

**ACT 31 of 8th November 1995
ON PREVENTION OF
OCCUPATIONAL RISKS,**

published 10th November 1995 coming into force February 1996

Act on prevention of occupational risks and subsequent amendment

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MINISTERIO
DE TRABAJO
E INMIGRACIÓN



INSTITUTO NACIONAL
DE SEGURIDAD E HIGIENE
EN EL TRABAJO

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BACKGROUND CONSIDERATIONS

1

Article 40.2 of the Spanish Constitution entrusts to the public powers, as one of the driven principles in the economic and social policy making, the responsibility for safeguard health and safety at work.

This constitutional mandate implies the need to develop a policy for the protection of health of workers by means of risks prevention derived from work, being this Act its fundamental pillar. This Act can be considered as the general legal framework to which the various preventive measures shall accommodate, in coherence with the decisions of the European Union which has expressed its ambition for improving gradually conditions at work through a progressive harmonisation of those conditions throughout the European countries.

The presence of Spain in the European Union is the starting point of the need for the harmonisation of our policy with the recent community policy on this matter, concerned each time more, with the study and treatment of the risks prevention derived from work. A good evidence of it was the amendment of the Constitutive Treaty of the European Economic Community with the arrival of the so-called Single Act, which in accordance with its article 118(A) the Member States are encouraging, from the date of its entry into effect, the improvement in the working environment in order to achieve the objective above mentioned of harmonisation in the progress in the conditions of safety and health of workers. This objective has been seen reinforced in the European Union Treaty through the procedure established in the same to adopt, through Directives, a minimum of provisions which shall be applied progressively.

A consequence of all this has been the establishment of an European compilation of legal resources for the protection of health of workers at the work place. The most significant is, without doubt, the Council Directive 89/391/CEE, on the introduction of measures to encourage improvements in the safety and health of workers at work, which contains the general legal framework in which the Community policy on prevention operates. This Act transposes into the Spanish legislation the mentioned Directive and at the same time incorporates in what shall be our basic legal body on this subject, provisions of other directives whose contents demand or advise the transposition into a provision of legal rank, such as the Directives 92/85/EEC, 94/33/EEC and 91/383/EEC, relating to the protection of maternity, the protection of young persons and the treatment of relations of temporary workers, under a fixed term contract of employment and in enterprises of temporary employment.

Therefore, the constitutional mandate enshrined in article 40.2 of our act of acts and the legal community established by the European Union in this field lay the foundation on which this Act rests. Together with that, our own commitments with the International Labour Organisation from the ratification of Convention 155 on safety and health of workers and working environment enrich the contents of the legal text on incorporating their provisions and giving them adequate legal rank within our legal system.

2

But it is not only from the constitutional mandate and the international commitments of the Spanish State from where the demand for a new legal approach arises out. But also, in the domestic order, arises from a double need: first to correct the lack of a single vision of the policy for the prevention of occupational risks, a characteristic of the dispersion of the current legislation, as a result of accumulation for years of rules and regulations of very different ranks and guidance, many of them prior to the very Spanish Constitution and secondly, the updating of the regulations already phased out and the regulation of new situations no considered before. Although these situations are always of importance, they acquire special relevance when they relate to the protection of safety and health of workers at the work place, whose changes demand a permanent updating and adaptation of legislation to new situations.

3

For all of this, this Act has the goal to determine the precise basic body of guarantees and responsibilities to establish an appropriate level of protection of health of workers against the risks arisen out of the working

conditions, and all this within the framework of a coherent, co-ordinate and efficient policy for the prevention of occupational risks.

From the recognition of the workers' rights at the workplace to the protection of their health and integrity, this Act establishes the various duties which, in the mentioned area, shall guarantee those rights, as well as the Public Administrations actions that shall help in attaining that object.

On inserting this Act within the specific scope of labour relations, it is considered as a minimum legal reference in a double sense: first, as an Act which lays down the legal framework of reference from which other regulations shall determine and express in concrete terms the most technical aspects of the preventive measures; and, secondly, as a basic support which should be taken as an starting point from which the collective bargaining shall develop its specific functions. IN this sense, the Act and its regulations constitute labour law in accordance with Article 149.1.7 of the Spanish Constitution.

But, at the same time -and in that lies one of the main novelties of the Act-, this Act shall be applied also to the scope of Public Administrations, this is the reason why this Act, not only has the condition of labour legislation, but it constitutes, in its fundamental aspects, a basic rule of the statutory system of the public employees, pursuant to Article 149.1.18th of the Spanish Constitution. By this, it is confirmed also the universal character of the Act dealing, in a coherent and global manner, with the problems derived from work related risks in whatever field the work is done.

Consequently, the scope of application of this Act shall apply to all workers bonded by a labour relation in strict sense as well as the civil servants with a relation of administrative or statutory character with the Public Administrations, the workers of cooperatives with the only exceptions, in the area of public service activities, certain activities of the armed forces, the police, customs control, forensic work and civil protection services which characteristics that might conflict with the Act, however, it shall inspire, specific regulations to safeguard the safety and health of workers in those activities; in a similar sense, it foresees its adaptation to the specific characteristics of military and prisons centres or establishments.

4

The policy on prevention of occupational risks, as a set of activities of public powers aiming at the promotion of the improvement of terms and conditions at work in order to raise the level of protection of health and safety of workers, is laid down in the Act on the base of the principles of efficiency, coordination and participation, and arranging, not only the activities of the various public Administrations with competence in prevention matter but also the necessary participation in those activities of employers and employees, through their representative organisations. For this purpose, the National Commission of Health and Safety at Work that is created is schemed as a privileged instrument in the arrangement and development of preventive policy.

But, as the main object of this Act is the prevention. its contents cannot rest exclusively on the order of duties and responsibilities of the parties directly involved with the labour matter. The purpose to encourage an authentic preventive culture through the improvement of education in this matter in all levels of education, involves the society as a whole and that is one of the basic objectives and perhaps, one with the most transcendental effect for the future of the proposed by this Act.

5

The protection of workers against the occupational risks requires from enterprises an attitude which surpasses the mere formal implementation of a predetermined set -more or less broad- of employers' duties and responsibilities, and, even more, the simple correction a posteriori of situations of risk already declared. The planning of prevention from the very moment of the design of an enterprise project, the initial assessment of inherent risks at work and their periodical updating in accordance with the change of circumstances, the order of a coherent and global whole of preventive measures appropriate to the nature of detected risk and the control of the efficiency of the said measures constitute the basic elements of the new approach to the prevention of occupational risks which this Act proposes. And, with all this, obviously, the information and training of workers aimed to a better knowledge of the actual scope of risks derived from work and the way to prevent and avoid

them adapted to the specific circumstances of each workplace, the characteristics of the people that work in it and the specific activity they do.

Chapter III of this Act: taking into account these principles, it regulates the rights and obligations derived from or in connection with the basic right of workers to their protection, as well as, in a more specific way, to operate in emergencies or in case of a serious and imminent risk, the guarantees and rights in connection with the surveillance of the workers' health and with special attention to the protection of confidentiality and with regard to their privacy in the management of those activities, and the particular measures must be taken in relation to specific categories of workers, such as the youngsters, pregnant women or those who have given birth recently and temporary workers.

Among the employers' responsibilities contained in this Act, besides those which imply the guarantee of recognised rights to the worker, it can be emphasised the duty of co-ordination which is imposed upon employers who carry out their activities in the same workplace and on those who contract or sub-contract with others the carrying out of work or services in their own workplaces, the duty of surveillance of the implementation of prevention provisions of those contractors or sub-contractors.

The fundamental instrument of the preventive action imposed upon the employers is the responsibility laid down by chapter IV for the arrangement of the said preventive action through one or several workers of the enterprise specifically designed for the purpose, through the establishment of a prevention service or the outsourcing of an external prevention service. In this way, the Act combines the need of an orderly and formalised arrangement of preventive activities with the recognition of a diversity of situations to which the Act targets as the magnitude, complexity and intensity of the inherent risk of the said situations, providing a sufficient set of possibilities, including the possible participation of the Mutual insurance companies for accidents at work and Occupational Diseases, in order to organise in a rational and flexible way the development of the preventive actions, guaranteeing in all case not only the efficiency of the model of management chosen, but the independence and protection of workers who, either members or not of a preventive service, have been assigned to the said task.

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Chapter V establishes, in a detailed form, the consultation and participation rights of workers in questions relating to safety and health at work. With the starting point of the system of collective representation in force in our country, the Act confers to the called Prevention Representatives-chosen by and among representatives of personnel within the scope of the respective bodies of representation- the task of dealing with the specialised functions in matter of prevention of occupational risks and for that purposes it confers to them the necessary competence, powers and guarantees. Together with that, we have the Safety and Health Committee, which carries the experience of an established and traditional figure in our labour legal system and it is conceived as the encounter body between the cited representatives and the employer for the development of a balanced participation in the risks prevention matters.

All this without prejudice to the possibilities which the Act confers to collective bargaining of agreeing on a different way of articulating the instruments of participation of workers, even from the establishment of scopes different from the ones of the workplace, gathering with that different positive experiences of regulations whose validity, fully compatible with the object of this Act, are safeguarded by its transitional provisions.

7

After setting up Chapter VI the basic obligations which affect manufactures, importers and providers of machinery, equipment, products and tools, linked to the community legislation for the domestic market to ensure the exclusive commercialisation of those products and equipments which offer the highest levels of safety for the users, this Act in its Chapter VII lays down the regulation of responsibilities and sanctions which must ensure its implementation, including the breach of provisions and sanctions procedure.

Finally, the fifth additional provision commands the creation of a foundation, under the surveillance of the Ministry of Labour and Social Security, in which shall participate the Public Administration and the representative organisations of employers and employees, whose main aim shall be the promotion, specially in

the small and medium size enterprises, of activities intended for the improvement of the conditions of safety and health at work. The foundation, in order to be able to carry out the development of its activities, shall be provided, by the Ministry of Labour, with resources from the excess of exceeding amount from the Mutual insurance companies for accidents at work and occupational diseases.

With this, and without doubt, the objectives of responsibility, co-operation and participation which the Act inspires as a whole shall be reinforced.

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The draft Act, in accordance with the legal procedure on the matter, has been submitted to the consideration of the Economic and Social Council, the General Council of the Judicial Power and the State Council.

CHAPTER I Object, scope and definitions

Article 1.-Legislation for the prevention of occupational risks

The legislation for the prevention of occupational risk is laid down by this Act, its provisions of development or complementary ones and any other rules and regulations, either legal or conventional, which contain orders relating to the adoption of preventive measures at the work place or susceptible of producing them for that purpose.

Article 2.-Object and character of the Act

1.-The object of this Act is the promotion of safety and health of workers through the application of measures and development of the necessary activities for the prevention of occupational risks.

To that end, this Act establishes the general principles concerning the prevention of occupational risks to ensure the protection of safety and health, the elimination or reduction of risks arisen out of work, the information, the consultation, the balanced participation and training of workers in prevention, in accordance with the terms of this provision.

For the implementation of the said principles, this Act shall be applied to the activities of Public Administrations as well as the activities of employers, workers and their respective representative organisations.

2.-The provisions of labour character contained in this Act and its regulations shall be in all case considered as the minimum compulsory essential requirements, being subject to improvement and development by collective agreements.

Article 3.-Scope

1.- This Act and its regulations shall apply to labour relations as governed by the consolidated Act of Workers' Statutes (Ley del Estatuto de los Trabajadores), as well as to public administration staff relations of an administrative or statutory nature, bearing in mind the particular characteristics which, in this case, are laid down in this Act or in its implementing rules. This is without prejudice to compliance with the specific obligations established for manufacturers, importers and suppliers, and the rights and obligations that may arise for self-employed workers. They shall also apply to co-operatives, formed in accordance with the applicable legislation, in which there are members who contribute with personal work, with the special features derived from their specific regulations.

