

COMPLIANCE AND ITS CONTRIBUTIONS TO SAFETY AT WORK

PAULA ANDREA RAMIREZ BARBOSA*

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ABSTRACT

Labour compliance is essential to protect workers' rights and promote sustainable, responsible and effective business development. It necessitates continuous preparation of preventive compliance reports on occupational risks, usually requiring studies and their timely updates, risk analysis, training-oriented resource management, and training of workers and managers. Greater self-regulation, such as compliance, can help mitigate risk of penal sanctions for individuals who fail to comply with risk prevention regulations, seriously endangering health and safety at work. A robust and effective compliance programme in this area aims to ensure legal and contractual obligations are met, particularly with respect to protecting the life and health of workers. Compliance can also bolster company success, minimise reputational damage for corporations, avoid payment of hefty fines and suspension of permits and licenses that would halt operations, among others.

Keywords: compliance, safety and health at work, responsibilities, company, employer, workers

1. INTRODUCTION

Preventing occupational accidents is important not only to protect the life and health of workers, but also to allow organisations with effective occupational health and safety systems to save money and achieve their development objectives. Work accidents and occupational diseases violate worker rights, negatively impact the corporate charter goals, and affect corporations' development. Each year sees

* PhD in Law from the University of Salamanca and master's degree in political studies from the University of Salamanca, Professor at the Universidad Católica and Externado de Colombia (Colombia), e-mail: paramirez@ucatolica.edu.co, ORCID: 0000-0001-9739-1236.



fatalities and injuries among workers due to occupational accidents and diseases, with over 2.78 million deaths and 374 million non-fatal injuries occurring in the workplace. These result in an average of four days of work absenteeism.¹ Cost impact the economic, social and personal lives of workers, particularly affecting their lives, health and integrity because of non-compliance with occupational health and safety regulations. The highest rate of related deaths in this area stems from occupational diseases rather than occupational accidents. Labour accidents produce an economic impact of approximately 3.94 percent of the global Gross Domestic Product annually.²

The violation of workers' rights thrives in a labour market which is marked by lack of preventive measures and characterised by precariousness, informality, and emerging risks, intensifying workplace dangers and occupational accidents. On the other hand, violence and harassment at work also affect worker health and safety, as well as organisations' productivity and reputation. Proof of this, in June 2019, at the ILO Centenary Conference, the Violence and Harassment Convention (No. 190) and its accompanying Recommendation (No. 206) were adopted, highlighting the prohibition and prevention of workplace violence and harassment due to their global consequences.³

In this context, occupational risks, technological advances, and evolving market demands have prompted a shift in productive relationship conditions. The facts demonstrate that observing measures aimed at promoting health and safety at work is increasingly recognised as a valuable asset for companies. The Covid-19 pandemic underscored the importance of prevention and control measures to protect those involved in labour relations from exposure to this biological risk, and the necessity to adopt measures preventing new infections.⁴

Exposure to the virus in the workplace and its impact on workers underscore the need to prioritise company health and safety management, based on risk assessment and the adoption of preventative and protective measures. These include implementing strict work protocols, sanitary measures, adequate and sufficient personal protective equipment, job design, work organisation, preventative training, and surveillance of the workers' health.⁵ Furthermore, worker participation and

¹ OIT, *Seguridad y salud en el trabajo frente a la pandemia*, 2020, available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/briefingnote/wcms_742469.pdf.

² Available at: <https://www.ilo.org/global/topics/safety-and-health-at-work/lang-es/index.htm>.

³ According to official data from the Spanish Ministry of Labour, "between January and April 2021, 176,624 work accidents with leave and 176,522 without leave were recorded. The sectors of economic activity with the highest accident rates are manufacturing industry and construction. Despite a decrease in productive activities and the rise of teleworking, the number of occupational accidents greatly exceeds the cases of the previous year. Accidents with sick leave increased by 16.9% and accidents without sick leave by 8.5%. However, those that resulted in the death of the worker were slightly reduced. There were 176 fatal accidents, eight fewer than in the same period in 2020. Most of the victims were between 45 and 59 years of age at the time of death." Available at: https://cronicaglobal.elespanol.com/vida/aumentan-accidentes-laborales-pesar-teletrabajo-nprs_511581_102.html.

⁴ OIT, *Seguridad y salud...*, op. cit.

