

## HEAD OF STATE

Official State Gazette (BOE), 10th November 1995. BOE Number 269. Page 32590

OCCUPATIONAL HEALTH AND SAFETY. Regulates Occupational Risk Prevention

## STATEMENT OF REASONS

1.

Article 40.2 of the Spanish Constitution entrusts the public powers with responsibility for monitoring occupational health and safety, as one of the governing principles of economic and social policy.

This constitutional mandate implies the need to develop a policy for the protection of health at work by preventing occupational risks and this Act constitutes its fundamental pillar. This act can be considered as the general legal framework within which various preventive measures shall be developed, consistent with the decisions of the European Union which has expressed its desire to progressively improve working conditions through a gradual harmonisation of those conditions throughout the various European countries.

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

A consequence of all this has been the establishment of a European compilation of legal resources for the protection of health of workers at work. Of those Directives, the most significant is, without doubt, the Council Directive 89/391/CEE, relating to measures for the improvement of occupational safety and health of workers, which contains the general legal framework within which the Community policy on prevention functions.

This Act transfers to the Spanish legislation the aforementioned 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 regulation of legal level, such as the Directives 92/85/EEC, 94/33/EEC and 91/383/EEC, relating

to the protection of maternity, minors, and the treatment of relations of temporary workers, under a fixed term contract of employment, and in temporary employment agencies.

Therefore, the constitutional mandate enshrined in article 40.2 of our Act of acts and the legal community established by the European Union lays the foundation for this Act. In addition, our commitment to the International Labour Organisation from the ratification of Convention 155 on the occupational safety and health of workers enriches the contents of the legal text on incorporating their provisions and giving them adequate legal recognition within our legal system.

2.

But the demand for a new legal approach is not only due to the constitutional mandate and the international commitments of the Spanish State. It also stems from the domestic order, from a double need: first, ending the lack of a unifying vision on the policy for the prevention of occupational risks, a characteristic of the straying from the current legislation, the result years of accumulating rules and regulations of very different levels and guidance, many of them prior to the Spanish Constitution and secondly, the updating of the regulations already phased out and the regulation of new situations never considered before. Although these situations are always important, they acquire special relevance when related to the protection of occupational safety and health of workers, whose changes demand a continuous updating and adaptation of legislation to new situations.

3.

Therefore this Act's objective is to determine the precise basic body of guarantees and responsibilities required to establish an appropriate level of occupational protection of workers' health and all this within the framework of a coherent, coordinated and efficient policy for the prevention of occupational hazards.

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

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

But, at the same time -- and herein lies one of the main novelties of the Act --, this Act shall also be applied in the area of Public Administrations, and that is the reason why this Act is not only for legislating employment, but constitutes in its fundamental

aspects a basic rule of the statutory system of public employees, pursuant to Article 149.1.18th of the Spanish Constitution. This also confirms the universal tendency of the Act in dealing in a coherent and global manner with the problems derived from work related risks wherever the work is performed.

Consequently, the scope of application of this Act shall apply to all sectors of activity, both public and private with the exception of certain specific public service activities, such as the armed forces, the police, customs and excise control, forensic work and civil protection services which inevitably conflict with the Act. However, this will be inspired by specific legislation 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 penitentiary centres or establishments.

4.

The policy on prevention of occupational hazards, as a part of all government activities aiming to promote the improvement of terms and conditions at work in order to raise the level of protecting the health and safety of workers, is laid down in the Act based on the principles of efficiency, coordination and participation, and arranging, not only the activities of the various public Administrations with competence in prevention matters but also the necessary participation in those activities of employers and employees, through their representative organisations. For this purpose, the National Commission of Occupational Health and Safety is created as a privileged instrument in the arrangement and development of preventive policy.

But, as the main object of this Act is prevention, its contents cannot rest exclusively in regulating the duties and responsibilities of the parties directly involved with labour matters. The intent to encourage an authentic preventive culture through the improving education on this subject at all levels involves society as a whole and creates perhaps one of the most transcendental basic objectives and future effects proposed by this Act.