Where reference is made to workers and employers in this Act, they shall also be understood to include, respectively, on the one hand, staff under an administrative or statutory relationship and the civil service departments for which they work, under the terms of the Third Additional Provision of this Act, and, on the other hand, the co-operative partners referred to in the previous paragraph and the cooperatives to which they provide services.

2.- This Act shall not be applicable where characteristics peculiar to certain specific public service activities conflict with it:

- The police, security and customs and excise control.
- Civil Protection Services and forensic work in cases of serious risk, catastrophe and public disaster
- The Armed Forces and the military activities of the Civil Guard.

Nevertheless, this Act shall inspire the specific legislation to regulate the protection of the health and safety of workers who carry out the above mentioned activities.

3.- This Act shall be applied to military centres and institutions, with the peculiarities of its specific legislation.

In the penitentiary institutions, those activities whose characteristics justify a special regulation shall be adapted to this Act, which will be carried-out in accordance with the terms prescribed in the Act 7/1990, of July 19th on collective bargaining and participation in the determination of conditions at work of public workers.

4.- This Act shall not be applied to the special labour relations of the domestic staff of private household. However, the householder is obliged to take care that the job of his workers is carried out under adequate conditions of safety and hygiene.

Article 4.-Definitions

For the purposes of this Act and its regulations the following terms shall have the following meanings:

1.-"Prevention": the set of activities or measures taken or planned at all stages of the activity in the enterprise in order to prevent or reduce occupational risks.

2.-"Occupational risks": the possibility that a worker suffers a determined damage derived from work. In order to assess a risk from the point of view of its seriousness it shall be taken into consideration jointly the probability that the damage may occur and its severity.

3.- "Damage derived from work": any disease, condition or injury arisen out of or in connection with the work.

4.-"Serious and imminent occupational risk": all risk which may probably within reason materialise in an immediate future and may suppose a serious risk to the health of workers.

In the case of exposure to agents capable of causing serious damage to the health of workers, it shall be considered that a serious and imminent risk exists where it is likely reasonably that an exposure to the said agents will be materialised in an immediate future which may cause serious damage to health, even when those damages do not become apparent immediately.

5.-They shall be considered as "potentially dangerous" the processes, activities, operations, equipments or products which, in the absence of specific preventive measures, are the source of risks to safety and health of workers who use or deal with them.

6.-It shall be considered as "working equipment" any machinery, apparatus, instrument or utilities used at work.

7.- It shall be considered as "working condition" any of its characteristics which may have a significant influence

in the origin of risks to the safety and health of worker. The following are specifically included in this definition:

- a) The general characteristics of premises, utilities equipments, products and any other existing tool at the workplace.
- b) The nature of physical, chemical and biological agents present in the working environment and their corresponding intensities, concentrations or level of presence.
- c) The using procedures of the mentioned agents which affects the generation of the said risks.
- d) Any other characteristic of work, including the ones relating to its organisation and arrangement which influence the magnitude of risks to which workers are exposed.

8.-It shall be understood as "personal protective equipment" any equipment intended to be carried or held by a worker as protection against one or several risks which may threaten his/her safety or health at work, and so any complement or accessory intended for such purpose.

CHAPTER II Policy for the risks prevention in order to protect the safety and health at work

Article 5.- Object of this Policy.

1. The object of the preventive policy shall be the promotion of improvement in the working conditions in order to raise the level of protection of safety and health of workers at work.

This policy shall be implemented by regulations and the corresponding administrative actions, in particular, the provisions of this chapter, which shall be oriented towards the co-ordination of the various public Administrations competent in prevention and harmonisation of the work which, in accordance with this Act, belongs to the public and private subjects, for this purpose:

- a) The General Administration of the State, the Administration of the Autonomous Communities and bodies which integrate the local Administration shall provide each other co-operation and assistance for the efficient performance of their respective competencies within the scope laid down in this article.
- b) The design of the preventive policy shall be carried out with the participation of employers and workers through their most representative organisations of employers and trade unions.

2.-For the purposes of the previous paragraph public Administrations shall promote the improvement of preventive education in the various levels of teaching and specially in the national system of vocational training and shall adapt the training of the necessary human resources for the prevention of occupational risks.

A permanent collaboration between the Ministry of Labour and Social Security and other relating ministries, in particular the Education and Science and Health and Consumer Affairs shall be established in the scope of the General Administration of State with the object of setting up the training levels and suitable specialisation and a constant review of the teaching of these subjects with the purpose of adapting them to the existing needs in each moment.

3.- In the same way, Public Administrations shall encourage those activities developed by the subjects referred to in paragraph (1) article 2, with regard to the improvement in the safety and health conditions at work and reduction of occupational risks, the research or promotion of new forms of protection and development of efficient structures of prevention.

To that end they shall be able to adopt specific programmes aiming to the improvement of working environment

and arisen of levels of protection. Those programmes shall be materialised through the concession of the incentives laid down by regulations and which shall be intended specially for the small and medium size enterprises.

4.- Public administrations shall promote the effectiveness of the principle of equality between men and women, taking into account sex-related variables in both data collection and processing systems and in the general study and research on the prevention of occupational risks, with the aim of identifying and preventing potential situations in which harm arising from work activities may appear to be linked to the sex of workers.

5.- The occupational risk prevention policy shall promote the effective integration of occupational risk prevention into the company's management system.

Similarly, the occupational health and safety policy shall take into account the specific needs and difficulties of small and medium-sized businesses. To this end, general occupational risk prevention resolutions shall comprise a report on how these are to be implemented in small and medium-sized businesses, in which specific measures for such businesses shall be included, where appropriate.

Article 6.-Regulations

1.- The government through its respective regulations and prior consultation with the most representative unions and employers organisations, shall regulate the following matters:

- a) Minimum requirements which must be fulfilled by the working conditions for the protection of safety and health of workers.
- b) Limitations or prohibitions which shall affect the working operations, processes and exposures which entail risks to safety and health of workers. Specially there shall be able to establish the submission of these processes or operations to administrative procedure of control, and in the case of hazardous agents, the prohibition of their use.
- c) Special conditions and requirements for any of the cases referred to in the previous paragraph, such as the requirement of a prior training or practice or the arrangement of a plan which contains the preventive measures to be adopted.
- d) Assessment procedures of the risks to the health of workers, normalisation of methodology and guidelines for the preventive action.
- e) Forms of organisation, management and control of preventive services, taking into account the peculiarities of small size enterprises with the purpose of avoiding unnecessary obstacles for the creation and development of those services, as well as the capabilities and aptitudes which the said services and workers designated for the development of the preventive action must have.
- f) Workings conditions or specific preventive measures in specially hazardous works, particularly if there are pre-arranged special medical controls set for them, or where risks derived from certain characteristics or special situations of workers appear.
- g) Assessment procedure of occupational diseases, and requirements and procedures for the communication and information to the competent authority of the health damage derived from work.

2.- The provisions referred to in the preceding paragraph shall comply, in all case, with the principles of preventive policy laid down by this Act. They shall keep the due co-ordination with health legislation and industrial safety legislation and shall be object of assessment and, where appropriate, of periodical review, in accordance with the experience on its application and the technical progress.

Article 7.- Actions of the competent Public Administrations on labour

1.- In compliance with the contents of this Act the competent public Administrations on labour shall develop actions for the promotion of prevention, technical advice, surveillance and control of compliance by the individuals comprised within their scope of application of the legislation for the risks prevention at work, and shall punish the infractions of the said legislation, in the following terms:

- a) Promoting the prevention and the advice to be developed by the technical bodies in preventive matter, including technical assistance and co-operation, information, publication, training and research in preventive matter, as well as the monitoring of preventive actions which are carried out in enterprises for the attainment of the objectives laid down by this Act.
- b) Ensuring the fulfilment of the legislation on the risks prevention at work through surveillance and control actions. To this end, they shall provide the necessary advice and technical assistance for the fulfilment of the said legislation and shall develop specific programmes aimed to achieve a better efficiency in control.
- c) Punishing the infractions of the preventive legislation of risks at work by any of the subjects comprised within the scope of application of this Act, accordingly to Chapter VII.

2.- The actions of the competent public Administrations in labour matter referred to in paragraph 1 shall continue being developed, with regard to mines, quarries and tunnels which require the application of mining technique, and to those who imply manufacture, transport, storage, handling and use of explosive devices or the use of nuclear energy, by the specific bodies mentioned in their particular legislation.

The competencies referred to in the previous paragraph are understood without prejudice to the provisions of the specific legislation on industrial products and installations.

Article 8.- National Institute of Safety and Hygiene at Work

The National Institute of Safety and Hygiene at Work is the scientific and technical specialised body of the General Administration of the State whose mission is the analysis and study of safety and health conditions at work, as well as the promotion and support to the improvement of same. To that end, it shall establish the necessary co-operation with the bodies of the Autonomous Communities with competence on this matter.

The Institute, in compliance with this mission, shall have the following duties:

- a) To provide technical advice in the elaboration of the legislation and the development of normalization, both at national and international level.
- b) To promote and, where appropriate, to carry out the activities of training, information, research, study and promotion relating to the risks prevention at work, with the adequate co-ordination and collaboration, where appropriate, with the competent technical bodies in the prevention matter of the Autonomous Administrations
- c) To provide technical support and collaboration to the Labour and Social Security Inspectorate in compliance with its role of surveillance and control, pursuant to Article 9 of this Act, within the scope of the Public Administrations.
- d) To collaborate with international bodies and to develop programmes of international co-operation within its scope, facilitating the participation of the Autonomous Administrations.
- e) To carry out any other activity which may be necessary for the fulfilment of its purposes and it is conferred on it within the scope of its competencies, in accordance with the National Commission of Safety and Health at Work governed by article 13 of this Act, with the collaboration, where appropriate,

of the technical bodies of the Autonomous Communities with competencies in this matter.

2.-The National Institute of Safety and Hygiene at Work, within the framework of its activities, shall ensure the co-ordination, it shall support the exchange of information and the experiences among the various public Administrations and specially it shall promote and provide support to the carrying out of activities for the promotion of safety and health by the Autonomous Communities.

In the same way, it shall provide also, in accordance with the competent Administrations, technical specialised support in the matter of certification, test and accreditation.

3.- Regarding to the Institutions of the European Union, the National Institute of Safety and Hygiene at Work shall operate as a centre of national reference, guaranteeing the co-ordination and transmission of the information which shall be provided on a national scale, particularly with regard to the European Agency for Safety and Health at Work and its Network.

4.-The National Institute of Safety and Hygiene at Work shall run the General Secretariat of the National Commission of Safety and Health at Work, providing the necessary technical and scientific assistance for the development of its competencies.

Article 9.-Labour and Social Security Inspectorate.

1.- It concerns to the Labour and Social Security Inspectorate the activity of surveillance and control of the legislation on the risks prevention at work. In compliance with this role, it shall carry out the following functions:

- a) To ensure the fulfilment of the legislation on risks prevention at work, and also of the legal-technical provisions related to the risks prevention at work, although they may not have the direct status of labour legislation, proposing to the competent labour authority the adequate penalty, where it is prove a breach of legislation on risks prevention at work, in accordance with Chapter VII of this Act.
- b) To advise and inform enterprises and workers about the most effective way of complying with the provisions whose surveillance has been entrusted with.
- c) To prepare reports in cases of occupational injuries and diseases which Labour Tribunals may request.
- d) To notify to the labour authority about fatal, very serious and serious accidents at work, and about those others which, because of their characteristics or affected persons, it is considered necessary such a notification, and also about occupational diseases which meet those qualifications and, in general, whenever the said authority asks for it in relation to the fulfilment of the legislation on the risks prevention at work.
- e) To control and to promote the fulfilment of the obligations taken on by the prevention services set up by this Act.
- f) To order the immediate stoppage of work where, according to the inspector's opinion, it has been noticed the existence of a serious and imminent risk to the safety or health of workers.

