic and industrial hygiene matters, in particular, the work rhythm, the provisions concerning working hours and breaks, the design of the workplace, the workflow and the work environment,
 - e) the organization of "First Aid" within the establishment,
 - f) issues concerning a job change and the integration and re-integration of persons with disabilities into the work process,
 - g) the assessment of the working conditions,
2. examine the workers, assess them and offer them guidance in terms of occupational medicine, and record and evaluate the results of such examinations,
3. monitor the implementation of the occupational safety and health and accident prevention measures, and in this context
 - a) inspect the workplaces at regular intervals and notify the employer or another person responsible for occupational safety and health and for accident prevention of any defects they may have determined, propose measures for the correction of such defects, and work towards their implementation,
 - b) check that the body protection equipment is being used,

c) examine the causes of job-related illnesses, record and evaluate the results of these examinations, and propose measures for avoiding such illnesses to the employer,

4. make efforts to ensure that all workers of an establishment act in accordance with the requirements of occupational safety and health and accident prevention, in particular, instruct them with regard to the accident and health hazards they are exposed to at work as well as the facilities and measures available to avoid such hazards, and cooperate in the scheduling and training of the "First Aid" assistants and the medical auxiliary personnel.

(2) Occupational physicians shall inform a worker at his/her request about the result of occupational medical examinations; section 8 (1) sentence 3 shall not be affected.

(3) The obligations of occupational physicians do not include the verification of whether or not a worker's sick report is justified.

Section 4

Requirements for occupational physicians

The employer shall only appoint persons as occupational physicians who are licensed to practice medicine, and who have the expertise in occupational medicine required to fulfil the duties assigned to them.

Part Three

Occupational Safety Specialists

Section 5

Appointment of occupational safety specialists

(1) The employer shall appoint occupational safety specialists (safety engineers, technicians, master craftsmen) in writing and assign them the duties specified in section 6 hereof, if this is necessary in view of

1. the type of establishment and the accident risks and health hazards workers may be exposed to,

2. the number of workers employed and the composition of the workforce,

3. the organization of the establishment, in particular, as regards the number and type of persons who are responsible for occupational safety and health and accident prevention,

4. the knowledge and the level of training of the employer or the persons responsible for occupational safety and health pursuant to section 13 (1) nos. 1, 2 or 3 of the Safety and Health at Work Act (Arbeitsschutzgesetz).

(2) Employers shall ensure that the occupational safety specialists appointed by them comply with their obligations. Employers shall support them in the fulfilment of their duties, in particular, they shall provide them with the auxiliary personnel and rooms, facilities, equipment and means necessary to fulfil their duties. Employers shall inform them of the activities of persons who are working under a fixed-duration contract of employment or have been assigned to them for performing work.

(3) Employers shall give the occupational safety specialists the opportunity to participate in further training as necessary to fulfil their duties and with due regard to the interests of the establishment. If occupational safety specialists are employed as workers, they shall be released from performing their duties for the time of further training while continuing to receive their remuneration. The costs of the further training shall be borne by the employer. If occupational safety specialists are not employed as workers, they shall be released from performing their duties for the time of further training.

Section 6

Duties of occupational safety specialists

The occupational safety specialists shall support employers in all matters of occupational safety in connection with occupational safety and health as well as accident prevention including measures designed to tailor jobs to meet human requirements. In particular, they shall

1. provide guidance to the employer and other persons responsible for occupational safety and health and for accident prevention, especially as regards
 - a) the planning, construction and maintenance of operating facilities and of social and sanitary facilities,
 - b) the procurement of technical work equipment and the introduction of processes and agents at work,
 - c) the selection and testing of body protection equipment,
 - d) the design of workplaces, the workflow, the work environment and other ergonomic issues,
 - e) the assessment of the working conditions,
2. inspect operating facilities and work equipment, in particular before they are put into service, and check working processes, especially before they are introduced, under the aspects of technical safety,
3. monitor the implementation of the occupational safety and health and accident prevention measures, and in this context
 - a) inspect the workplaces at regular intervals and notify the employer or another person responsible for occupational safety and health and for accident prevention of any defects they may have determined, propose measures for the correction of such defects, and work towards their implementation,
 - b) check that the body protection equipment is being used,
 - c) examine the causes of accidents at work, record and evaluate the results of these examinations, and propose measures to avoid such accidents to the employer,
4. make efforts to ensure that all workers of an establishment act in accordance with the requirements of occupational safety and health and accident prevention, in particular, instruct them with regard to the accident and health hazards they are exposed to at work as well as the facilities and measures available to avoid such hazards, and cooperate in the training of the safety officers.