5.

The protection of workers from occupational hazards requires from firms an attitude which surpasses the mere formal implementation of a predetermined number of duties and responsibilities and, even more, the simple rectification “a posteriori” of situations of risk already evident. The basic elements of the new approach to the prevention of occupational risks which this Act proposes are prevention planning from the very outset of the design of a business project, the initial assessment of inherent occupational hazards and their periodic updating in accordance with changes of circumstances, the order of a coherent and global whole of preventive measures appropriate to the nature of detected risk and control of the efficiency of said measures. And in addition, it is clear that the information and training of workers must aim for a better understanding of the actual scope of risks derived from workplace and the way to prevent and avoid them in accordance with the specific circumstances of each workplace, the characteristics of the workers and the specific activity they carry out.

Chapter III of this Act takes these principles into account, determines the rights and obligations derived from or in connection with the basic right in the most specific way and manner of operating in emergencies or in case of a serious and imminent risk, the guarantees and rights in connection with the monitoring of the workers' health and with special attention to the protection and regard to their privacy in these situations, and the particular measures that must be taken with regards to specific categories of workers, such as minors, pregnant women or those who have given birth recently, and for temporary workers.

Among the employers' responsibilities contained in this Act, besides those which imply the guarantee of recognised rights to the worker, the following are specified: the duty of co-ordination imposed upon employers who carry out activities in the same workplace centre and on those who contract or sub-contract with others for the execution of work or services at their own workplaces or the duty of monitoring the implementation of prevention provisions by said contractors or subcontractors.

The fundamental instrument of the preventive act imposed upon the employers is the responsibility laid down in chapter IV for arranging said preventive action through one or several firm workers specifically recruited for the purpose of establishing a service of prevention or arranging a service of prevention outside the firm. In this way, the Act combines the need for an orderly and formalised arrangement of prevention activities while recognizing the diversity of situations which the Act addresses regarding the magnitude, complexity and intensity of the inherent risk of said situations, while providing a sufficient whole of possibilities, including the possible participation by the Occupational Injuries and Diseases Society, in order to organise the development of the preventive measures in a rational and flexible way. It would guarantee at all times not only the efficiency of the model of measure chosen, but the independence and protection of workers who, either involved or not in a service of prevention, have been assigned to said task.

6.

Chapter V establishes, in a detailed form, the consultation and participation rights of workers in questions relating to safety and health at work. Starting from the system of collective representation in force in our country the Act confers upon the designated Prevention Delegates -- chosen by and among representatives of personnel within the scope of the respective bodies of representation -- the task of dealing with the specialised activities of prevention of occupational hazards and for that purpose confers upon them the necessary competence, powers and guarantees. In addition to this, we have the Safety and Health Committee, which continues in the role of an established and traditional concept in our employment legal system, and provides the form of meetings between the workers' representatives and the employers to develop balanced participation in preventing risks.

This all occurs without prejudice to the possibilities which the Act confers for collective bargaining in order to provide a different way for workers to participate, even through establishing means of working towards a solution that are different from those used in the workplace. This allows different positive experiences of conventional regulations to

be attempted whose validity, fully compatible with the object of this Act, is safeguarded by its transitional provisions included herein.

7.

Chapter VI sets up the basic obligations which affect manufactures, importers and providers of machinery , equipment, products and tools that link with the community legislation for the domestic market in order to ensure the exclusive marketing of those products and equipment which offer the highest levels of safety for the users. Chapter VII lays down the regulation of responsibilities and sanctions to ensure its implementation, including the breach of provisions and sanctions procedure.

Finally, the fifth additional provision orders the creation of a foundation, under the Ministry of Labour and Social Security, in which the Civil Service shall participate with the representative organisations of employers and employees, whose main aim shall be the promotion of activities intended to improve conditions of safety and health in the workplace, specially within small and medium size firms. For the foundation to be able to carry out the development of its activities, it shall be provided with resources from the Societies of Occupational Injuries and Diseases.