2.- The General Administration of the State and the Autonomous Communities shall adopt, within their respective spheres of competence, any necessary measures to guarantee the expert cooperation and technical advice needed by the Labour and Social Security Inspectorate which, within the sphere of the General Administration of the State, shall be provided by the National Institute for Occupational Health and Safety.

Said public administrations shall develop and coordinate action plans, within their respective competence and territorial spheres, in order to contribute to the development of preventive actions within companies, particularly within small and medium-sized ones and within those in sectors with higher levels of risk or accidents, through

advisory, informative, training and technical support actions.

In the exercise of these duties, public administrations' officials carrying out occupational risk-prevention tasks, as referred to in the previous paragraph, may advise, inform and verify the health and safety conditions in businesses and workplaces, to the extent as provided under section 3 of this Article and with the capacity to issue requirements as under Article 43 of this Act, all of which shall be done as laid down by regulation.

Said verification actions shall be planned by the appropriate Territorial Committee of the Labour and Social Security Inspectorate under Article 17.2 of Act 42/1997 of 14 November, regulating the Labour and Social Security Inspectorate in order to incorporate them into the Occupational Health and Safety Action Plan of the Labour and Social Security Inspectorate.

3.- Where the existence of an infringement is deduced from the verification actions referred to in the previous paragraph, and provided a prior notification was not complied with, the official in charge shall submit to the Labour and Social Security Inspectorate a report specifying the facts established, so that a finding of violation can be issued, if necessary.

For these purposes, the facts relating to the verification actions on the material or technical health and safety conditions contained in such reports shall have the benefit of the presumption of certainty referred to in the fourth additional resolution, section 2 of the Act 42/1997 of 14 November organizing the Labour and Social Security Inspectorate.

4.- The actions provided for in the two preceding paragraphs shall be bound by the deadlines referred to in Article 14, section 2, of Act 42/1997 of 14 November organizing the Labour and Social Security Inspectorate.

Article 10.-Actions of the Public Administrations competent on health

The actions of the public Administrations competent on health at work shall be carried out through the actions and in accordance with the aspects laid down in Chapter IV , Part 1 of the Act 14/1986, of April 25, General of Health and provisions for its development.

In particular, it shall concern the Public Administrations mentioned, the following matters:

- a) The establishment of adequate means for the assessment and control of the actions on health carried out in enterprises by the operating services of prevention. To that end, they shall set up the guidelines and protocols of actions, having heard the scientific societies, to which the said services shall be submitted to.
- b) The introduction of appropriate information systems which allow the working out, jointly with the competent labour authorities, of maps of risks at work, and the carrying out of epidemiological studies to identify and prevent the pathologies which may affect the workers' health, and also to enable a quick exchange of information.
- c) The supervision of training which, on the subject of prevention and promotion of health at work, must receive the personnel operating in the authorised preventive services.
- d) Development and publication of studies, research works and statistics relating to workers' health.

Article 11.-Administrative Co-ordination.

The development of preventive provisions and the control of their fulfilment, the promotion of prevention, the research and epidemiological surveillance on occupational risks, occupational accidents and diseases determine the need for the co-ordination of the actions of the competent Administrations on labour, health and industry matters for a more efficient protection of safety and health of workers.

Within the framework of that co-ordination, the competent Administration on labour conditions shall ensure, in particular, that the information obtained by the Labour and Social Security Inspectorate in the exercise of the powers conferred on it by Article 9(1) of this Act, is passed on to the competent health authority for the purposes laid down in Article 10 of this Act and Article 21 of the Act 14/1986 of April 25, General of Health, and also to the competent industry Administration for the purposes laid down in the Act 21/1992, of July 16, of Industry.

Article 12.-Participation of employers and employees

The participation of employers and employees, through the employers' and unions' most representative organisations, in planning, programming, organise and control of management related to the improvement of working conditions and the protection of safety and health of workers at work is a basic principle of the policy for the prevention of occupational risks, which much be developed by the competent public Administrations in the various territorial levels.

Article 13.-National Commission of Safety and Health at Work.

1.- The National Commission of Safety and Health at Work is established as a corporate body for the advising of the Public Administrations in the setting up of preventive policies and also as a body of institutional participation in safety and health at work.

2.- The Commission shall consist of a representative of each one of the Autonomous Communities and of an equal number of members of the General Administration of the State and pairing with all the mentioned, representatives of the most representative organisations of employers and unions.

3.- The Commission shall be aware of the actions taken by the competent public Administration for the promotion of prevention of occupational risks, technical advice, surveillance and control referred to in Articles 7,8,9 and 11 of this Act and it shall inform and put forward proposals relating to the said actions, specifically concerning:

- Criteria and general programmes of actions.
- Projects of provisions of general character .
- Co-ordination of the actions taken by the Public Administration competent on labour matter.
- Co-ordination among the Public Administrations competent on labour, health and industry matters.

4.-The Commission shall adopt its resolutions by majority. To that end, the representatives of Public Administrations shall have one vote each and two votes the representatives of employers and unions organisations.

5.-The Commission shall consist of a Chairman and four Vice-Chairmen, one for each one of its composing groups. The Chairmanship of the Commission shall be occupied by the General Secretary for Employment and Labour Relations (Secretario General de Empleo y Relaciones Laborales) and the Vice-Chairmanship ascribed to the General Administration of State by the under-Secretary for Health and Consumer Affairs (Subsecretario de Sanidad y Consumo).

6.- The Secretariat of the Commission as a body of technical and administrative support, shall fall on the Direction of the National Institute of Safety and Hygiene at Work .

7.-The National Commission of Safety and Health at Work shall operate in Plenary session, as a Permanent Commission or as Working Groups, in accordance with the provisions which set-up the internal Regulations which the very Commission shall establish.

With regard to any matter not considered by this Act or the internal Regulations referred to in the foregoing paragraph, the Commission shall be subject to the Act 30/1992, of the Legal System of Public Administrations and of the Common Administrative Procedure (Regimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común).

CHAPTER III Rights and Obligations

Article 14.-Right to protection against occupational risks.

1.- Workers have the right to an efficient protection in safety and health at work.

The said right implies a corresponding obligation of employer to the protection of workers against occupational risks.

This obligation of protection constitutes, equally, an obligation for the Public Administrations with regard to their employees.

The rights to information, consultation and participation, training in prevention, stoppage of activities in case of serious and imminent risk and surveillance of their state of health, within the terms foreseen by this Act, are part of the workers' right to an efficient protection in safety and health at work.

2.- Pursuant to the duty to protect, employers shall guarantee the health and safety of their workers in all work-related matters. To this end, employers shall, within the framework of their own responsibilities, prevent occupational risks by integrating preventive actions into the company and by adopting all necessary measures to protect the health and safety of workers, in accordance with the specialities listed in the following Articles related to occupational risk prevention plans, risk assessment, information, consultation and participation and training of workers, actions in the face of an emergency and in case of a serious and imminent risk, health surveillance, and by setting up an organization and the resources under the terms of chapter IV of this Act.

Employers shall permanently monitor preventive actions for the continued improvement of the activities related to the identification, assessment and control of risks that could not have been avoided and of the existing levels of protection, and shall make all necessary arrangements to adapt the prevention measures referred to in the previous paragraph to those changing circumstances that may affect work performance.

3.- The employer shall comply with the obligations laid-down in the provisions regarding the prevention of occupational risks.

4.-The workers' obligations laid down in this Act, the assignment to workers or services of enterprises of activities related to the protection and risks prevention at work and the resort to the agreement with specialised organisation for the development of prevention activities shall complete the employer's actions, and will not discharge him from his responsibilities in this area, without prejudice to the actions which he may take, where appropriate, against any other person.

5.-The cost of the measures relating to safety and health at work shall not be in any way at the workers' expense.

Article 15.-Principles of preventive action

1.- The employer shall apply the measures which are part of the general obligation to prevention laid down in the preceding article, in accordance with the following principles:

a) Avoiding risks.

- b) Evaluating the risks which cannot be avoided.
- c) Combating the risks at source.
- d) Adapting the work to the individual, especially as regards the design of the work stations, the choice of work equipment and the choice of working and production methods, with a purpose, in particular, to diminish monotonous and repetitive work and to reduce their effect on health.
- e) Take into account the technical progress.
- f) Replacing the dangerous by the non-dangerous or the less dangerous.
- g) Planning the prevention activities, developing a coherent overall prevention policy which covers technology, work organisation, working conditions, social relationships and the influence of the environmental factors related to the work.
- h) Giving priority to collective protective measures over the personal ones.
- i) Giving appropriate instructions to the workers.

2.- The employer shall take into account the professional capabilities of the workers in the area of safety and health at the moment of entrusting them with any task.

3.- The employer shall adopt the necessary measures in order to guarantee that only workers who have received sufficient and adequate instructions may have access to areas where there is a serious and specific danger.

4.-The efficiency of preventive measures shall anticipate oversights or non-temerary imprudences of the workers. For the adoption of such efficiency there shall be taken into account the additional risks which could suppose determined preventive measures, which only shall be able to adopt where the magnitude of those risks is substantially lower than the one which it is intended to control and there are not safer alternatives.

5.-There shall be able to take out insurance policies for the purpose of guaranteeing insurance cover as a precaution against the risks arisen out of work, the enterprise with regard to its workers, the self-employed persons with regard to themselves and the co-operative societies with regard to their partners whose activity consists of the performance of personal work.

Article 16: Occupational risk prevention plan, risk assessment and planning of preventive actions

1.- Occupational risk prevention shall be incorporated into the company's general management system, both into all its activities and into all the levels of its hierarchy, by implementing and applying an occupational risk prevention plan as specified in the following paragraph.

This occupational risk prevention plan shall include the organizational structure, responsibilities, duties, practices, procedures, processes and resources needed to carry out risk preventive actions in the company, as set forth in the regulations.

2.- The basic tools for managing and applying risk prevention plans, which may be implemented in stages on a scheduled basis, are the occupational risk assessment and the planning of preventive actions such as these are referred to in the following paragraphs:

- a) Employers shall carry out an initial assessment of the risks to the health and safety of workers, taking into account, in general, the nature of the activities of the company, the characteristics of the existing jobs and the workers who shall perform them. A similar assessment shall be made when choosing work equipment, chemical substances or preparations used and the fitting-out of workplaces. The initial

assessment shall take into account all other actions that shall be implemented in accordance with the regulation on the protection against specific risks and particularly dangerous activities. The assessment shall be updated where the working conditions change and shall, in any event, be reconsidered and reviewed, if necessary, where health damage has occurred.

- b) Should the results of the assessment make it necessary, employers shall periodically monitor the employees' working conditions and the activities they carry out, in order to identify potentially dangerous situations.
- c) Where the results of the assessment referred to in paragraph a) reveal situations of risk, employers shall take all necessary preventive actions to eliminate or reduce and control said risk. Such preventive actions shall be planned by the employer, indicating for each of the activities the implementation deadline, the designated officers and the human and material resources needed to implement them.

Employers shall ensure that the preventive actions included in the planning are effectively implemented and, to that end, shall continuously monitor them.

Preventive actions shall be modified where the employer, as a result of the periodic monitoring referred to in paragraph a) above, appreciates that they fail to provide the intended protection.

2. bis. Depending on the number of workers and the nature and dangerousness of the activities they carried out, companies may opt to draft the occupational risk prevention plan, the risk assessment and the prevention activity plan in a simplified manner, provided that this does not entail a reduction in the level of protection of workers' health and safety and under conditions to be laid down by regulations.