⁵ *Ibidem*.

cooperation and/or that of their representatives in managing this risk, particularly through bipartite instances of social dialogue in companies or collective bargaining are some of the crucial aspects in this regard. In this scenario, the importance of compliance arises as an effective tool in preventing and delimiting corporate and individual criminal responsibilities.⁶

II. THE CRIMINAL PROTECTION OF SAFETY AND HEALTH AT WORK AND ITS PREVENTIVE RELEVANCE

Crimes related to workplace safety and health presuppose criminal law barriers protecting life and health of workers as an essential assumption of the right to decent and safe work.⁷ Protection in this area aims to avoid occupational risks by adopting necessary preventative measures in various productive activities.⁸ The legally obligated party is liable if he/she fails to provide workers with the safety measures necessary for them to carry out their work safely and with the least possible risk. Consequently, this safeguard is not limited to the rights of each individual worker, but rather covers the interests of a group of workers who carry out their productive work in a particular workplace.⁹

Taking into account the above, the lack of safeguards will include cases such as failure to provide appropriate sanitary and environmental conditions, lack of a general plan for the occupational hazards prevention, non-compliance with measures related to the toxic and polluting substances treatment, absence of effective actions against harassment, failure to provide biosecurity measures, lack of training, or failure to update safety measures, among others.¹⁰

For example, the norm provided for in Article 316 of the Spanish Penal Code penalises omissive conduct which consists of failing to provide necessary means for workers to carry out their activity with the safety and health measures required by labour regulations.¹¹ Those legally obliged within the framework of their functional powers, or assumed by an effective delegation, must provide specific

⁶ Ramírez Barbosa, P.A., Ferré Olivé, J.C., *Compliance, Derecho penal corporativo y buena gobernanza empresarial*, Bogotá, 2019.

⁷ Hortal Ibarra, J., *Protección penal de la seguridad en el trabajo*, Barcelona, 2004.

⁸ Ramírez Barbosa, P.A., *El delito contra la seguridad y salud en el trabajo. Análisis dogmático de los artículos 316 y 317 del Código Penal español*, Madrid, 2007.

⁹ The typical conduct of this crime, in its wilful modality, is described in Article 316 of the Criminal Code (Código Penal, CP), which penalises creating a danger or serious risk to the life, health, or physical integrity of workers by not providing them with the necessary means to ensure health and safety at work.

¹⁰ Article 317 CP punishes the typical conduct described in Article 316 CP when carried out with serious negligence, which implies a breach of the duty of care due to the lack of all provisions required of the guarantor of the safety and health of workers, but without awareness of danger.

¹¹ The measures consist of both material and immaterial ones. The latter include education, information, training and updating of the worker.

and appropriate safety measures for each job, suitable in risk control and in the development of workers' productive activities.¹²

The duty of persons bound by extra-criminal regulations or by the assumption of organisational duties through delegation must focus on facilitating the required measures to prevent damage and avoid dangers at work, even if their conduct does not entirely eliminate accidents or diseases at work.¹³ The extent of the unjust damage caused by an offence relating to specific danger is determined by verifying the breach of any specific obligations, as long as a risk to the safety and/or health of workers arises, even if ultimately no damage is produced.¹⁴

As this constitutes a blank criminal type, non-observance of occupational risk prevention regulations is required, mainly the Occupational Risk Prevention Law and other legal provisions, as a necessary assumption of breach of the obligation to protect health and safety at work. The consequent omission must entail a danger to the life or health of affected workers.

This implies that the omissive conduct of the person responsible for adopting safety measures generates a danger that could have been avoided or prevented, had they adequately provided the means at their disposal. Obligated parties are those in managerial or command functions within a corporation, whether superior, intermediate, or basic execution. They exercise such functions both by regulatory and factual obligations, and, therefore, must comply with and enforce regulations to ensure work is conducted under safe conditions.¹⁵

The aforementioned legal measure is addressed to those legally obliged in this area, including administrators or managers who fail to adopt the required measures. Article 318 CP provides that, if the typical conduct is attributed to a legal person, criminal responsibility falls not only on administrators but on any person responsible or aware of the facts, even temporarily.¹⁶

Therefore, as provided by Law 1/2015 of 30 March measures such as the suspension of activities, premises and establishments closure, the prohibition of future activities during which the crime was committed, facilitated, or concealed may be imposed. Similarly, the judicial authority may order disqualification from obtaining subsidies and public aid, contracting with the public sector, and enjoying tax or Social Security benefits and incentives, and may even order judicial intervention to safeguard the rights of workers or creditors.¹⁷

¹² Ramirez Barbosa, P.A., *El delito contra...*, op. cit., p. 153 et seq.

