

Obligation of Training the Employees on Occupational Health and Safety

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I. General

Training has a priority role in solving the problems on occupational health and safety¹. As a matter of fact, a major reason of industrial accidents or occupational diseases is lack of training given to the employees to reduce risks inherent to the jobs they perform besides unadequate consciousness on the importance of training.

As appropriately mentioned in the doctrine, constitution of consciousness on occupational health and safety is essential for the materialization of occupational health and safety². Achievement of the purpose of the precautions for occupational health and safety is dependent on the training of the employees³.

The same subject is specified in the reason of article 77 of the law. The reason states that taking the precautions for occupational health

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1 Süzek, "Concrete Solution Proposals on Occupational Health and Safety", Problems of Turkish Social Security Law and Solution Proposals, Meeting on Problems of Turkish Social Security Law and Solution Proposals arranged by Istanbul Bar Association and Galatasaray University, Istanbul 2001, 138.

2 Süzek, Labour Law, 673; Bayram, "Ruling Principles of Our New Occupational Health and Safety Legislation", 1119; Also see B. Ergin, "Turkey in Terms of Occupational Health and Safety", dedicated to A.Can TUNCAY, Istanbul 2005, 142.

3 Süzek, "Rights and Obligations of the Workers Occupational Health and Safety", Legal İHSGHD, 2005/6, 619;

and safety will not be adequate; the employer also has the obligation of training. As a sociological reality, some of the employees disregard the precautions and this is widely due to insufficient training and lack of consciousness on occupational health and safety. In accordance with this issue, Labour Law no 4857 has a significant emphasis on training and provides detailed rules⁴.

Article 77/paragraph II of the Labour Law regulates obligations of employer relating to occupational health and safety in a comprehensive manner. While Article 3 of the Regulations on Occupational Health and Safety rules that an employer is obliged to train its employees on health and safety measures which should be observed in performing their jobs and inform any employer who is assigned a new job about the risks associated with such new job, scope of the training obligation is even extended in Article 77 of the Labour Law no.4857 ruling that the employees should be informed about their legal rights and obligations in addition to the occupational risks they are exposed to and receive necessary training on occupational health and safety issues.

Principles and procedures of training are envisaged to be determined through a regulations to be promulgated by the Ministry of Labour and Social Security whereupon "the Regulations on Principles and Procedures for Training of Employees on Occupational Health and safety Issues" is promulgated upon publication of the same in the Official Gazette dated 7 April 2004 issue 25426. The employers are obliged to take necessary measures to establish a healthy and safe working environment at the workplace as per Article 4 of the Regulations above-mentioned. For this purpose, the employers are obliged to prepare training programs on occupational health and safety in order to make the employees aware of he occupational risks and measures to be taken for reducing such risks, inform the employees about their legal rights and obligations, make necessary arrangements to carry out the training sessions, ensure full attendance of employees to training programs and provide appropriate training tools and equipment.

II. The Effect of the Cancellation of Occupational Health and Safety Regulation on Training Obligation

Labour Law Article 77 paragraph II and "Regulations on the Methods of Occupational Health and Safety Training for Employees" are not the

⁴ See Ergin, "Turkey in Terms of Occupational Health and Safety", 142.

only arrangements on occupational health and safety training. Furthermore, some regulations arranging the special risks that are to be mentioned below, have a number clauses related with the training and information to be provided for the employees.

Occupational Health and Safety Regulation, which was cancelled, also includes provisions on training the employees. Article 12, titled "Training the Employees", states that the employer is obliged to provide an occupational health and safety training, which includes special instructions and information about the work, for each and every employee. The article also states that these trainings should be provided especially before starting to work and in case of a change in the workplace or the work, a change in the equipments and when new technologies are applied. The article defines that the trainings should be modified according to the changing risks and periodically repeated when necessary. These trainings should also be provided for the employees who come from other work places. This Regulation also includes important provisions about the trainings to be provided for the employees.

But the cancellation of the said Regulation has not removed the obligation of providing training for the employees. The obligation of providing occupational health and safety training for the employees has primarily been arranged by the Labour Law article 77 paragraph II. "Regulations on the Methods of Occupational Health and Safety Training for Employees" that was issued in accordance with this clause still has operative effect. Moreover, article 12 of the framework regulation exactly includes the provision in the Regulation which was cancelled.

III. The Scope of Training Obligation in terms of Location

Training obligation is binding for all businesses that are covered by the Labour Law. In this issue, number of the employees, risk group of the work or the work's being accepted as industry or not are not effective. The said elements shall be effective on the scope and the type of the training, not the training obligation.