3.-When some damage has been caused to the health of workers or when, on the occasion of the health surveillance referred to in Article 22, there appear signs that the preventive measures prove to be inadequate, the employer shall carry out an investigation with regard to it, in order to detect the causes of this matter.

Article 17.- Working Equipments and protection measures

1.-The employer shall adopt the necessary measures in order to adapt the work equipments to the work which must be carried out so that they guarantee the safety and health of workers on using them. Where the use of the working equipment implies a specific danger to safety and health of workers, the employer shall adopt the necessary measures with the purpose that:

- a) The use of working equipment is carried out only by the personnel designated for it.
- b) The repair works, transformation, maintenance or conservation are carried out by the workers specifically trained for that.

2.- The employer shall provide to his workers with adequate personal protective equipments in the performance of their activities and shall ensure the actual use of the said equipments when, because of the nature of work done, are necessary. The personal protective equipments shall be used when the risks are unavoidable or cannot be reduced by technical means of collective protection or by measures, methods or procedures for the arrangement of work.

Article 18.-Information. consultation and participation of workers.

1.- For the purpose of compliance with the duty of protection laid down in this Act, the employer shall adopt the adequate measures in order that workers receive all the necessary information relating to:

- a) Risks to safety and health of workers at work, not only those which affect the enterprise as a whole

but also the ones which affect each sort of position or activity at work.

- b) The protective and preventive measures and activities applicable to the risks referred to in the preceding paragraph number 2.
- c) The measures adopted in accordance with the provisions of Article 20 of this Act.

In enterprises with workers' representatives, the information referred to in this article shall be provided by the employer to workers through their representatives; however, each worker shall be informed directly about the specific risks which affect his/her position or task at work and about the protective and preventive measures applicable to the said risks.

2.- The employer shall consult workers, and allow them to take part in discussions on all questions relating to safety and health at work, in accordance with the provisions laid down in Chapter V of this Act.

Workers shall be entitled to put forward proposals to the employer, and so to the bodies of participation and representation referred to in Chapter V of this Act, in order to improve the levels of protection of safety and health at work.

Article 19.-Training of workers

1.- In compliance with the obligation to protection, the employer shall ensure that each worker receives a theoretical and practical training, sufficient and adequate, in preventive matter not only at the moment of his recruitment, regardless of the form of contract and period of same, but also whenever may be changes in the performance of his duties, or new technologies or new work equipments are introduced.

The training must be specifically focused on the workstation or job of the worker; it must be adapted to the development of risks and the appearance of new ones, and shall be repeatedly performed, if needed.

2.-The training referred to in the preceding paragraph must take place, whenever it is possible, during working hours, otherwise, in other hours but deducting from those working hours the time spent on the training. The training shall be given by the enterprise through its own means or contracted to external services, and its expense may not be fall upon the workers in any case.

Article 20.-Emergency measures

The employer, taking into account the size and the nature of the activities of the enterprise, and also the possible presence of persons unconnected to it, shall analyse the possible situations of emergency and shall take the necessary measures for first aid, fire-fighting and evacuation of workers, designating for those purposes the workers required to implement such measures and checking periodically, where appropriate, their proper working order. The mentioned personnel must have the necessary training, must be sufficient in number and must have at their disposal adequate equipment in accordance with the circumstances above mentioned.

For the application of the measures taken, the employer shall arrange the necessary contacts with external services, particularly as regards first aid, emergency medical care, rescue work and fire-fighting, in order to guarantee the speed and efficiency of such measures.

Article 21.-Serious and imminent danger

1.- Where workers are or may be exposed to a serious and imminent danger because of their work, the employer shall be compelled to:

- a) Inform as soon as possible all workers concerned about the presence of such a danger and measures taken or which, where appropriate, must be taken in respect of protection.
- b) Take measures and give the necessary instructions to workers in the event of serious, imminent and unavoidable danger, to stop work and, if necessary, immediately to leave the workplace. In this case it shall not be required of workers to resume work while the danger persists, safe exception duly justified by safety reasons and duly regulated.
- c) Arrange whatever needed for the worker who may not be able to contact his immediate superior responsible in the event of serious and imminent danger to his safety, the safety of other workers and third persons to the enterprise, to enable him/her to take the appropriate steps in the light of his knowledge and the technical means at his disposal, to avoid the consequences of such danger.

2.- In accordance with paragraph 1, Article 14 of this Act, the worker shall be allowed to stop work and to leave the workplace, if it is needed, when he considers that such activity entails a serious and imminent danger to his life or health.

3.- Where in the case referred to in paragraph 1 of this article the employer does not take or does not allow to take the necessary measures to ensure the safety and health of workers, their legal representatives shall be able to decide by majority, the stoppage of the activity of workers affected by the said danger. Such decision shall be communicated immediately to the enterprise and to the employment authority, which, in the period of twenty four hours, shall cancel or ratify the agreed stoppage.

The decision referred to in the previous paragraph shall be able to be taken by a deciding majority of the Prevention Representatives where it is not possible to gather with the required urgency the representative body of workers.

4.- The workers or their representatives shall not be placed at any detriment derived from the adoption of the actions referred to in the previous paragraphs, unless they acted in bad faith or there was serious negligence on their part.

Article 22.-Health surveillance

1.- The employer shall ensure that his workers receive a periodical health surveillance appropriate to risks inherent in the work.

This surveillance shall be carried out only with the worker's consent. From this volunteer character, there shall be excepted only, subject to a report of the workers' representatives, the cases in which the carrying out of medical examinations are essential for the assessment of the effects of working conditions to the workers' health or for testing whether the state of health of the worker may constitute a danger to himself, to other workers or to other persons relating to the enterprise or whenever is laid down in a legal provision related to the protection of specific risks and activities of special danger.

In all cases those examinations or tests which cause less inconvenience to the worker and are proportional to the risk should be chosen.

2.- The measures of surveillance and control of health of workers shall be carried out taking in consideration always the right to privacy and dignity of the worker and confidentiality of all information relating to his state of health.

3.- The results of health surveillance referred to in the previous paragraph shall be reported to the affected workers.

4.- Data relating to health surveillance of workers shall not be used for a discriminatory purpose or for any disadvantage of the worker.

The access to private medical records shall be restricted to medical staff and to the health authorities which carry out the health surveillance of workers, not being allowed access to those records, either to the employers or other persons without the expressed consent of the concerned worker.

Notwithstanding the aforementioned, the employer and persons or bodies with responsibilities in the area of prevention shall be informed of the conclusions obtained from the examinations carried out related to the competence of the worker for the performance of his job or to the necessity of introducing or improving protective and preventive measures so that they may carry out properly their preventive functions.

5.-In the cases where the nature of the risks inherent in the work makes it necessary, the workers' right to periodical surveillance of their state of health shall be extended beyond the end of labour relationship, in accordance with the terms laid down by regulations.

6.-Health surveillance and control measures of workers shall be carried out by health personnel with technical competence and accredited training and capacity.

Article 23: Documentation

1.- Employers shall draw up and make available to the labour authority the following documentation relating to the obligations laid down in the preceding Articles:

- a. An occupational risk prevention plan, in accordance with Article 16, section 1 of this Act.
- b. An assessment of the risks to safety and health at work, including the results of periodic checks of workers' working conditions and activities, pursuant to Article 16, section 2, paragraph a) of this Act.
- c. A planning of preventive actions, including the protection and prevention measures to be taken and, where appropriate, the protective materials to be used, in accordance with Article 16, section 2, paragraph b) of this Act.
- d. Practice of the controls of the state of health of workers in accordance with article 22 of this Act and conclusions obtained from them in accordance with the terms of the last paragraph of number 4 of the mentioned article.
- e. list of occupational accidents and diseases resulting in a worker being temporary disable for more than one working day. In these cases the employer shall carry out, as well, the notification referred to in the number 3 of this article.

2.- At the time of termination of their activities, employers shall send to the employment authority the documentation referred to in the aforementioned number.

3.- The employer shall be obliged to notify in writing to the employment authority the damage for the health of his workers which had been produced because of their activities, in accordance with the procedure which shall be determined by regulations.

4.- The documentation referred to in this article shall be submitted also to the health authorities so they are able to comply with the provisions of article 10 of this Act and article 21 of the Act 14/1986, 25th April, General of Health.

Article 24.-Co-ordination among enterprises

1.-Where workers from two or more enterprises share the same workplace for their activities, each enterprise shall co-operate with each other in the application of the legislation on the risks prevention at work. To this end,

they shall arrange the necessary means of co-ordination relating to protection and risks prevention at work and information about those risks to their respective workers, in accordance with the terms laid down in number 1, article 18 of this Act.

2.- The employer, owner of the work-place, shall take the necessary measures in order that those other employers who carry out activities in his workplace receive information and adequate instructions, regarding the existing risks at the workplace and the appropriate measures for protection and prevention and also the emergency measures to be applied, for them to pass on to their own workers.

3.- Enterprises, who contract or subcontract other enterprises in order to carry out works or services corresponding to the own activities of the former and which are executed in their own workplace, shall ensure the compliance by those contractors or subcontractors with the legislation for the risks prevention at work.

4.- The obligations stated in the last paragraph of number 1, article 41 of this Act shall be of application also, with regard to the contracted operations, in the cases in which the workers of the contractor or subcontractor enterprise do not work at the work-place of the main enterprise, whenever such workers have to operate with machinery, equipments, raw materials or tools provided by the main enterprise.

5.- The obligations of co-operation, information and instruction laid down in numbers 1 and 2 shall apply to the self-employed persons who carry out activities in the mentioned workplaces.

6. - The obligations included in this Article shall be established by regulation.

Article 25.-Protection of workers especially sensitive to certain risks

1.-The employer shall guarantee particularly the protection of workers who, because of their personal characteristics or known biological state, including those who have a recognised condition of physical, psychical or sensorial disability, are specially sensitive to the risks derived from work. To this end, the employer shall take into account those aspects on assessing the risks and, accordingly, shall take the necessary preventive and protective measures.

Workers shall not be in jobs in which, because of their personal characteristics, biological state or because of their duly recognised condition of physical, psychical or sensorial disability, may be put themselves, other workers or other persons relating to the enterprise in a dangerous position or, in general, where they are evidently in transient states or situations which do not respond to the psychophysical requirements of the respective jobs.

2.- Likewise, the employer shall take into account in the assessments the risk factors which can affect the procreation function of the male and female workers, particularly in the cases of the exposure to physical, chemical and biological agents which can cause mutagenic or toxicogenic effects for the procreation, not only in the fertilities aspects but also in the development of descendants, with the object of taking the necessary preventive measures.

Article 26: Maternity protection

1.- The assessment of the risks referred to in Article 16 of this Act shall include an assessment of the nature, degree and duration of exposure of pregnant workers or workers who have recently given birth to agents, processes or working conditions that may have a negative impact on their health or the unborn child's, for any activity that may pose a specific risk for said workers. If the results of the assessment reveal a risk for the health and safety of these workers, or any possible effect on their pregnancy or breastfeeding, the employer shall take all necessary measures to ensure that, by temporarily adjusting the working conditions and/or the working hours of the worker concerned, the exposure of that worker to such risks is avoided.

Where necessary, these measures shall include the non-performance of night or shift work.

2.- Where the adjustment of her working conditions or working hours is not feasible, or if after adjusting them, the health of the pregnant worker or the unborn child may be negatively affected by the conditions of her job, and this is certified by the Medical Services of the National Social Security Institute or by a mutual insurance company, depending on the body with which the company has an agreement to cover occupational risks, in addition to a report from the National Health Service doctor attending the worker, she shall be assigned to a different job or position that is compatible with her condition. In consultation with the workers' representatives, the employer shall draw up a list of the jobs that are free of such risks for this purpose.

This change of job or position shall be carried out in accordance with the rules and criteria that apply to occupational mobility and shall be in effect until the worker health is fit to return to her previous position.

