

GUIDELINES FOR THE INSPECTION ACTIONS ON PSYCHOSOCIAL RISKS IN SPAIN

1. CONCEPT OF PSYCHOSOCIAL RISKS, PSYCHOSOCIAL RISKS FACTORS AND ILL-HEALTH RELATED TO THEM

Pursuant to the concept used by the European Agency of Safety and Health at Work the psychosocial risks are understood to be “those aspects of the design, organization and management of work, and its social and environmental context, which can cause psychological, social or physical harm”

There is a general consensus at European level to consider that these risks are work-related stress and violence at work, both inside the organisation or carried out by third parties. We also add the fatigue of workers derived from the organization of working time, mainly on the regime of night and work shifts, because the most of risks assessment methods include it within this matter.

The best known psychosocial risk is work-related stress which is related to the relationship between work and person. Health problems arise when work demands are not adapted to the needs, expectations or abilities of the worker. The main reference in this regard is the "European Framework Agreement on Work-related Stress" (2004).

The violence at work has its reference in the European Framework Agreement on Harassment and Violence at Work (2007) and in the Multi-sectoral Guidelines to tackle Third-party Violence and Harassment related to Work (2010). Harassment and violence in the workplace are also potential stress factors but they frequently involve abuse or unlawful behaviour towards other people which could violate their labour rights.

The fatigue resulting from the organisation of working time is as aspect regulated by the Spanish Labour Law according to the Directive 2003/88/EC.

These psychosocial risks are usually present in an interrelated manner. Stress is a factor of violence and vice versa, while fatigue is often accompanied by stress, especially when it results from an excessive workload, monotonous or repetitive work and lack of sleep.

Psychosocial risk factors are those aspects of work organisation and social environment that can cause psychosocial risks previously described. Identifying these factors is the aim of the psychosocial risk assessment.

Psychosocial risks have implications on the company organisation (absenteeism, resignations, low productivity, etc.) and on the worker (ill-health and wellbeing).

We should take into account the interactions between psychosocial risks and the safety and ergonomic conditions. The first interactions are showed in unsafe behaviours. Most studies indicate that problems in the organization of work are the most common indirect cause of work-related accidents (caused by failures or errors due to fatigue or stress situations, inadequate communications, production targets difficult or impossible to achieve, inadequate distribution of tasks to

unqualified persons, etc.). On the other hand, it could have a frequent connection between work-related stress and musculoskeletal disorders.

2. ENFORCEMENT OF LEGAL PROVISIONS ON PSYCHOSOCIAL RISKS

2.1. THE ENFORCEMENT OF OCCUPATIONAL HEALTH AND SAFETY LAW

Most of European countries do not have specific legislation on psychosocial risks but it does exist a common understanding of implicit inclusion of these risks in the general provisions of the Framework Directive 89/391/EEC and the rules which transpose it, in our case the Law 31/1995 of 10 November for the Prevention of Occupational Risks (Ley de Prevención de Riesgos Laborales - LPRL).

In this Law we can find some references to these hazards when it is laid down that the organization and management can affect the magnitude of the risks the workers are exposed (Art. 4.7.d), the duty to adapt the job to the person (Art. 15.1.d) and the need to execute prevention actions seeking a coherent plan which integrates technology, work organization, working conditions, social relations and the influence of environmental factors at work (Art 15.1.g).

The general provisions on risks management (risks assessment, prevention plan, assignment of workers to compatible jobs and investigating the causes of ill-health at work) are directly binding for the employers without any specific regulation and the Labour Inspectorate can enforce them.

In addition to these statutory requirements, the content of the Framework Agreements signed by the European partners may be taken into account to guide the interpretation and application of the general provisions of the Law according to the Spanish courts judgments.

The "European Agreement on Work-related Stress" states that "under Framework Directive 89/391, all employers have a legal obligation to protect the occupational safety and health of workers. This duty also applies to problems of work-related stress in so far as they entail a risk to health and safety. All workers have a general duty to comply with protective measures determined by the employer" and "if a problem of work-related stress is identified, action must be taken to prevent, eliminate or reduce it. The responsibility for determining the appropriate measures rests with the employer. These measures will be carried out with the participation and collaboration of workers and/or their representatives"

2.2. THE ENFORCEMENT OF LABOUR LAW ON PSYCHOSOCIAL RISKS

With regard to violence and harassment at work Labour Law provisions could also be applicable, specifically the right to dignity at work and the

legal regulation on equal treatment and non-discrimination. In the same manner working time regulations could also be affected.

Labour Inspectors can also enforce these regulations in a complementary way to the occupational health and safety legislation. However, labour violations are usually related to conduct already done and for that reason its implementation normally takes place in reactive inspection actions.

3. INSPECTION GUIDELINES FOR THE CAMPAIGN

Inspection proactive actions during the European campaign are divided into two steps.

The first involves the check by the inspector of the preventive activities undertaken by the company in psychosocial risks matters. Their result is used to be an improvement notice to the company in order to carry out a psychosocial risks assessment or to complete it.

The second step consists in the analysis of the risk assessment carried out by the company and the design and adoption of measures derived from it.