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

8.

The draft, complying with the legal requirements on the subject, has been submitted for consideration to the Social and Economic Board of the Attorney General Council of the Judicial Branch Office and the State Council.

## **CHAPTER I**

### **Object, scope and definitions**

#### **Article 1. Standards on preventing occupational hazards.**

The standards on preventing workplace risks is established in this Law, its development or complementary regulations and any other laws, legal or conventional that contain relative fixes for adopting preventive measures in the workplace or which could cause them in said place.

#### **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 hazards.

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

For the implementation of 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 an employment nature contained in this Act and its regulations shall be in all cases considered as the minimum necessary law available, being subject to improvement and development by collective agreements.

### **Article 3. – Scope of application.**

1. This Act and its regulations shall be applied to both industrial relations governed by the consolidated Act of Workers' Statutes [Ley del Estatuto de los Trabajadores], and to relations of a public or statutory character for civilian personnel in the Public Sector, with the special characteristics which, in that case, are laid down by this Act or its regulations for the application of same. This is not to effect compliance with the specific obligations set forth for manufacturers, importers and providers and the rights and obligations derived for self-employed persons. They shall also be applicable to the co-operative societies established in accordance with the applicable legislation, and to those cases in which there are partners whose activity consists of personal work, with the special characteristics derived from their specific legislation.

Where reference is made in this Act to workers and employers, it shall be understood that also included in those terms are, respectively, on the one hand civilian personnel relative to a public or statutory nature and the Public Administration for which that personnel works, in accordance with the expressed terms of the third additional provision of this Act, and, on the other hand, the partners of the co-operatives referred to in the preceding paragraph and the co-operative societies for which they work.

2. This Act shall not be applicable when characteristics peculiar to certain specific public service activities, conflict with it, as happens in the cases of:

The Police, security and customs and excise control.

Civil protection services and forensic reports in cases of serious risk, catastrophe and public disaster.

Armed Forces and military activities of the Civil Guard.

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

3. This Act shall be applied to military centres and institutions, without being detrimental to the peculiarities of their specific legislation.

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

4. This Act shall not be applied either to domestic staff of private households. However, the head of the house is obliged to ensure that their work 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 these meanings:

1. - "Prevention": all the steps or measures taken or planned at all stages of work in the firm to prevent or reduce occupational hazards.

2. - "Occupational hazards": the possibility that a worker sustains a given damage derived from work. In order to assess a risk from the point of view of its seriousness, the probability that the risk may occur and its severity shall both be taken into account.

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

4. - "Serious and imminent risk at work": all risk which probably and reasonably may 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 danger to persons at work, it shall be considered that a serious and imminent danger exists where it is likely and reasonable that an exposure to the said agents is materialised in an immediate future and may cause serious danger to health, even when those agents do not become apparent immediately.

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

6. - "Working equipment" shall be deemed any machinery, apparatus, instrument or plant and building used at work.

7. - "Working condition" shall be deemed any characteristic of same which may have a significant influence in the cause of risks to the safety and health of worker. The following shall be specifically included in this definition:

- a) The general characteristics of premises, plant and building equipment, products and any other existing apparatus 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 procedure to use the above mentioned agents which affects the generation of said risks.
- d) Any other characteristic of work, including those relating to its organisation and regulation which influence the magnitude of risks to which workers are exposed.

8. - "Personal protective equipment" shall be deemed any device intended to be carried or held by a worker as protection against one or several risks which may threaten his safety or health at work as well as any accompaniment or accessory intended for such purpose.

## **CHAPTER II**

### **Policy for the prevention of occupational hazards to protect safety and health.**

#### **Article 5. - Objective of this Policy.**

1. The objective of this preventive policy shall be the promotion of improving working conditions in order to raise the level of protection of safety and health of workers in the workplace.