Should there be no compatible job or position, even when the rules stated in the previous paragraph are applied, the worker may be assigned to a position that does not correspond to her group or equivalent category, although she shall retain the right to all the benefits of her original position.

3.- If moving her to another job is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the contract of the affected worker may be suspended due to risk during pregnancy, as provided for in Article 45.1.d) of the Workers' Statute, for the time needed to protect her health or safety and throughout the period during which she is unfit to return to her previous position or another that is compatible with her condition.

4. The provisions of numbers 1 and 2 of this Article shall also apply during breastfeeding, where working conditions may negatively affect the health of the woman or her child and provided this is certified by the Medical Services of the National Social Security Institute or by a mutual insurance company, depending on the body with which the company has an agreement to cover occupational risks, in addition to a report from the National Health Service doctor voluntarily attending the worker or her child. The contract of the affected worker may also be suspended due to risk during breastfeeding of children under nine months of age as provided for in Article 45.1.d) of the Workers' Statute, if the circumstances provided for in number 3 of this Article are met.

5.- Pregnant workers shall be entitled to time-off, without loss of pay, in order to attend prenatal examinations and training, provided they give prior notice to the employer and justify the need to do this during working hours.

Article 27.-Protection of minors

1. Before beginning to work, the workers younger than eighteen years, and prior to the introduction of any important change in the working conditions, the employer shall carry out an assessment of the jobs available to them, with the purpose of determining the nature, degree and period of exposure, in any activity liable to presenting a specific risk in that respect, to agents, processes, or working conditions which may put in danger the safety or health of these young workers.

To that end, the assessment shall take specially into account the specific risks to safety, health and development of minors, derived from their lack of experience, from their immaturity to evaluate the existing or potential risks and from their still incomplete development.

In any case, the employer shall inform those young persons and their parents or guardians who have taken part in the contract, pursuant to the provision laid down in the letter b) article 7 of the consolidated text of the Act Workers' Statute (Estatuto de los Trabajadores) passed by the legislative Royal Decree 1/1995, of 24 March, about possible risks and all measures taken for the protection of their safety and health.

2. Taking into account the factors previously mentioned, the Government shall establish the restrictions on employment of young persons under the age of eighteen years in jobs which suppose specific risks.

Article 28.-Temporary workers, fixed-term contracts and enterprises of temporary work

1. Workers under the terms of a temporary work or fixed-term contract of employment, and workers contracted by enterprises of temporary work, shall enjoy the same level of protection in the field of safety and health as the rest of workers employed in the same enterprise.

The existence of an employment relationship of those mentioned in the previous paragraph shall not justify in any case a difference of treatment in the working conditions with regard to any of the aspects of protection of safety and health of workers.

This Act and its regulations shall be fully applied to the employment relationships mentioned in the previous paragraphs.

2.-The employer shall adopt the necessary measures to ensure that, before the commencement of duties, the workers referred to in the previous number are provided with information on the risks to which they are going to be exposed, particularly with regard to any special occupational qualifications or skills required, any special health surveillance required to be provided or the presence of specific risks of the job to be carried out, and measures of prevention and protection from those risks.

The said workers shall be provided, in all case, with a sufficient training adequate to the characteristics of the work to be covered, taking into account their qualifications and occupational experience and the risks to which they are going to be exposed to.

3.- The workers referred to in this article shall be entitled to a periodical health surveillance in accordance with the terms of article 22 of this Act and its regulations.

4.- The employer shall inform the workers designated to carry out the activities of protection and prevention or, where appropriate, the preventive service foreseen in Article 31 of this Act about the incorporation of workers referred to in this article, in such a way that they can perform in an adequate manner their functions in relation to all the workers of the enterprise.

5.-In the employment relationships through enterprise of temporary work, the user enterprise shall be responsible for the working conditions in all matters related to protection of safety and health of workers. The user enterprise shall be responsible as well for the fulfilment of the obligations on information foreseen in number 2 and 4 of this article.

The enterprise of temporary work shall be responsible for the fulfilment of the obligations on the area of training and health surveillance referred to in numbers 2 and 3 of this article. To that end, and without prejudice to the provision referred to in the previous paragraph, the user enterprise shall inform the temporary work enterprise, and the latter to the workers concerned, before the appointment, about the specific characteristics of the work to be carried out and about the qualifications required.

The user enterprise shall inform the workers' representatives about the appointment of workers put at the disposal from the temporary work enterprise. The mentioned workers shall be able to approach those representatives in the exercise of the duties recognised in this Act.

Article 29.-Obligations of workers on the area of risks prevention

1.- It shall be responsibility of each worker to take care, according to his possibilities and in compliance with the adopted preventive measures, of his own safety and health and of other persons whom may be affected by his actions at work., due to his acts and his omissions in accordance with his training and instructions given by his employer.

2.-To this end, workers, in accordance with their training and the instructions given by the employer, must in particular:

1st.- Make correct use, in accordance with its nature and foreseeable risks, of machinery , apparatus, tools, dangerous substances, transport equipment and, in general, of any other means used in their activity.

2nd.- Make correct use of the personal protective equipment supplied by the employer, in accordance with the instructions received from him.

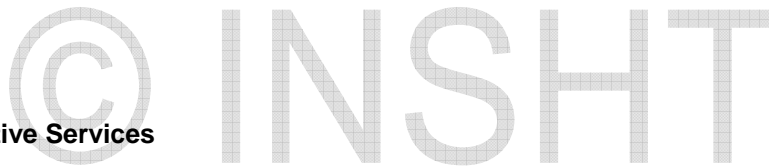
3rd.- Refrain from disconnecting and make correct use of the existing safety devices or which may be fitted in the means related to their activity or in the places of work where their activity takes place.

4th.-Inform immediately their direct superior and the workers designated to carry out activities of protection and prevention or, where appropriate, the prevention service, about any situation which, to their opinion, supposes, due to reasonable causes, a risk to the safety and health of workers.

5th.- Co-operate in the fulfilment of the obligations imposed by the competent authority with the object of protecting the safety and health of workers at the workplace .

6th.- Co-operate with the employer to enable him to ensure that the working conditions are safe and imply no risks to the safety and health of workers.

3.-The breach by workers of the obligations in the area of risks prevention referred to in the previous paragraphs shall be considered as a breach of the employment law, pursuant to Article 58.1 of Workers' Statute (Estatuto de los Trabajadores) or as an offence, where appropriate, in accordance with the provisions of the disciplinary procedure of public employees or statutory personnel of the public Administrations Service. Equally it shall be applicable to the partners of co-operatives whose activities consist of their own personal work, with the details laid down in their Internal Procedure Rules.



CHAPTER IV Preventive Services

Article 30.-Protection and Prevention of occupational risks

1.- In compliance with the obligation of the prevention of occupational risks, the employer shall designate one or more workers to carry out that activity, he shall set-up a preventive service or shall arrange the said service with an external specialised firm.

2.- Designated workers must have the necessary capabilities, the necessary time and means and be sufficient in number, taking into account the size of the enterprise and the risks to which the workers are exposed and their distribution throughout the entire enterprise, with the scope which shall be determined in the provisions referred to in letter e) number 1, Article 6 of this Act.

The workers referred to in the preceding paragraph shall collaborate with each other and, where appropriate, with the preventive services.

3.-For carrying out the preventive activity, the employer shall provide the designated workers with access to the information and documentation referred to in articles 18 and 23 of this Act.

4.-Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks in the enterprise. In the exercise of these activities, the aforesaid workers shall enjoy, in particular, the guarantees established for workers' representatives in the letters a), b) and c) of the Article 68, and number 4 of the Article 56 of the consolidated text of the Act Workers' Statute (Ley del Estatuto de los Trabajadores).

This guarantee shall be extended also to the workers who make up the preventive service, if the enterprise decided to set it up in accordance with the provision laid out in the following article.

Workers referred to in the previous paragraphs shall keep in secret the information relating to the enterprise to which they would have access because of their activities.

5.- In companies with up to ten workers, the employer may carry out the duties listed in section 1 personally, as long as he or she carries out his or her activities in the workplace normally and has the necessary capacity, depending on the risks to which the workers are exposed and which are involved in the tasks being performed, within the scope established under Article 6.1.e) of this Act.

6.- The employer who had not arranged the preventive service with an outside specialised organisation shall submit his plan of prevention to the control of an outside audit or assessment, in accordance with the terms which shall be determined by regulations.

7.- Specialised persons or bodies wishing to audit prevention systems shall be in the possession of one single authorization issued by the labour authority, which will be valid throughout Spain. Should the term for the issuing of said authorisation expire without express notification of a decision to the interested party, the application shall be understood rejected by administrative silence, in order to ensure an adequate protection of workers.

Article 31.-Preventive services

1. If the designation of one or several workers was insufficient to carry out the preventive activities because the size of the enterprise, the risks to which the workers are exposed or the danger of the activities carried out, and having regard to the scope which shall be determined in the provisions referred to in letter e) number 1 of Article 6 of this Act, the employer shall resort to one or more preventive services either internal or external, which shall collaborate where it is necessary .

For the setting up of these services within the public Administrations there shall be taken into account their structural organisation and existence, where appropriate, of sectorial and decentralised scopes.

2.- It shall be understood as a preventive service the whole of human and material resources necessary to carry out preventive activities in order to guarantee adequate protection of safety and health of workers, advising and helping for this purpose the employer, the workers and their representatives and the bodies of specialised representation. For the exercise of their activities, the employer shall provide the said service with access to the information and documentation referred to in number 3 of the previous article.

3.- Prevention services shall be able to provide the company with the advice and support it may need taking account of the existing types of risk and in regard to:

- a. The design, implementation and application of an occupational risk prevention plan capable of integrating prevention into the company.
- b. The assessment of the risk factors that may affect the health and safety of workers under the terms and conditions provided for in Article 16 of this Act.
- c. The planning of preventive actions and the identification of priorities when adopting prevention measures and monitoring their effectiveness.
- d. Information for and training of workers, under the terms and conditions provided for in Articles 18 and 19 of this Act.
- e. The provision of first aid and emergency plans.
- f. The surveillance of workers' health in relation to occupational risks.

If the company does not carry out preventive actions with own resources, the duties in regard to the matters described in this section may only be taken over by an external prevention service. This shall be without prejudice to any other legal or regulatory assignment of competence to other entities or bodies in regard to the matters indicated herein.

4.-The preventive service shall have an inter-disciplinary character, and its means must be adequate to the fulfilment of its activities. For that purpose, the training, speciality, capability, dedication and number of members making up these services, and their technical resources, shall be sufficient and adequate to the preventive activities, to be carried out, in accordance with the following circumstances:

- a) Size of the enterprise.
- b) Sorts of risk to which the workers can be exposed to.
- c) Distribution of risks in the enterprise.

5.- To act as prevention service providers, specialised bodies shall be required to obtain an accreditation from the labour authority, which shall be only one and valid throughout Spain, after verifying that they meet the requirements laid down by regulation and subject to prior approval of the health authority as regards health matters.

These requirements include the obligation of specialised bodies to take out an insurance policy covering their liability for the amount laid down by regulation and without it constituting a limit of the liability of said service.

6.- If the maximum period for issuing said authorisation expires without express notification of a decision to the interested party, the application shall be understood rejected by administrative silence, in order to ensure an adequate protection of workers.

Article 32: Prevention action of Social Security's mutual insurance companies for accidents at work and occupational diseases

The Social Security's mutual societies for occupational accidents and diseases shall not directly carry out the duties of external prevention services. This is without prejudice to the fact that they may participate with its own heritage in corporations set up for the sole purpose of occupational prevention, under the terms and conditions laid down in the implementing rules.

Article 32 bis. Presence of preventive resources.

