

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

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For requirements under Einigungsvertrag (Unification Treaty), refer to Annex EV hereof

(+++ Status: Last amended by Art. 5a of the law dated 24. 8.2002 I 3412 +++)

Introductory Clause

The Federal Parliament adopted the following Act with the approval of the Bundesrat:

Part One

Section 1: Principle

The employer shall appoint occupational physicians and occupational safety specialists subject to the provisions of this Act who shall support him in occupational safety and health as well as accident prevention matters. This measure is designed 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. well-founded occupational medicine and safety results can be implemented to encourage occupational safety and health as well as accident prevention,
3. the provisions encouraging occupational safety and promoting health and 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 necessary, with regard to

1. the type of establishment and the risks of accidents 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) The employer shall ensure that the occupational physicians appointed by him comply with their obligations. He shall support them in the fulfilment of their duties, in particular, he shall provide them with the auxiliary personnel and rooms, facilities, equipment and means necessary to fulfil their duties. He shall inform them of the activities of persons working under a fixed-duration contract of employment or have been assigned to him for performing work.

(3) The employer shall give the 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 the occupational physician is employed as a worker, he shall be released from performing his duties for the time of further training while continuing to receive his remuneration. The costs of the further training shall be borne by the

employer. If the occupational physician is not employed as a worker, he shall be released from performing his duties for the time of further training.

Section 3: Duties of the occupational physicians

(1) The occupational physicians shall support the employer in all matters of health protection in connection with occupational safety and health and in dealing with 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 working methods and substances,
- 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 schedule, the provisions concerning working hours and breaks, the design of the workplace, the work flow and the working environment,
- e) the organization of "First Aid" within the establishment,
- f) issues concerning a job change and the integration and re-integration of disabled persons into the work process,
- g) assessment of the working conditions,

2. perform physical examinations and occupational medical evaluations of the workers, offer them guidance, and record and evaluate the results of such examinations,

3. monitor the implementation of the occupational safety and health and the accident prevention measures, and in this context

- a) visit the workplaces in 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 use their influence for their implementation,
- b) verify whether 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. use their influence 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 concerning 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) The occupational physicians shall inform the worker at his request about the result of occupational medical examinations, section 8 (1) sentence 3 shall not be affected.

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

Section 4: Demands on the occupational physicians

The employer shall only appoint persons as occupational physicians who are licensed to practice medicine, and who have sufficient expertise in occupational medicine 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 necessary, with regard to

1. the type of establishment and the risk of accidents 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 for accident prevention,
4. the knowledge and the level of training of the employer or the persons responsible for occupational safety and health protection pursuant to section 13 (1) nos. 1, 2 or 3 of the Arbeitsschutzgesetz (Protection at Work Act).

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

(3) The employer 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 the occupational safety specialist is employed as a worker, he shall be released from performing his duties for the time of further training while continuing to receive his remuneration. The costs of the further training shall be borne by the employer. If the occupational safety specialist is not employed as a worker, he shall be released from performing his duties for the time of further training.

Section 6: Duties of occupational safety specialists

The occupational safety specialists shall support the employer in all matters of occupational safety in connection with occupational safety and health issues and in dealing with 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 working methods and substances,
 - c) the selection and testing of body protection equipment,
 - d) the design of workplaces, the work flow, the work environment and other ergonomic issues,
 - g) the assessment of the working conditions,
2. inspect the operating facilities and work equipment, in particular, before they are put into service, and review working processes, especially before they are introduced, under the aspects of technical safety,
3. monitor the implementation of the occupational safety and health and the accident prevention measures, and in this context
 - a) visit 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 use their influence for their implementation,
 - b) verify whether 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. use their influence to ensure that all workers of an establishment act in accordance with the requirements of occupational safety and health and or accident prevention, in particular, instruct them concerning the accident and health hazards they are exposed to at work as well as the facilities and measures available to avoid such hazards, and assist in the training of the safety officers.

Section 7: Demands on occupational safety specialists

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

craftsman must have the knowledge of safety technology necessary to discharge the duties assigned to him.

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

Part Four: Joint Provisions

Section 8: Independence in the application of technical knowledge

(1) The occupational physicians and occupational safety specialists shall not be bound by instructions in the application of their knowledge of 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) The 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 establishment's manager.