¹³ De Vicente Martínez, R., *Seguridad en el trabajo y Derecho penal*, Barcelona, 2001.

¹⁴ Ramirez Barbosa, P.A., *El delito contra...*, op. cit., p. 129 et seq.

¹⁵ Meini, I., *Responsabilidad penal del empresario por los hechos cometidos por sus subordinados*, Valencia, 2003.

¹⁶ TS 162/2019 of 26 March 2019, Criminal liability of legal persons, where it is highlighted that it is impossible in crimes against workers (Article 318 CP).

¹⁷ STS, Sala de lo Social 58, 19 January 2021, the criminal conviction of the company manager does not prevent the imposition of an administrative sanction on the legal person for violating the regulations on occupational risk prevention. The decision states that: "the principle »non bis in idem« has not been infringed, because the triple subjective, factual, and fundamental identity required for the application of said principle does not coincide between the criminal and administrative sanctions. Consequently, the criminal conviction of the company manager as the perpetrator of a crime against the workers' rights and another of injuries due to serious

III. DELIMITATION OF RESPONSIBILITIES IN SAFETY AND HEALTH AT WORK

The Spanish Law No. 31/1995 of 8 November 1995 on Occupational Risk Prevention stipulates that every employer is obliged to guarantee the safety and health of workers when they perform their tasks for that employer. To this end, every employer should prevent occupational risks by implementing measures necessary for this purpose.¹⁸

The omission in this crime can be intentional when the active party is aware of their obligation to prevent risks, by providing and making available necessary safety measures, yet deliberately decides not to carry it out, thereby seriously endangering the life or health of workers. The omission will be considered imprudent when the breach of obligations to provide security measures, did not account for the degree of danger its absence caused, nor did it condone it.¹⁹

The necessity for criminal intervention in this crime is justified considering data from the International Labor Organization, which highlights that “every 15 seconds, a worker dies from a work-related accident or disease” and, in that same interval of time, “every 15 seconds, 153 workers have a work-related accident”. Which means that every day 6,300 people die as a result of occupational accidents or work-related diseases. The impact on Human Rights is evident, and despite the existence of multiple regulations of various natures, this serious problems persists.²⁰

On a regulatory basis, crimes against workplace safety and health do not imply direct liability of the legal person, and their occurrence requires the existence of common rights and obligations to promote safe work with effective measures to prevent occupational hazards, in accordance with the constitutional norm of Article 40.2 of the Spanish Constitution, the laws on the prevention of occupational risks, and other implementing legislation.²¹

It is crucial to identify and verify the type of legal and factual activities assigned to the people within the business structure. The fundamental step is to determine competence against the duty to provide appropriate workplace safety

negligence, does not prevent the company from being imposed a sanction for the infringement of the regulations on occupational risk prevention”.

¹⁸ Law 31/95 of 8 November 1995 on Occupational Risk Prevention imposes a series of obligations on the employer and the worker to guarantee safety and health at work. Article 42 of the that Law provides that “failure to comply with their obligations in the prevention of occupational risk area by employers gives rise to administrative responsibilities, and so, where appropriate, to criminal and civil responsibilities for damages which can be derived from such non-fulfilment”.

¹⁹ Relevant regulations include the Royal Legislative Decree 5/2000 of 4 August 2000, which approves the revised text of the Law on Infractions and sanctions in the social order; Royal Legislative Decree 2/2015, of 23 October 2015, approving the consolidated text of the Workers’ Statute Law and Royal Legislative Decree 8/2015 of 30 October 2015 approving the text recast of the General Law of Social Security. Additionally, there are sector-specific regulations related to safety and health at work that are pertinent to its assurance.

²⁰ Ramírez Barbosa, P.A., *El delito contra...*, op. cit., p. 156 et seq.

²¹ Lascuraín Sánchez, J.A., ‘La prevención penal de los riesgos laborales: cinco preguntas’, in: Carbonell Mateu, J.C. (coord.), Dykinson, S.L. (ed.), *Estudios penales en homenaje al profesor Cobo del Rosal*, Madrid, 2006, pp. 568–573.

and health measures, and if the breach of said obligation was the causative factor in endangering workers' life and health. Within this protective scope, it is important to define the functions that may be performed by manufacturers, suppliers and importers, promoters, technical architects, or prevention delegates, among others, who are not directly charged with the duty to ensure the protection of the workers' rights, but who contribute to the maintenance of specific safety measures in the workplace, either by virtue of special powers mandated by the Law, or by specific acts resulting from business decentralisation.