1.- The presence of preventive resources in the workplace, however these may be organised, shall be required in the following circumstances:

- a. When risks may be aggravated by or change throughout the process or activity, owing to various operations being implemented in succession or simultaneously and which make it necessary to control the correct application of working methods.
- b. When performing activities or processes that are considered dangerous or involving special risks according to regulations.
- c. When such presence is requested by the Labour and Social Security Inspectorate, if circumstances so required owing to the working conditions that were previously identified.

2.- The following are considered to be preventive resources, whose presence in the workplace may be assigned by the employer:

- a. One or more designated workers from the company.
- b. One or more members of the company's internal prevention service.
- c. One or more members of the external prevention service(s) hired by the company. Where various preventive resources are present in the workplace, these shall co-operate with each other.

3.- The preventive resources referred to in the previous paragraph shall be sufficiently skilled, have the necessary means and be of a sufficient number to monitor compliance with preventive actions, and shall remain in the workplace while the situation that requires their presence continues.

4.- Notwithstanding the terms of the previous sections, employers may assign the presence of one or more workers of the company who, albeit not a part of the in-company prevention service nor a designated worker, have the necessary knowledge, qualifications and experience regarding the activities and processes referred to in section 1, and who have at least prevention training in basic level functions.

In this case, said workers shall collaborate with the employer's preventive resources as may be needed.

CHAPTER V Consultation and participation of workers

Article 33.-Consultation of workers

1.- The employer shall consult workers, duly in advance, the adoption of decisions related to:

- a) The planning and organisation of work in the enterprise and the introduction of new technologies, in everything related to the consequences that they could have to the safety and health of workers, derived from the choice of equipment, the determination and adaptation of the working conditions and the impact of the environmental factors at work.
- b) The planning and organisation of the activities of protection of health and prevention of occupational risks in the enterprise, including the designation of workers for those activities or the arrangement of contracts with external services.
- c) The designation of workers to carry out emergency measures.
- d) The procedures of information and documentation referred to in Articles 18.1 and 3.1 of this Act.
- e) The planning and organisation of the training in preventive services.
- f) Any other action which may substantially affect safety and health of workers.

2.- Where there are workers' representatives in the enterprises, the consultation referred to in the previous number 1 shall be taken up with those representatives.

Article 34.-Rights of participation and representation

1.. Workers have the right to take part in discussions in the enterprise on questions relating to the risks prevention at work. In enterprises or establishments with six or more workers, their participation shall be channelled through their representatives and the specialised representation regulated in this chapter.

2.- It concerns to the workers' committees, workers' Delegates and union representatives, in the terms which, respectively, the Workers' Statute (Estatuto de los Trabajadores), the Representation of Public Servants Act

and the Trade Union Freedom Act determine, the protection of the workers' interests in the risks prevention at work. To this end, the workers' representatives shall carry out the responsibilities which those pieces of legislation lay down with regard to information, consultation and negotiation, surveillance and control and exercise of actions before the enterprises and the competent bodies and tribunals.

3.-The right of participation regulated in this chapter shall be exercised in the scope of the Public Administrations with the appropriate adaptations having regard to their diversity of the activities and conditions, the complexity and dispersion of their organised structure and their peculiarities in collective representation in the terms set up in the Act 7/1990, of July 19, on collective bargaining and participation in the determination of the working conditions of civil servants, being able to establish sectorial and decentralised scopes depending on the number of employees and establishments.

In order to carry out of the mentioned adaptations within the scope of the General Administration of the State, the Government shall take into account the following criteria:

- a) In no case, the referred adaptations shall affect the responsibilities, faculties and guarantees recognised by this Act to the Prevention Representatives and Committees of Safety and Health.
- b) It shall be established the specific scope which may be adequate in each case to the exercise of the activity of participation in the area of prevention within the organising structure of the Administration. In general, the said scope shall be the one of the representative bodies of the personnel in the service of the public Administrations, although they shall be able to establish other different ones in accordance with the characteristics of the activities and frequency of risks to which workers may be exposed.
- c) Where in the said scope there are different representative bodies of the personnel, it shall be guaranteed a co-ordinated action of all of them in the prevention and protection of the safety and health at work, enabling that the participation be carried-out in a jointly manner among themselves, within the specific scope established to this end.
- d) In general, it shall be set-up a single Safety and Health Committee within the scope of the representative bodies established in the Representation of Public Servants Act, which shall be integrated by the Prevention Representatives designated in that scope, not only for the personnel with a relationship of administrative or statutory character but also for the personnel with a contract of employment, and by representatives of the Administration in number no higher than that of Prevention Representatives. However, there can be set up Committees of Safety and Health in other scopes where the reasons of the activity and the sort and frequency of risks so they justify it.

Article 35.- Prevention Representatives

1.- The Prevention Representatives are the workers' representatives with specific functions in the area of occupational risk prevention.

2.- The Prevention Representatives shall be designated by and among the representatives of personnel, in the scope of the representative bodies pursuant to the preceding article, and in accordance with the following scale:

- From 50 up to 100 workers: 2 Prevention Representatives
- From 101 up to 500 workers: 3 Prevention Representatives
- From 501 up to 1.000 workers: 4 Prevention Representatives
- From 1.001 up to 2.000 workers: 5 Prevention Representatives
- From 2.001 up to 3.000 workers: 6 Prevention Representatives
- From 3.001 up to 4.000 workers: 7 Prevention Representatives
- From 4.001 and upwards: 8 Prevention Representatives

In enterprises of up to thirty workers the Prevention Representative shall be the Delegate of Personnel. In enterprises of thirty one and up to forty nine workers there shall be a Prevention Representative who shall be designated by and among the Delegates of Personnel.

3.- With the object of determining the number of Prevention Representatives it shall be taken into account the following criteria:

- a) Workers employed on fixed term contracts for a period longer than a year shall be considered as permanent staff.
- b) Workers employed on fixed term contracts of up to a year period shall be reckoned in accordance with the number of days worked during the period of one year before the designation. Every two hundred days worked or part thereof shall be reckoned as one more worker.

4.-In spite of the contents of this article, there shall be allowed to introduce in the collective agreements other methods of designation of Prevention Representatives, provided that it is guaranteed that the power of designation concerns the personnel representatives or the workers themselves.

Likewise, in the collective bargaining or in the agreements referred to in article 83.3 of the Workers' Statute (Estatuto de los Trabajadores) there shall be allowed to agree that the powers conferred by this Act on the Prevention Representatives could be exercised by specific bodies created in the collective agreement itself or in the mentioned agreements. The said bodies shall be able to take on, in the terms and in accordance with the forms which shall be agreed, general powers in relation to the whole of working centres included in the scope of the collective agreement or of the pact, in order to encourage the best fulfilment in the same of the legislation on the risks prevention at work.

Equally, within the scope of the public Administrations there shall be able to establish, in accordance with the terms laid down in the Act 7/1990, of July 19, about collective bargaining and participation in the determination of the working conditions of public employees, other methods of designation of the Prevention Representatives and to agree that the powers this Act confers upon those Representatives may be exercised by specific bodies.

Article 36.-Competencies and powers of the Prevention Representatives

1.- Prevention Representatives shall assume the following functions:

- a) To collaborate with the management of the enterprise in the improvement of the preventive action.
- b) To promote and encourage the co-operation of workers in the enforcement of the regulations on the prevention of occupational risks.
- c) To be consulted by the employer, before its implementation, about the provisions referred to in article 33 of this Act.
- d) To perform a task of surveillance and control over the fulfilment of the legislation in the prevention of occupational risks.

In the enterprises which, pursuant to article 38.2 of this Act, do not have a Safety and Health Committee because they do not reach the minimum number of workers required for this purpose, the competencies conferred on it by this Act shall be exercised by the Prevention Representatives.

2.-The Prevention Representatives within the exercise of the competencies conferred on them, they shall be empowered to be able:

- a) To accompany the experts in assessments of preventive nature of the working environment, and so, in accordance with the provisions of article 40 of this Act, to the Labour and Social Security Inspectors

in the inspections and checks which they carry out in workplaces in order to verify the fulfilment of the law on occupational risks prevention, being able to make to them any remarks which they think appropriate.

b) To have access, with the limitations laid down in the Article 22.4 of this Act, to the information and documentation related to the working conditions which is necessary for the exercise of their functions and, in particular, to the one referred to in articles 18 and 23 of this Act. Where the information is subject to the described limitations, it shall only be supplied in such a way that the respect for the confidentiality is guaranteed.

c) To be informed by the employer of the injuries caused to the workers' health once that the former had known about them, being able to attend, even outside the working hours, at the scene of the accident in order to know about its circumstances.

d) To receive from the employer information from persons or bodies responsible for the protection and prevention at the enterprise, and the competent bodies with specific responsibility for the safety and health of workers, without prejudice to the provision referred to in Article 40 of this Act in the matter of collaboration with the Labour and Social Security Inspectorate.

e) To carry out inspections of the workplace in order to monitor and control the state of the working conditions, being able, to this end, to enter any area of the workplace and to communicate during the working hours with the workers, in a way that the normal working process is not altered.

f) To demand to the employer to adopt preventive measures for the improvement of the levels of protection of the safety and health of workers, being able to this end, to make proposals to the employer and to the Safety and Health Committee for their discussion within the said Committee.

g) To put forward to the representative body of workers the adoption of stoppage agreement of activities referred to in Article 21.3.

3.-The reports which the Prevention Representatives have to issue in accordance with the number 1, letter c) of this article must be prepared within the period of fifteen days, or within the indispensable time where dealing with the taking of measures to prevent imminent risks. Should the period elapsed without having been issued the report, the employer shall be able to put in practice his own decision.

4.- The negative decision of the employer of adopting the measures proposed by the Prevention Representatives in accordance with the provision of number 2, letter f) of this article shall be explained.

Article 37.- Guarantees and professional Secrecy of the Prevention Representatives

1.- The provision of Article 68 of the Workers' Statute (Estatuto de los Trabajadores) in the area of guarantees shall be applied to the Prevention Representatives in their role as workers' representatives.

The time spent by the Prevention Representatives in the discharge of the functions laid down in this Act shall be considered as the exercise of the representative functions with regard to the use of the monthly hour credit pursuant to Article 68(e) of the Workers' Statute (Estatuto de los Trabajadores).

Notwithstanding the aforesaid, it shall be considered in all case as actual worked time, without imputation to the said hourly credit, the corresponding to the meetings of the Committee of the Safety and Health and to any other meetings arranged by the employer in the area of risk prevention and the time assigned to the visits foreseen in number 2, letter a) and c) of the previous article.

2.-The employer shall provide the Prevention Representatives with the means and training in preventive matter appropriate for the exercise of their functions.

The training shall be provided by the employer through his own means or through the arrangement with other bodies or specialised organisations in that field and shall be adapted to the evolution of the risks and the developing of new ones, being periodically repeated should it be necessary.

The time spent in training shall be considered as worked time for all purposes and its cost shall not be in any case at the Prevention Representatives' expense.

3.-The Prevention Representatives shall be under the obligation of keeping the due professional secrecy with regard to the information to which they may have access as a result of their functions in the enterprise, in accordance with Article 65.2 of the Workers' Statute.

4.- The provision of the current article concerning the matter of guarantee and professional secrecy of the Prevention Representatives shall be understood as referred, in the case of civil servants, to in the regulation contained in Articles 10.2 and 11 of the Act 9/1987, of June 12, on Representative Bodies, Determination of the Working Conditions and Participation of Personnel in the Service of Public Administrations.

Article 38.-Safety and Health Committee

1.- The Safety and Health Committee is the bipartite and corporate body of participation bound to perform regular and periodical consultation on the enterprise activities in risk prevention.

2.-It shall be established a Safety and Health Committee in all enterprises or establishments with a workforce of 50 workers or more.

The Committee shall consist of the Prevention Representatives, on the one hand, and of the employer and/or his representatives in equal number to the Prevention Representatives, on the other.