IV. The Scope of Training Obligation in terms of People

The occupational health and safety training obligation of the employer priory relates to those who are bound to the employer with a service contract. Type of the service contract is of no consideration. Article 6 of

the Regulation on Occupational Health and Safety for Temporary and Fixed Period Works clearly states that the training obligation covers the employees who have contracted with the employer temporarily or for a fixed period of time. Also the final paragraph of Article 4 of the "Regulations on the Methods of Occupational Health and Safety Training for Employees" states that the employer is obliged to provide the necessary training regardless of the service contract type.

This obligation also applies to the apprentices and trainees working at the workplace as per Article 77/last paragraph of the Labour Law which rules that the provisions of bye-laws and Regulations on occupational health and safety should cover the apprentices and trainees employed at a workplace.

There is no obligation imposed upon the employers for giving direct training to the personnel of sub-employers. It is ruled in Article 4/paragraph II of the Regulations that the employer is responsible to give training to the personnel of a sub-employer jointly with that sub-employer only at the workplaces where a principal employer – sub-employer relationship exists. Differently from the employees who are contracted to the principal employer with a service contract for a fixed period of time, the principal employer is not obliged to provide training for the employees who are contracted to a sub-employer. The reason for this is that the principal employer does not have a right to give direct orders or instructions to the employees of the sub-employer. The principal employer is obliged to provide that the trainings according to the Regulation are provided by the sub-employer.

On the other hand, the expression that the principal employer shall also be responsible for the trainings of the sub-employer's employees does not have a legal maturity. This expression probably declares that the principal employer shall also be responsible along with the sub-employer in case that a liability for the sub-employer occurs due to insufficient training.

V. Obligation of the Employees to Participate in the Trainings

Training obligation is not an obligation that is binding only for the employer. As a matter of fact, constructing the consciousness on occupational health and safety is binding for both parties. In this regard, the Regulation states that the employees are obliged to participate in the trainings. According to article 5 of the Regulation, the employees are

obliged to participate in the trainings with the purpose of constructing a healthy and safe work place and to follow the instructions and procedures on this issue⁵.

Clearly emphasizing the obligation of the employees to participate in the trainings has been appropriate. These trainings are for the benefits of the employees at least as much as employers. Constitution of consciousness on occupational health and safety is dependent is on fulfilling of the obligations by the employees, as well as the employers. For this reason, as is due to the Regulation, obligation of participating in the trainings is a part of the employees' duty. In this regard, insisting on not participating in the trainings, constitutes a justified reason of annulment according to the Labour Law, article 25/II – clauses (h) and (ı).

On the other hand, although participating in the trainings, the employee may be considered unsuccessful according to the scaling and evaluation process carried out after the training. In this case, the employee shall go through the training again, the duty of the employee shall be changed or the service contract shall be annulled due to the specifications of the concrete case. Because the employee who has been unsuccessful with the training shall be considered as not having the necessary qualifications for the said duty. Definitely, this shall be valid for the case that the employee is unsuccessful without his/her fault. In case that the employee is unsuccessful due to his/her fault, a justified reason for annulment of the service contract shall occur.

VI. Appliance of the Training

1) Objective of the training

The objective of occupational health and safety trainings is priory constitution of consciousness on occupational health and safety, training the employees on potential occupational risks and the precautions to be taken. In article 8 of the Regulation, this objective has been defined as constructing a healthy and safe work place, reducing the occupational accidents and diseases, informing the employees on their legal rights and obligations, training them about the potential occupational risks and the necessary precautions to be taken and providing the consciousness on occupational health and safety and cause them to work appropriately.

⁵ See Ergin, "Turkey in Terms of Occupational Health and Safety", 142.

The training programs shall be determined according to this objective and trainings appropriate for achieving this objective shall be selected considering the nature of the work and the specifications of the employees to be trained.

2) Training Periods and Types

Occupational health and safety trainings are not ad-hoc. As a matter of fact, the Regulation states that these trainings shall be provided in various times and periods.

According to relevant provisions of the Regulations, trainings should be given before beginning to work of an employee or in case of a workplace or job change or changed working equipment or when a new technology is adapted taking into consideration that the employee may have inadequate or no knowledge of the work he/she is already or going to be assigned. In accordance with this necessity, three types of training have been specified.

New training sessions are organized in order to furnish the employees with new knowledge when they begin with their jobs and assist them in adapting themselves with newly introduced working conditions.

Additional training sessions are organized in order to supplement their knowledge on occupational health and safety issues and improve their professional qualities.

Advanced training sessions are organized in order to improve the abilities of the employees on occupational safety and professional skills and eliminate obsolete professional approaches.

Furthermore these trainings should be modified according to the changing risks and periodically repeated when necessary.