(3) In cases where the occupational physicians or occupational safety specialists do not reach an agreement with the manager of an establishment concerning 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 1st sentence hereof. If the employer or the competent member of the organ entitled to represent the entity legally rejects the proposal, the persons submitting the proposal shall be informed in writing including 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 obligations.

(2) The occupational physicians and occupational safety specialists shall inform the works council of important matters concerning 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 concerning occupational safety and health matters and accident prevention.

(3) The occupational physicians and occupational safety specialists shall be appointed and dismissed with the approval of the works council. This also applies where their duties are extended or restricted; furthermore, section 87 and section 76 of the Betriebsverfassungsgesetz (Works Constitution Act) 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 the occupational physicians and the occupational safety specialists

The occupational physicians and occupational safety specialists shall cooperate in the discharge of their obligations. In particular, they shall jointly inspect the establishment. 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 Sozialgesetzbuch (Social Code).

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

Section 12: Instructions of the regulatory authority

(1) The competent authority may order, in individual cases, the measures to be taken by the employer to comply with his 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 for the performance of the order.

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

Section 13: Rights to know and to inspect

(1) The employer shall provide the information required for the performance of this Act to the competent authority if so requested by the authority. He may refuse to provide information if this information bears the risk for himself or one of his family members specified in section 383 (1) nos. 1 to 3 of Zivilprozessordnung (Federal Rules of Civil Procedure) of being prosecuted for a criminal or administrative offense.

(2) The officials from 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 for the public safety and order are to be prevented. The basic right of inviolability of the home (Article 13 of the Basic Law) is limited to this extent.

Section 14: Authority to adopt ordinances

(1) The Federal Minister of Labor and Social Affairs may adopt an ordinance with the approval of the Federal Council (Bundesrat) specifying the measures to be taken by the employer to comply with the obligations resulting from the present Act. To the extent that the statutory accident insurance funds have been authorized to specify more detailed definitions of the statutory obligations in the form of accident prevention regulations, the Federal Minister of Labor and Social Affairs shall not make use of his authority 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 Minister.

(2)

Section 15: Authority to adopt general administrative rules

The Federal Minister of Labor and Social Affairs may adopt general administrative rules with the approval of the Federal Council amending 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 entities, bodies 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 ordinance concerning suitability for working on seagoing vessels and the ordinance concerning medical care on merchant vessels include equivalent provisions for seagoing vessels, these provisions shall be applicable to the captains and crew members and all other persons working on board German seagoing vessels. Provided that the present Act is not applicable to seagoing vessels, the details shall be governed by an ordinance.

(3) To the extent that the mining law contains provisions equivalent to this Act, those provisions shall be applicable. In all other cases, the present Act shall be applicable.

Section 18: Exceptions

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

Section 19: External services

The 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 performance of his obligations under section 3 or section 6.

Section 20: Administrative offenses

(1) An administrative offense is committed by any person who, intentionally or negligently

1. violates 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 may be punished by a fine of up to twenty-five thousand Euros if the condition of subsection 1 no. 1 is met, or by a fine of up to five hundred Euros if the conditions of subsection 1 nos. 2 or 3 are met.

Section 21:

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Section 22: Berlin clause

According to section 13 (1) of the Drittes Überleitungsgesetz (Third Transitory Act) 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 Transitory 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)

Occupational Safety Act, 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:

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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 an institution of the industrial health service. Letters b) and d) shall be applicable.
- b) The employer may consider that the technical knowledge of the 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) The employer may consider that the technical knowledge of occupational safety specialists required under section 7 has been proven by qualified 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 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 requirement if they have worked in the field of occupational safety for at least two years prior to the commencement of this Act.
- d) The on-the-job experience of the 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 workers have to be attended to by an occupational physician 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 on-the-job experience determined on the basis of these minimum values shall be increased if the work-related 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 on-the-job experience of the 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 on-the-job experience determined on the basis of these minimum values shall be increased if the difficulty of the job 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. The necessary technical knowledge may furthermore 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 state of Berlin, insofar as the Basic Law has previously not been applicable, the guidelines of the Federal Ministry 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 ff) shall be applicable until corresponding provisions have been adopted by the state ministries responsible for the public sector.

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