In the meetings of the Safety and Health Committee there shall participate, with voice but without vote, the Unions' Delegates and the technical experts responsible for the prevention in the enterprise who are not included in the composition referred to in the previous paragraph. In the same conditions there shall be able to participate workers of the enterprise who have special qualifications or information relating to specific issues which are debated in this body and external prevention experts to the enterprise, provided that any party of the Committee requests it.

3.- The Safety and Health Committee shall meet each term and whenever any of its parties requests it. The Committee shall adopt its own working rules.

The enterprises with several workplaces which are entitle to have a Safety and Health Committee shall be able to agree on with their workers the establishment of a inter-workplace committee, with the functions conferred on it by the agreement.

Article 39: Powers and Authority of the Safety and Health Committee

1.- The Safety and Health Committee shall have the following competencies:

- a. It shall take part in the drafting, implementation and assessment of the company's risk prevention plans and programmes. To this end, before putting them into effect and with regard to their impact on risk prevention, the prevention modality election, and if appropriated, the performance of the external entities contracted to carry out preventive activities, the projects related to planning, work organization and the introduction of new technologies, the organization and implementation of the protection and preventive activities referred to in Article 16 of this Act and the project and organization of prevention-related training, shall all be discussed within this Committee.

- b. To promote initiatives about methods and procedures for the effective prevention of risks, putting forward to the enterprise the improvement of conditions or correction of the existing deficiencies.

2.- In the exercise of its functions, the Safety and Health Committee shall have the following powers:

- a) To know directly the situation relating to the risk prevention at the workplace, carrying out to this end the appropriated visits.
- b) To know as many documents and reports relating to the working conditions as necessary for the discharge of their functions and, where appropriate, the ones coming from the activities of the prevention service.
- c) To know and to analyse the damage caused to the health or to the physical integrity of workers, for the purpose of assessing their causes and to propose the appropriate preventive measures.
- d) To know and to inform the annual report and planning of the prevention service.

3.- In order to comply with the provisions of this Act regarding the collaboration among enterprises on the assumptions of overlapping activities in the same workplace, there shall be able to agree the arrangement of joint meetings of the Safety and Health Committee or, in its absence, of the Prevention Representatives and employers of the enterprises which do not have such Committees, or other measures of co-ordinated action.

Article 40.-Collaboration with the Labour and Social Security Inspectorate

1.- The workers and their representatives shall be able to appeal to the Labour and Social Security Inspectorate if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring safety and health at work.

2.- During the inspection visits to the workplaces to establish whether the legislation on the risks prevention at work is upheld, the Labour and Social Security Inspector shall report his presence to the employer or his representative or to the inspected person, to the Safety and Health Committee, to the Prevention Representative or, in their absence, to the workers' legal representatives, so that they can accompany him during the development of the inspection visit and submit the observations which they deem appropriate, unless the Inspector considers these reports may damage the outcome of his functions.

3.- The Labour and Social Security Inspectorate shall inform to the Prevention Representatives about the results of the inspection visits referred to in the previous paragraph and the measures taken in consequence, and also to the employer by way of a note in the Visit Log Book of the Labour and Social Security Inspectorate which must be in each workplace.

4.- The most representative unions and employers' organisations shall be prior consulted about the design of the plans of the Labour and Social Security Inspectorate in the matter of the risks prevention at work, particularly about the specific programmes for enterprises with fewer than six workers, and shall be informed of the results of the said plans.

CHAPTER VI Obligations on manufactures, importers and providers

Article 41.-Obligations on manufactures, importers and providers

1.- Manufacturers, importers and providers of machinery, equipments, tools and other means of production, are obliged to ensure that these are not a source of danger to the worker, provided that they are installed and used in accordance with the instructions given by the former.

Manufacturers, importers and providers of products and chemical substances for use at work are obliged to pack and label them in such a way that allows their preservation and handling in safety conditions and their content can be clearly identified and also the risks whose storage or use may entail on the safety or health of workers.

The individuals above mentioned in the two previous paragraphs shall provide the appropriate instructions for the correct use by the workers, the additional preventive measures which should be taken and the risks which not only their normal use implies, but also their inadequate handling or use.

Manufacturers, importers and providers of workers protective equipment are obliged to ensure its effectiveness, provided they are installed and used in accordance with the conditions and way recommended by the former. For that purpose, they shall supply the information which informs about the sort of risk to which they are intended to, the level of protection against it and the appropriate way of use and maintenance. Manufacturers, importers and providers shall supply the employers with, and these shall demand from the former, the necessary instructions regarding the use and handling of machinery, equipment, products, raw materials and working tools in order to avoid any risk to the safety and health of workers, and so the employers are able to fulfil their obligations of information with regard to the workers.

2.- The employer shall ensure that the information referred to in the previous number is passed on to the workers in terms comprehensible to them.

CHAPTER VII Liabilities and Penalties

Article 42.-Liabilities and their compatibility

1.-The failure to comply with their obligations in the prevention of occupational risks area by employers gives rise to administrative liabilities, and so, where appropriate, to criminal and civil liabilities for damages which can be derived from such non-fulfilment.

2. Repealed.

3.-The administrative liabilities derived from the disciplinary procedure shall be compatible with the compensation for damages and the surcharge of the economic benefits of the Social Security System which can be established by the competent body in accordance with the rules and regulations of the said system.

4. Repealed.

5. Repealed.

Article 43.- Requests issued by the Labour and Social Security Inspectorate

1.- Where the Labour and Social Security Inspector establishes the existence of a breach of the legislation on the prevention of occupational risks, he shall request the employer to correct the faults observed, unless due to the seriousness and imminence of the risks he decided to proceed with the stoppage of works subject to the provision of Article 44, without prejudice to the proposal of the adequate penalty, where appropriate.

2.-The request made by the Labour and Social Security Inspector shall be notified in writing to the supposedly responsible employer pointing out the anomalies and deficiencies observed with information of the deadline to correct them. The said request shall be notified also to the Prevention Representatives.

If the request is not complied with, and the deficiencies continue the Labour and Social Security Inspector, should he have not done it before, shall draw up a formal statement of breach of statutory duty.

3.-The requests issued by the public employees referred to in Article 9.2 of this Act, when exercising their duties to support and cooperate with the Labour and Social Security Inspectorate, shall be issued in accordance with the requirements and for the purposes set forth in the previous section, and they may be recorded in the Labour and Social Security Inspectorate Inspection Visit Log Book, in the manner laid down by regulation.

Article 44.-Works Stoppage.

1.-Where the Labour and Social Security Inspector ascertains that the breaking of the regulations on the prevention of occupational risks, in his opinion, implies a serious and imminent danger to the safety and health of workers, he shall be able to order the immediate stoppage of such work or tasks. This measure shall be passed on to the enterprise responsible of it which shall inform immediately the affected workers, the Safety and Health Committee, the Prevention Representative or, in their absence, the personnel's representatives, of such a measure. The responsible enterprise shall report to the Labour and Social Security Inspector about the compliance with this notification.

The Labour and Social Security Inspector shall pass on immediately his decision to the labour authority. The enterprise, without prejudice to the immediate fulfilment of such decision, shall be able to contest it before the labour authority within the period of three working days, which must decide within the maximum period of twenty four hours. Such ruling shall be enforceable, without prejudice to the appropriate legal appeals.

The stoppage of work shall be lifted by the Labour and Social Security Inspector who ordered it, or by the employer as soon as the causes which gave rise to it are rectified, having, in this instance, to inform immediately the Labour and Social Security Inspectorate.

2.- The cases of stoppage regulated by this article, and so the ones described by the provisions governing the activities mentioned in the Article 7.2 of this Act, shall be understood, in all case, without prejudice to the payment of salary/wages or damages due and the measures which may be decided for their guarantee.

Article 45: Administrative violations

1. Repealed.

Nevertheless the above mentioned, in the scope of the relationships of the civilian personnel in the public Administrations Service, the offences shall be object of responsibilities through the imposition, by decision of the competent authority, of the carrying out of the correcting measures for the breaches concerned in accordance with the procedure which shall be set-up for that purpose.

In the scope of the General Administration of the State, it shall be the concern of the Government the regulation of the said procedure which shall be adjusted to the following principles:

- a) The procedure shall be started by the competent body of the Labour and Social Security Inspectorate either in compliance with a superior order, or by its own initiative or by request of the personnel representatives.
- b) Afterwards, the Inspectorate shall make a request for the measures to be taken and the deadline to carry them out. The inspected administrative unit shall be duly informed, so that it can make up allegations.
- c) In case of discrepancy among the competent Ministers as a result of the application of this procedure, the legal proceedings shall be submitted to the Council of Ministers for its final decision.

2. Repealed.

Article 46: Minor violations

Repealed.

Article 47: Serious violations

Repealed.

Article 49: Penalties

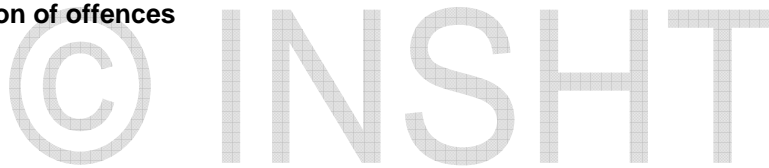
Repealed.

Article 50.-Re-Offending

Repealed.

Article 51.-Prescription of offences

Repealed.



Article 52.-Punishing powers

Repealed.

Article 53.-Suspension or closure of the workplace

The Government or, where appropriate, the management bodies of the Autonomous Communities with competencies on the matter, when offences under the legislation on safety and health at work are accompanied by exceptionally serious circumstances, shall be able to decide the suspension of work for a fixed period or, as a last resort, the closure of the workplace, without prejudice, in any case, to the payment of salaries or compensations due and the measures which may be taken for the guarantee of payment.

Article 54.- Limits in the power to contract with the Administration.

The limits in the power to contract with the Administration because of the commission of criminal or very serious administrative offences under the legislation on safety and health at work, shall be governed by the provisions of the Act 13/1995, of May 18th, on the Contracts of the Public Administrations.

ADDITIONAL PROVISIONS

First additional provision.-Definitions for Social Security purpose

Without prejudice to the use of the definitions contained in this Act within the scope of the legislation on the prevention of occupational risks, the definition of the concepts of occupational accident, occupational disease, non-occupational accident and common disease but also the legal rules and regulations laid down for these contingencies in the Social Security legislation shall continue applying according to the terms and purposes established in the said legal scope.

Second additional provision.-Organic rearrangement.

There shall be abolished the Organisation of the Medical Services of Enterprise, whose functions shall be carried out by the competent health Administration in accordance with the terms of this Act.

The resources and functions currently conferred on the National Institute of Medicine and Safety at Work and the National School of Occupational Medicine are assigned to and shall be developed by the units, bodies or institutions of the Ministry of Health and Consumer Affairs according to their organisation and internal distribution of competencies.

The National Institute of Silicosis shall keep its status as the national centre of reference of the technical-health prevention of occupational diseases which affect the cardiac-respiratory system.

Third additional provision.-Basic character of this Act.

1.- This Act, and so the regulations which the Government make by virtue of Article 6, constitute labour law, enacted pursuant to Article 149.1. 7th of the Constitution.

2.-With regard to civilian personnel with either an administrative or statutory relationship in the service of the Public Administrations, the current Act shall be applied in the following terms:

a) The articles set out below constitute basic legislation within the meaning of Article 149.1.18th of the Constitution:

2

3.1 and 3.2 except the second paragraph.

4

5.1.

12.

14.1 and 14.2, except the reference to Chapter IV, 3, 4 and 5.

15

16

17

18.1 and 18.2, except the reference to Chapter V.

19.1 and 19.2 except the reference to training through internal or outsourced services.