Failure to provide safety instruments at work implies not providing workers with material means, which may coincide with a breach of the information, control, and training duties, related to prevention of situations endangering the legal rights of the worker. Nevertheless, it is pertinent to establish the scope of the 'medium', and the existence of a link between the failure to observe workplace safety instruments, and the danger to the workers' interests. This also requires determining the extent to which the omission of the particular safety measure contributes to the creation of the typical risk.²²

Non-compliance with occupational risk prevention policies, which endangers the life and health of workers, must be a result of an intentional or reckless failure to fulfil the company's safety duties, by those legally or factually responsible, who are assigned such duties. This includes the protective scope of criminal law. The commission of a crime can be tied to deficient business policies in occupational risk prevention, insufficient budget allocation for risk mitigation actions, deficiencies in delegation, transferring security obligations to the employer, the undue Updating of the provisions for detecting risks that lead to occupational accidents or business indifference.²³

The prevention and protection of occupational safety and health should be formulated from the design of the corporate project, highlighting the importance of an effective compliance programme in preventing workplace accidents. It is, therefore, necessary to implement good governance policies for anticipating risks that may affect workers. This requires carrying out an initial evaluation of inherent work-related risks and its periodic update as exogenous and endogenous circumstances of each productive sector change. In addition, the compliance elements can reinforce corporate objectives such as the adoption of information and training measures covering, inter alia, the actual extent of risks arising from work, and strategies to prevent, mitigate, and address them once they occur, considering the companies' peculiarities, their corporate purpose, number of employees and hazardous nature of the assigned tasks.²⁴

²² "Compliance and safety management begins with your senior management team. It's their voice and actions that make safety a priority. It's one of the key components of business development. Without a safe and healthy workforce, it's difficult to move forward. Productivity and the future often take a front seat. But don't put worker safety aside. If you want to see success all around, safety compliance management should certainly be a focus". Available at: <https://www.safetybydesigninc.com/safety-compliance-services-company-management/>.

²³ Ramírez Barbosa, P., Ferré Olivé, J.C., *Compliance, Derecho Penal Corporativo...*, op. cit., p. 50 et seq.

²⁴ Lascaraín Sánchez, J.A., 'La delegación como mecanismo de prevención y de generación de deberes penales', in: AA.VV., *Manual de Cumplimiento Penal en la Empresa*, Valencia, 2015, p. 172.

IV. THE SIGNIFICANCE OF COMPLIANCE IN WORKPLACE RISK PREVENTION

Introducing compliance programmes to prevent risks that may affect the safety and health of workers, starts with the commitment of senior business management and a recognition of the importance of compliance management in this area as a key factor for successful work. There are both legal and ethical obligations aimed at guaranteeing that productive activities are carried out safely and are timely updated in response to the endogenous and exogenous risks of each productive activity. Additionally, workplace safety can affect a company's reputation and be one of the deciding factors for customers to choose its products or services over those of its competitors. The priority is to foster a culture of occupational health and safety compliance that reinforces the protection of the essential rights of workers in all companies.

Compliance aimed at preventing occupational accidents involves more than just the absence of unforeseen risks. It signifies a substantial commitment to make occupational health and safety one of the focal points of every activity carried out. When a company prioritises safety compliance, its managers design key indicators and strategic objectives, which are then integrated into compliance programmes, thereby fostering good corporate governance.

Once there is a clear vision of what a safe work environment will entail, alongside measurable objectives to determine progress, the implementation of specific actions for the prevention, control, mitigation, and handling of occupational risks will be effective in the company's organisational culture. Conversely, the lack of such measures has a negative impact on the development and management of social objectives. Health and safety compliance directly affects the realisation of the corporate social purpose and productivity in the company. Good compliance measures can reduce overhead costs and foster a healthier organisational culture required for sustainable success.²⁵

An effective compliance program should: (a) Implement specific actions that ensure workers have an adequate system in their workplaces. (b) Possess information systems and real-time risks reporting in response to the individual needs of each company. (c) Consider the company characteristics, the endogenous and exogenous risks to the business activity, including the specific location, number of workers, capacity building and training systems. (d) Allocate financial resources and budget for health and safety compliance that must be adequate to achieve an authentic culture of risk prevention at work. (e) Maintain measures aimed at training, informing, and supporting all company members and related third parties in health and safety matters as a strategic priority. (f) Conduct assertive and regular communication with workers regarding business changes, risk updates, regulatory and contractual developments relevant to the prevention and assurance of workplace safety and health, among others.