3.1. FIRST STEP: VERIFICATION OF PSYCHOSOCIAL RISK MANAGEMENT MADE BY THE COMPANY

In this step, Inspectors should visit the company, hold interviews with the employer and the employees and/or their representatives, gather relevant information on incidents and possible indicators of psychosocial risks and directly observe the working conditions in the company. Some guidelines have been designed in order to carry out those interviews.

The aim of this first step is to guide the company and workers about the true significance of psychosocial risks. Data and information obtained during this visit serve to reinforce the inspection actions, especially in case of infringement or when the employer denies the existence of psychosocial risks in the workplace. This approach also serves to make a proper contrast and balance of the final results of the psychosocial risks assessment.

3.2. SECOND STEP: ANALYSIS OF PSYCHOSOCIAL RISK ASSESSMENT

Once the psychosocial risks assessment has been done, Inspectors should visit the workplace for analysing it. These are the aspects to be considered:

A) Preparation and development of evaluation process

To undertake the study of psychosocial risks the expert of the Prevention Service has had to collect background information about the organization and workers in order to determine the assessment method and the analysis units by different sections or workers' groups of the company previous consultation with workers' representatives.

As a rule, unless the company has a very simple structure it is not acceptable to carry the psychosocial risks assessment for all the

workplace as a whole without making any distinction between groups, sections or categories.

B) The method chosen for making the risks assessment

Pursuant to the Spanish Regulations the chosen method for the assessment should provide confidence about the outcomes and to meet psychometric requirements of validation.

The application of qualitative techniques (usually linked to individual interviews or discussion groups) is often helpful in the initial phases of the study (collection of prior information) and also in later phases of the assessment to clarify and identify the risks factors. It should be borne in mind that their application requires specific professional training.

It is relevant in this respect, to stress some common errors such as the choice of a questionnaire or scale which is not aimed at detecting risks, e.g. climate or satisfaction scales. These techniques could be used as additional tool of information but they are not equivalent to risk assessment.

To evaluate these data, we must consider whether the collection of data from these surveys has been saved the confidentiality of personal data and the persons who have managed the process.

The choice of the method and other preparatory activities must be subjected to consultation with workers or their representatives according to the Law on Occupational Prevention Hazards.

C) Analysis of the evaluation process

The evaluation should cover the entire company without exceptions. It is essential the participation of workers to collect the information on risks factors. This data collection should not be unexpected, it is essential to have planned in advance the practical aspects. It should be performed by the prevention service and not by the company in order to protect personal data. The general rule should be the direct participation of all workers who wish. The techniques of sampling should be an exception.

The assessment is complete when we have obtained sufficient and accurate information on psychosocial risk factors. If the quantitative analysis (using questionnaires) does not provide all the necessary information the expert shall use qualitative methods such as interviews and focus groups to find out more rigorously the content of psychosocial risk factors to which workers are exposed.

The analysis of data should allow finding the cause of the problems. To determine these causes should be borne in mind that a particular problem can have various reasons and that we must try to identify the "real" causes and not just the "apparent" ones. Data processing and interpretation of their results must be performed by an expert that has the required skills.

D) Determination of measures

All risks identified must be accompanied by preventive measures and the proposals for improvement should be specific to each of the risks identified.

Measures can be preventive and organizational measures (primary) whose implementation is preferred according to the Law, the intervention measures or coping (secondary), addressed to workers (training, procedures or protocols, etc.) and protection measures on rehabilitation (tertiary), recovery-oriented workers who have suffered ill-health and it is necessary to ensure compatibility with their job (Art. 25.1 LPRL).

Vary levels of performance are needed and measures adopted should seek to integrate prevention in the ordinary management of the company according to the Law.

The safety representatives should have access to information on risk assessment and must be consulted on the measures that can be taken as a result of the assessment.

E) Planning and implementation of measures

It should be noted that psychosocial intervention cannot always be implemented immediately and to carry out some actions need adequate time and sufficient resources.

F) Control of effectiveness

The psychosocial risks assessment should foresee periodic controls and inspections.

4. REACTIVE INSPECTIONS

Reactive actions are due to complaints, request for mediation or arbitration or investigation of a work-related accident.

These performances over should be geared towards resolving the specific problem and not to the monitoring of preventive management in general.

4.1. INVESTIGATION OF THE FACTS

The Inspector must investigate the facts according to the Inspeccion Guidelines on Violence and Harassment at Work and Risk of Assault in workplaces (Technical Criteria 69/2009 and 87/2011).

4.2. REQUIREMENT OF INTERVENTION MEASURES

a) The investigation of ill-health

According to the Law, when the employer knows that worker concerned has suffered ill-health due to work condition the company is obliged to carry out an investigation of its causes.

This research has a prevention aim and therefore it has to be done with the participation of the prevention service and the measures to prevent recurrence should be identified and implemented.

b) The use of procedures of intervention

The tool most commonly used intervention regarding psychosocial risks of violence at work is the use of procedures for managing the problems of harassment.

The Equal Treatment Act lies down that "companies should promote working conditions that prevent sexual harassment and harassment based on sex and to devise specific procedures for prevention and to channel complaints or claims.

c) **Examination of compatibility with the job**

The measures called tertiary or rehabilitation of people affected by psychosocial risks are no different from those of other occupational hazards.

d) **Other instruments**

In addition to these instruments the company can make use of other it deems appropriate and adequate to handle each situation