20

21

22

23

24.1, 24.2 , 24.3 and 24.6

25

26

28.1 first and second paragraphs, 28.2, 28.3 and 28.4, except the relating to temporary work enterprises.

29

30.1 and 30.2, except the reference to article 6.1. a), 30.3 and 30.4 except the reference to consolidated Act of Workers' Statute.

31.1, except the reference to Article 6.1, a), 31.2, 31.3 and 31.4.

32 bis

33

34.1 first paragraph, 34.2 and 34.3, except second paragraph.

35.1, 35.2, first paragraph, 35.4, third paragraph.

36, except the references to the Safety and Health Committee.

37.2 and 37.4

42.1

45.1, third paragraph.

Fourth additional provision. Designation of Prevention Representatives in special cases.

Transitional provision, 3

The rules and regulations which the Government makes by virtue of the Article 6 of this Act shall have the same basic character.

b) In the scope of the Autonomous Communities and local institutions, functions which the law confers to the labour authorities and to the Labour and Social Security Inspectorate shall be able to be transferred to different bodies.

c) The remaining articles shall be of general application in the case of lack of specific legislation approved by the public Administrations, with the exception of those inapplicable to the Public

administration because of its own legal-labour nature.

3.-The Article 54 constitutes the basic legislation of administrative contracts pursuant to Article 149.1.18th of the Constitution.

Fourth additional provision.- Designation of Prevention Representatives in special cases.

In the workplaces without workers representatives because there are no workers with sufficient seniority to be either elector or candidate in the elections for the representation of personnel, the workers shall be able to choose by majority a worker who may exercise the competencies of the Prevention Representative who will have the powers, guarantees and obligations of the professional secrecy of such Representatives. The function of these shall cease at the time when the necessary requirements of seniority for the election of personnel representatives are fulfilled, extending the said function during the indispensable period for the actual holding of the election.

Fifth additional provision.-Foundation

1. There shall be a foundation assigned to the National Commission of Safety and Health at Work whose purpose shall be to promote the improvement of the conditions of safety and health at work, especially in the small size enterprises, through actions of information, technical assistance, training and promotion of the legislation on risk prevention.

For the fulfilment of its purpose, the foundation shall be provided with funds at the expense of the Fund of Prevention and Rehabilitation proceeding from the excess of the surplus originated by the Mutual Insurance Companies for accidents at work and occupational diseases.

The total amount of those funds shall not exceed the 20 per cent of the above mentioned Fund, determined on the date of the coming into force this Act.

The Constitution of the foundation shall be approved by the National Commission of Safety and Health at Work, with the favourable vote of two thirds of its members.

In order to achieve a better fulfilment of its purposes, its collaboration with the Labour and Social Security Inspectorate shall be duly arranged.

The planning, development and funding of actions in the various territorial scopes shall take into account the working population in employment, the size of enterprises and the rates of occupational injuries and diseases. The budgets which the foundation set aside for the autonomous regions which have assumed competencies to enforce the labour legislation in the area of safety and hygiene at work, shall be transferred, for their management, to the tripartite institutional bodies of participation which may exist in those autonomous regions and may have a similar nature to the National Commission of Safety and Health at Work.

In the sectors of activity in which there are foundations of sectorial scope, established by employers and employees, and which may have among their purposes the promotion of activities intended for the improvement of the safety and health at work, the development of the objectives and purposes of the Foundation shall be carried out, in any case, in co-ordination with those mentioned in the preceding paragraph.

2. In order to ensure regular compliance with the objectives of the Foundation, it might receive capital injections from the Prevention and Rehabilitation Fund mentioned in the preceding paragraph, at the intervals and in the proportion determined by regulation.

Sixth additional provision.-Constitution of the National Commission of Safety and Health at Work

The Government, within the time limit of three months from the date of the coming into force of this Act, shall regulate the composition of the National Commission of Safety and Health at Work. The Commission shall be established within the period of the following thirty days.

Seventh additional provision.- Compliance with the legislation on the transport of dangerous goods.

The provisions of this Act are applicable without prejudice to the compliance with the obligations derived from the legislation on the transport of dangerous goods.

Eighth additional provision.- Preventive activities' planning

Each Ministerial Department, within the period of six months from the date on coming into force this Act and subject to the consultation with the most representative union organisations, shall submit an agreed proposal of the preventive activities' planning in the corresponding Department and in the centres, bodies and establishments of all sort depending on it to the Council of Ministers.

The proposal shall be accompanied necessarily by an explanatory report about the economic cost of the programmes, and so the timetable of their implementation, with the adequate budgetary forecasts.

Ninth additional provision. -Armed forces establishments

1.-The Government, within the period of six months, subject to consultation with the most representative unions' organisations and at the request of the Ministries of Defence and Labour and Social Security, shall adapt the provisions of Chapters III and V of this Act to the demands of the national defence, to the organic peculiarities and current system of personnel representation in the military establishments.

2.- There shall be kept in force the provisions on organisation and competence of the labour authority and Labour Inspectorate in the scope of the Military Administration contained in the Royal Decree 2205/1980, of June 13th, made in compliance with the seventh final provision of the Workers' Statute.

Ninth Additional Provision bis. Military personnel.

[The terms of chapters III, V and VII of this Act shall apply in accordance with the specific military rules.](#)

Tenth additional provision.-Co-operative Societies

The procedure for the designation of Prevention Representatives regulated in the Article 35 of this Act in the co-operative societies which do not count with salaried employees shall be determined in their constitution or as an object of agreement to be decided in the General Assembly. Where, in addition to the partners who actually work in it there are employees, both groups of workers shall be counted for the purposes of the provision of article 35.2. In this case, the designation of Prevention Representatives shall be carried out jointly by the partners who work and the salaried employees or, where appropriate, the representatives of the latter.

Eleventh additional provision.-Amendments of Workers' Statutes with regard to paid time off.

It is added letter f) to the number 3 of Article 37 of the Consolidated text of the Act of Workers' Statutes approved by the legal Royal Decree 1/1995 of March 24, and whose text is as follows:

" f) For the indispensable period for prenatal examinations and techniques for the preparation of childbirth which must be carried out during the working hours".

Twelfth additional provision.- Institutional participation in the Autonomous Communities.

In the Autonomous Communities, the institutional participation, in relation to their structure and organisation, shall be carried out in accordance with the competencies that they may have in the area of safety and health at work.

Thirteenth additional provision.-Fund of Prevention and Rehabilitation

The resources of the Fund of Prevention and Rehabilitation proceeding from the excess of the surplus originated by the management carried out by the mutual insurance company for accidents at work and occupational disease referred to in Article 73 of the Consolidated Act of Social Security shall be set aside, in the amount which shall be determined by regulations, for the activities which may carry out as services of prevention the mutual insurance company for accidents at work and occupational disease, in accordance with Article 32 of this Act.

Fourteenth Additional Provision. Presence of preventive resources on construction sites.

1.- The terms of Article 32 bis of the Act on Prevention of Occupational Risks shall apply to construction sites governed by Royal Decree 1627/1997 of 24 October, laying down the basic health and safety provisions for construction sites, with the following special considerations:

- a. The mandatory presence of preventive resources shall apply to every contractor.
- b. In the case referred to in section 1, paragraph a) of Article 32 bis, the presence of each contractor's preventive resources shall be necessary when work that involves special risks is done on the site, as defined in said Royal Decree.
- c. The aim of the mandatory presence of preventive resources shall be to monitor compliance with the measures included in the occupational health and safety plan and to verify their effectiveness.

2.- The provisions of the previous paragraph are to be understood without prejudice to the obligations of coordinator for safety and health matters during the project execution stage.

Fifteenth Additional Provision. Authorizing public officials.

In order to be able to carry out the duties laid down in Article 9, section 2 of this Act, the public officials of the Autonomous Communities shall be in the possession of a specific authorization from their own Autonomous Community, under the terms laid down by regulation.

In all cases, said public officials shall belong to qualification group A or group B and prove that they have specific occupational risk prevention training.

Sixteenth Additional Provision. Accreditation of training.

Public or private entities intending to carry out any of the occupational risk prevention training activities listed under the third transitional provision of Royal Decree 39/1997 of 17 January, establishing the Regulation on Prevention Services, shall prove their capability by means of a liability declaration submitted to the competent labour authority stating their compliance with the requirements laid down by regulation.

TRANSITIONAL PROVISIONS

First transitional provision.-Application of the most favourable provisions

1. -The contents of Articles 36 and 37 of this Act relating to powers, competencies and guarantees of the Prevention Representatives shall be understood without prejudice to the regard for the most favourable provisions for the exercise of the rights of information, consultation and participation of workers in the prevention of occupational risks laid down in the collective agreements in force on the date of the coming this Act into force.

2.- The specific bodies of workers representation in the field of prevention of occupational risks which, where appropriate, would have been determined by the collective agreements referred to in the preceding paragraph and which are provided with a scheme of competencies, powers and guarantees which uphold the provisions of Articles 36 and 37 of this Act, shall be able to continue operating, in place of the Prevention Representatives, save that the legal representative body of workers decides the designation of these Representatives according to the procedure of Article 35.

3.-The contents of the preceding paragraphs shall be applied also to the agreements concluded within the scope of the public service pursuant to the Act 7/1990 of July 19th, on collective bargaining and participation in determining the working conditions of the public employees.

Second transitional provision.

In the meantime the Regulations of the Services of the Prevention of Occupational Risks are approved, it shall be understood that the Mutual insurance companies for accidents at work and occupational diseases fulfil the requirement established in Article 31.5 of this Act.

Single repealing provision.-Scope of the repeal

All the provisions opposed to this Act are repealed and specially:

- a) Articles 9, 10, 11, 36.2, 39, and second paragraph of 40 of the Act 8/1988, of April 7th, on offences and penalties in the social order.
- b) The Decree of July 26th 1957 which governs the work prohibited to women and minors, in the aspects of its provisions related to the work of women, keeping in force the provisions related to the work of minors until the Government develop the measures contained in article 27.2.
- c) The Decree of March 11th, 1971 about the constitution, composition and functions of the Committees

of Safety and Hygiene at Work.

d) The Parts I and III of the General Ordinance of Safety and Hygiene at Work, approved by order of March 9th, 1971.

That, which does not oppose the contents of this Act, and until the regulations referred to in Article 6 are approved shall continue being of application the regulation of the matters comprised in the said article and which are contained in the Part II of the General Ordinance of Safety and Hygiene at Work or in other pieces of legislation which may contain specific measures about such matters, and so the Order of the Ministry of Labour of December 16th, 1987, which sets up the forms for accident reports. Likewise, there shall remain in force the regulating provisions of medical services of enterprises until the preventive services contained in this Act are developed through regulations. The personnel assigned to those services on the date of coming into force of this Act shall be placed at the preventive services of their respective enterprises, when these services are established, without prejudice to continue carrying out those functions different from the special activities of the preventive services conferred upon them.

This Act does not affect the applicability of the special provisions on the prevention of occupational risks related to the mine work contained in Chapter IV of the Royal Decree 3255/1983, of December 21st, which approves the Miners Statutes, and in its provisions of development, and so the provisions of the Royal Decree 2857/1978, of August 25th which approves the General Regulations for the Mining Scheme, and the Royal Decree 863/1985, of April 2nd, which approves the General Regulations of the Basic Legislation on Safety at Mines and its complementary provisions.

First final Provision.-Updating of Penalties

The amount of penalties referred to in Article 49.4 shall be updated by the Government at the request of the Minister of Labour and Social Security. Request which must be adapted to the powers referred to in Article 52.1 of the Act.

Second final provision.-The coming into force

This Act shall come into force three months after its publication in the Official State Gazette.

Therefore I order all the Spaniards, individuals and authorities to observe and to make to observe this Act.

Madrid, 8th November 1995

JUAN CARLOS R.

The Head of the Government

Felipe González Márquez.