²⁵ Ramírez Barbosa, P.A., Olivé Ferré, J.C., *Compliance, Derecho Penal Corporativo...*, op. cit., p. 160 et seq.

In this area, it is advisable to conduct continuous audits that can either be internally led or carried out by an external security consultant. Compliance measures regarding safety should aim to avoid complex reporting systems, inadequate training, and workload overflows that, despite the intention of observation, imply inefficiency in their implementation. This implies that workers have sufficient time to fulfil any reporting requirements, or that the security team is adequate, hence the level of compliance and willingness to comply must then be articulated. This leadership is only possible if top management considers health and safety compliance a priority in their activities.

Compliance procedures are integrated with continuous monitoring, directed towards risk assessment, measures adopted, and their progress. The evaluation and supervision can stimulate implementation of additional measures, if required, and the consolidation of an organisational culture of compliance with workplace safety and health. The above should be complemented by periodic reviews and evaluations of changes and business policies for risk management and productivity levels, allow the implementation of any additional measures if needed.²⁶

An effective and business development-oriented compliance programme in the field of occupational health and safety must include in its structure a Code of Ethics that includes specific actions against workplace and sexual harassment, and other elements aimed at promoting ergonomics at work. Occupational risk prevention models and internal complaint channels will yield positive results for the company, but more importantly, a tangible protection of the fundamental legal rights of workers as subjects of special protection.²⁷

V. CONCLUSIONS

Compliance in the area of occupational health and safety encompasses a wide array of laws, regulations, and standards aimed at preventing occupational accidents, imposing duties on various public and private market players. These actions entail measures to prevent dangerous situations for workers' fundamental rights due to non-compliance with provisions on safety measures, and to avoid occupational deaths and diseases.

²⁶ The crime against safety and health at work involves determining within the company who is assigned the duties in Occupational Risk Prevention. These individuals can be integrated into the business compliance system and be subject to supervision. The Compliance Officer role does not eliminate the responsibility of the person legally obliged to provide the workplace safety and health measures, and the occupational risk prevention delegate. In particular, the prevention technician is responsible for prevention in terms of occupational risk prevention; the prevention delegate represents workers with specific functions in the field of occupational risk prevention; and the compliance officer supervises regulatory compliance in all areas of the company, including observance of the Law 31/1995 on Occupational Risk Prevention and the regulations that develop its provisions.

²⁷ Ramírez Barbosa, P.A., Olivé Ferré, J.C., *Compliance, Derecho Penal Corporativo...*, op. cit., p. 160 et seq.

Labour compliance is essential to protect workers' rights and promote sustainable, responsible and effective business development. It necessitates continuous preparation of preventive compliance reports on occupational risks, usually requiring studies and their timely updates, risk analysis, training-oriented resource management, and training of workers and managers.

Greater self-regulation, such as compliance, can help mitigate risk of penal sanctions for individuals who fail to comply with risk prevention regulations, seriously endangering health and safety at work. It is necessary to develop Transparency and Business Ethics Programmes and similar instruments with a preventive focus as effective mechanisms preventing crimes against workers' rights, despite the lack of legal person responsibility in this sector in countries like Spain.

A robust and effective compliance programme in this area aims to ensure legal and contractual obligations are met, particularly with respect to protecting the life and health of workers.

Compliance can also bolster company success, minimise reputational damage for corporations, and avoid payment of hefty fines and suspension of permits and licenses that would halt operations, among others. It is essential to fortify compliance actions in defence of the life and health of workers by detecting, prosecuting, and effectively penalising individuals responsible for failing to provide the necessary security means to prevent workplace accidents, whether due to fraud or recklessness. When criminal and/or administrative responsibilities have been established, there must be appropriate, practical, and effective sanctions to deter others from causing similar harm.

Additionally, building a labour compliance programme in risk prevention serves as a helpful instrument in preventing crime and serious administrative offences in this area, alongside effective internal accounting controls and adequate risk management, followed by policies and updated procedures tailored to the corporation. These should be backed by the supervision of those responsible for protecting workers' legal assets.

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