Section 7

Requirements for occupational safety specialists

(1) Employers shall appoint only those persons as occupational safety specialists who satisfy the following requirements: A safety engineer must qualify as an engineer and have the expertise in safety technology necessary to discharge the duties assigned to him. The safety technician or master craftsman must have the expertise in safety technology necessary to discharge the duties assigned to him.

(2) The competent authority may permit, in individual cases, that instead of a safety engineer qualifying as an engineer, a person may be appointed who has the technical knowledge necessary to discharge the duties specified in section 6 hereof.

Part Four Joint Provisions

Section 8

Independence in the application of technical expertise

- (1) Occupational physicians and occupational safety specialists shall not be bound by instructions in the application of their expertise in occupational medicine and safety technology. They shall not be discriminated against because of the fulfilment of the duties assigned to them. Occupational physicians have only their own medical conscience to answer to and shall adhere to the rules of medical confidentiality.
- (2) Occupational physicians and occupational safety specialists or, if more than one occupational physician or occupational safety specialist have been appointed for an establishment, the managing occupational physician and the managing occupational safety specialist shall report directly to the manager of the establishment.
- (3) In cases where the occupational physicians or occupational safety specialists do not reach an agreement with the manager of an establishment on a measure proposed by them with regard to occupational medicine or safety technology, they may submit their proposal directly to the employer or, if the employer is a legal entity, to the competent member of the organ entitled to represent the entity legally. Where a managing occupational physician or a managing occupational safety specialist has been appointed for an establishment or a company, they shall be entitled to submit the proposal referred to in the first sentence hereof. If the employer or the competent member of the organ entitled to represent the entity legally rejects the proposal, the persons who submitted the proposal shall be informed in writing also about the reasons for the rejection, and the works council shall receive a copy thereof.

Section 9

Cooperation with the works council

- (1) The occupational physicians and occupational safety specialists shall cooperate with the works council in the discharge of their duties.
- (2) The occupational physicians and occupational safety specialists shall inform the works council of important matters of occupational safety and health and accident prevention; they shall also inform it of the contents of a proposal submitted to the employer pursuant to section 8 (3). They shall provide guidance to the works council at its request on matters of occupational safety and health and accident prevention.
- (3) The occupational physicians and occupational safety specialists shall be appointed and dismissed with the approval of the works council. This shall also apply where their duties are to be extended or restricted; furthermore, section 87 read together with section 76 of the Works Constitution Act (Betriebsverfassungsgesetz) shall be applicable. The works council shall be consulted prior to the appointment or dismissal of a self-employed physician, a self-employed occupational safety specialist or an external service provider.

Section 10

Cooperation between occupational physicians and occupational safety specialists

The occupational physicians and occupational safety specialists shall cooperate in the discharge of their duties. In particular, they shall jointly inspect the establishment. In the discharge of their duties, the occupational physicians and occupational safety specialists shall cooperate with other persons within the establishment who are given the task of overseeing matters of technical safety, health and environmental protection.

Section 11

Occupational safety and health committee

Unless stipulated otherwise in other legal provisions, the employer shall set up an occupational safety and health committee in establishments with more than twenty workers; when determining the number of workers, part-time workers with a regular weekly working time of not more than 20 hours shall be calculated at a rate of 0.5, and part-time workers

with a maximum of 30 weekly working hours at a rate of 0.75. This committee shall have the following members:

- the employer or an appointed representative,
- two members of the works council appointed by the works council,
- occupational physicians,
- occupational safety specialists, and
- safety officers pursuant to section 22 of the Seventh Book of the Social Code (Sozialgesetzbuch).