3) Training Topics and Determination of the Trainees

The training topics have been specified in article 11 of the Regulation. These topics are general rules of occupational health and safety, reasons of industrial accidents and occupational diseases, risks which may arise at a workplace, principles of protection against accidents, injuries or diseases and implementation of protection techniques, safe utilization of working equipment, legal rights and obligations of employees, informa-

tion on relevant legislation, establishing a safe working environment and related systems, use of personal protective equipment, working with screened equipment, warning signs, risks associated with chemical, physical and biological substances, cleanliness and orderliness, events of fire and fire-fighting techniques, thermal comfort conditions, ergonomics, electricity, associated risks, hazards and measures, first-aid and rescue.

Definitely, there is no obligation of providing the trainings stated above wholly to all of the employees at all work places. Priority, the trainings to be provided for the employees shall differ according to the activity area of the work place. Trainings that are not related with the activity area of the work place. For example, the training about the risks of the chemicals shall not be given in a work place where there are no chemicals. On the other hand, there is no obligation of providing a specific training for all of the employees at the same level even if the training is related with the activity area of the work place. As a matter of fact, article 12 of the Regulation states that; information, skills, attitudes and approaches that are necessary for the best performance of the duty should be displayed individually and in a scalable manner for each and every employee; individual level analysis should be performed and the necessary trainings should be determined. Also article 13 states that the trainings to be taken by the trainees should be carefully selected for an effective training period.

Training topics and the training level may vary according to the situation of the employee. For this reason article 7 paragraph 1 of the Regulation states that special importance shall be given to the trainings provided for women, young people, children, handicapped, ex convicts, victims of terrorism and migrant workers. Also employees with special duties related with health and safety shall be trained specially⁶. Special training probably refers to a training appropriate for the physical and mental situation of the employees or adequate for the duties carried out by the employees. Furthermore, the Regulation states that those who work in areas related with health and safety shall have special trainings.

On the other hand, regulations arranging special health and safety conditions also include provisions on the obligation of training and informing. Training and informing obligations included by these regulations also arrange the training topics.

Finally, the trainings are applied theoretically and practically. Also,

⁶ See Ergin, "Turkey in Terms of Occupational Health and Safety", 143.

trainings and any kind of information provided for the employees should be easily understandable.

4) Preparation of the Annual Training Program

The Regulation also states that an annual training program including the trainings to be given should be prepared. This program is a chart consisting of the trainings to be given for meeting the training requirements within the year. This chart consists of the information about the purpose, objective, time, aim and date of the trainings, name, surname and title of the trainers and number of trainees.

Preparing an annual training program is useful in terms of providing information about the trainings that have been given and the ones to be given. Besides; I believe that information about the identification of the trainers and the number of trainees are unnecessary details. The trainers, number of the trainees or even the training dates may change. On the other hand, the purpose and the objective of the training are not different from each other. In this regard, including the purpose and the objective is unnecessary.

5) Allowing the Expenses of Occupational Health and Safety Trainings

Article 6 of the Regulation states that the employer cannot accrue any additional financial obligation to the employees for the trainings provided within the said Regulation. In this regard, collecting the training expenses from the employee is not possible. Creating an indirect obligation, for example defining an obligatory service period, is also forbidden.

The same article also states that the time spent for the training shall be considered as working time, but I believe that this provision is not useful. Such trainings are for the benefits of the employees as well as the employers. Moreover, the training expenses are exclusively covered by the employer. In this regard, not considering the training time as working time would be more appropriate in terms of the balance of interests.

6) People and Organizations Qualified for Giving the Training

In training sessions on occupational health and safety can be employed an engineer or a technical staff in charge of occupational safety depending on their fields of specialty and the workplace physician as

well as entities, institutions or firms rendering or authorized to render such services, training centers, training foundation established by employer or employee entities, joint training centers and units established by employee or employer entities and individuals who have worked as Business Inspector on occupational health and safety issues depending on the type of training to be given.

In case of services received from specialized persons or entities, implementation of training given to the employees in a manner to cover the provisions of Article 4 of the Regulations shall be of the employer's responsibility. Outsourcing the training activity eliminates the responsibility of the employer which may arise due to incomplete or insufficient training.

7) Evaluation and Documentation

Efficiency of a training session is measured and evaluated at the completion in consequence of which it is decided whether additional training is needed or not.

The Regulations requires documentation of the training sessions. As per Article 17 of the Regulations, trainings given at a workplace should be documented and filed at the personnel files. Certificates issued upon completion of a training session should indicate the name, surname, and title of the attendant, subject matter and duration of training; name, surname, title and signature of the instructor(s) and date of training.

From this provision, we can understand that separate certificates should be arranged for each trainee and these should be kept in their record files. But, as proving the trainings is of importance, there is no reason not to accept the arrangement of a single certificate that will be kept in a separate file.