The occupational safety and health committee shall have the task of discussing matters of occupational safety and health and accident prevention. The occupational safety and health committee shall meet at least once every three months.

Section 12

Orders issued by the competent authority

(1) The competent authority may order, in individual cases, the measures to be taken by an employer to comply with his/her obligations resulting from the present Act, the legal obligations of a more detailed ordinance, and the accident prevention regulations, in particular, as far as the appointment of occupational physicians and occupational safety specialists is concerned.

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

1. consult the employer and the works council and discuss the most appropriate measures with them, and
2. give the competent statutory accident insurance fund the opportunity to participate in the consultations with the employer and to comment on the order envisaged by the authority.

(3) The competent authority shall grant the employer an adequate period of time to execute the order.

(4) The competent authority shall inform the works council in writing of any order issued with respect to the employer.

Section 13

Right to be informed and to inspect

(1) Employers shall provide the information required for the execution of this Act to the competent authority if so requested by the authority. They may refuse to reply to questions if these replies bear the risk for themselves or one of their family members specified in section 383 (1) nos. 1 to 3 of the Code of Civil Procedure (Zivilprozessordnung) of being prosecuted for a criminal or administrative offense.

(2) The representatives of the competent authority shall be entitled to access and inspect the workplaces during normal business and working hours; outside these times, or if the workplace is located within a residential home, they may not be accessed or inspected unless imminent dangers to public order and safety are to be prevented. The basic right of the inviolability of the home (Article 13 of the Basic Law) shall be restricted to this extent.

Section 14

Authorization to adopt ordinances

(1) The Federal Ministry of Labour and Social Affairs may adopt an ordinance with the approval of the Bundesrat specifying the measures to be taken by employers to comply with the obligations resulting from the present Act. To the extent that the statutory accident insurance funds have been authorized to specify the legal obligations in the form of accident prevention regulations, the Federal Ministry of Labour and Social Affairs shall not make use

of its authorization unless the statutory accident insurance fund has failed to adopt accident prevention regulations or to modify outdated accident prevention regulations within a reasonable period of time granted by the Ministry.

(2)(deleted)

Section 15

Authorization to adopt general administrative regulations

The Federal Ministry of Labour and Social Affairs shall adopt general administrative regulations with the approval of the Bundesrat to implement this Act and the ordinances adopted hereunder.

Section 16

Public administration

Equivalent medical and technical occupational safety and health protection based on the principles of the present Act shall be ensured for the administrative bodies and establishments of the administration at the federal, state, or local government level, and of other corporations, institutes and foundations under public law.

Section 17

Non-applicability of the Act

- (1) The present Act shall not be applicable to workers employed in private households.
- (2) To the extent that the Maritime Labour Act and other maritime shipping provisions include equivalent regulations, these regulations shall be applicable to the crew members of merchant vessels flying the German flag. Where the present Act is not applicable to maritime shipping, more detailed provisions shall be laid down in an ordinance.
- (3) To the extent that the mining law contains provisions equivalent to this Act, these provisions shall be applicable. In all other cases, the present Act shall be applicable.

Section 18

Exceptions

The competent authority may allow the employer to appoint occupational physicians and occupational safety specialists who do not yet have the necessary expertise referred to in section 4 or section 7, respectively, if the employer undertakes to have the occupational physicians or the occupational safety specialists undergo appropriate further training within a period of time to be specified.

Section 19

External service providers

An employer's obligation to appoint occupational physicians and occupational safety specialists may also be complied with if the employer entrusts an external service of occupational physicians or occupational safety specialists with the discharge of the duties under section 3 or section 6.

Section 20

Administrative offenses

- (1) An administrative offense is committed by any person who, intentionally or negligently
 1. contravenes an enforceable order pursuant to section 12 (1),
 2. fails to comply with section 13 (1) sentence 1 by failing to provide information at all, properly or completely, or
 3. fails to comply with section 13 (2) sentence 1 by not tolerating an inspection.
- (2) An administrative offense pursuant to subsection 1 no. 1 may be punished by a fine of up to twenty-five thousand euros, and an administrative offence pursuant to subsection 1 nos. 2 or 3 by a fine of up to five hundred euros.

Section 21

Section 22 **Berlin clause**

According to section 13 (1) of the Third Transition Act (Drittes Überleitungsgesetz) of 4 January 1952 (Federal Gazette I p. 1), the present Act shall also be applicable in the state of Berlin. Ordinances adopted under this Act shall be applicable in the state of Berlin pursuant to section 14 of the Third Transition Act.

Section 23 **Commencement**

(1) The present Act, with the exception of section 14 and section 21, shall come into force on the first day of the twelfth calendar month following its promulgation. Section 14 and section 21 shall come into force one day after the promulgation of the Act.

(2)

Annex EV, Extract from Annex I Chapter VIII Subject matter B Part III of the Unification Treaty

(Federal Gazette II 1990, 889, 1029)

Conditions applying to the joining territory (Article 3 of the Unification Treaty)

Part III

The Federal Law shall come into force in the territory defined in Article 3 of the Treaty subject to the following proviso:

12. Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists of 12 December 1973 (Federal Gazette I p. 1885), as amended by section 70 of the Act of 12 April 1976 (Federal Gazette I p. 965), subject to the following proviso:

- a) The employers' obligation under section 2 shall be deemed to have been fulfilled if the duties of an occupational physician are performed by a facility set up by an in-company health service. Letters b) and d) shall be applicable.
- b) An employer may consider that the expertise of an occupational physician required under section 4 has been proven for specialists in occupational medicine or industrial hygiene as well as specialists state-recognized as occupational physicians.
- c) An employer may consider that the expertise of occupational safety specialists required under section 7 has been proven by specialists with a university or technical college degree or master craftsman's certificate who worked in a position that corresponds to their education for at least two years, and can give evidence of training as technical engineers or technical economists specialized in occupational safety and health or occupational safety and health inspectors or safety engineers or specialist engineers for fire protection or of the acquisition of a recognized additional qualification in the field of health and occupational safety for safety inspectors or an equivalent training in the field of industrial hygiene. Occupational safety specialists also satisfy the requirements if they worked in the field of occupational safety for at least two years prior to the commencement of this Act.
- d) The operating hours of occupational physicians shall be determined on the basis of the following minimum values:
 - aa) 0.25 hours/worker x year for establishments with low risks,

bb) 0.6 hours/worker x year for establishments in which occupational health care is to be provided because special difficulties are encountered at work, or special job-related diseases are to be prevented, or workers or third parties are exposed to special work-related hazards.

cc) 1.2 hours/worker x year for establishments in which these occupational medicine examinations must be performed at intervals of one year or less.

The operating hours determined on the basis of these minimum values shall be increased if the occupational medicine examinations to be performed by the occupational physician are more than average in scope, or if additional tasks are to be performed in the establishment in order to comply with legal provisions.

e) The operating hours of occupational safety specialists shall be determined on the basis of the following minimum values:

aa) 0.2 hours/worker x year for establishments with low risks,

bb) 1.5 hours/worker x year for establishments with intermediate risks,

cc) 3.0 hours/worker x year for establishments with high risks,

dd) 4.0 hours/worker x year for establishments with very high risks.

The operating hours determined on the basis of these minimum values shall be increased if the difficulty of the workplace safety task or the scope of the tasks in the field of technical industrial hygiene are more than average, or if additional tasks are to be resolved, e.g., in the field of fire or radiation protection.

f) If the employer becomes a member of an accident insurance fund which has adopted accident prevention regulations pursuant to section 14 (1), the provisions under letters b) to e) shall be replaced with the corresponding provisions of the accident prevention regulations. Also in future, the necessary expertise may be deemed to have been proven if the conditions of letters b) and c) are met.

g) For the public sector of the states specified in Article 1 of the Treaty and the state of Berlin, insofar as the Basic Law was not applicable, the guidelines of the Federal Minister of the Interior concerning the service of occupational physicians and safety technicians in the Federal administrations and establishments of 28 January 1978 (Joint Ministerial Gazette p. 114 et seqq.) shall be applicable until corresponding provisions have been adopted by the state ministers responsible for the public sector.