This policy shall be implemented by regulations and the corresponding administrative actions, in particular, the provisions of this chapter, which shall set guidelines for the co-ordination of the various public Administrations responsible for prevention and which harmonise the work which, in accordance with this Act, belongs to the public bodies and private individuals 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 co-operation and assistance to each other or the efficient performance of their respective responsibilities within the scope laid down in this article.
- b) The preparation of the preventive policy shall be carried out with the participation of employers and workers through their representative organisations of employers and unions.

2. For the purposes of the previous paragraph public Administrations shall promote the improvement of preventive education at the various levels of teaching and specifically in the national system of vocational training and they shall adapt the training to the necessary human resources for the prevention of occupational hazards.

A permanent collaboration shall be established by General Administration of State between the Ministry of Labour and Social Security and other related ministries, in particular the Education and Science and Health and Consumer Affairs, with the object



of setting up the training levels and suitable specialisation as well as a constant review of the teaching of these subjects, for 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 improving occupational safety and health conditions and reduction of occupational hazards, research or promotion of new forms of protection, and development of efficient structures of prevention.

To that end specific programmes aiming to improve the working environment and levels of protection shall be adopted. Those programmes shall be implemented through the concession of incentives stipulated in regulations and which shall be intended specially for small and medium size firms.

4. The public administration shall promote the effectiveness of the principle of equality between men and women, considering the variables related with sex both in the employment systems and in dealing with data such as in the study and general investigation of occupational hazards preventive matters with the object of detecting and preventing possible situations in which damages derived from work could appear linked to the sex of the workers.

## **Article 6. - Regulations.**

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

a) Minimum requirements which working conditions must fulfil 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. Specifically, it may establish the submission of these processes or operations to administrative control procedures, and in the case of hazardous agents, to the prohibition of their use.

c) Special conditions or requirements for any of the possibilities referred to in the previous paragraph, such as the requirement for prior training or practice or the creation of a plan which contains the preventive measures to be adopted.

d) Assessment procedures of the risks to the health of workers, standardization of methodologies and guidelines for preventive action.

e) Forms of organizing, running and controlling preventive services, taking into account the peculiarities of small size firms for the purpose of avoiding unnecessary obstacles for the creation and development of those services and capabilities and aptitudes which said services and workers that have been designated for the development of the preventive action must have.

f) Work conditions or specific preventive measures for especially dangerous jobs, particularly if they require special medical controls, or when risks turn up that are derived from certain characteristics or special situations of the workers.

g) Rating procedure for occupational diseases, as well as requirements and procedures for the communication and information to the competent authority of the damages 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 maintain the necessary co-ordination with health and safety legislation and industrial security and shall be object of an evaluation and, where appropriate, of periodical review, in accordance with the experience on the application and the technical progress.

#### **Article 7. - Proceedings of the competent Public Administrations on labour matters.**

1. In compliance with the contents of this Act, the competent public Administrations on labour matters shall develop duties for promoting prevention, technical advice, monitoring and control of compliance by the individuals included within their scope of application of the legislation for the prevention of occupational hazards, and shall punish infringements of said legislation in the following terms:

a) Promoting the prevention and advice to be developed by the technical bodies in preventive matters, including technical assistance and co-operation, information, publication, training and research in preventive matters, as well as monitoring of preventive actions which are carried out in firms to attain the objectives envisaged in this Act.

b) Ensuring the fulfilment of the legislation on the prevention of occupational hazards through monitoring and control proceedings. To this end, they shall provide the necessary advice and technical assistance for the fulfilment of said legislation and shall develop specific programmes aimed to obtain a better efficiency in control.

c) Punishing the breach of occupational hazards preventive legislation by the subjects included within the scope of application of this Act, pursuant to Chapter VII of same.

2. The actions of the competent public Administrations in industrial matters referred to in paragraph 1 shall continue to be developed with regard to mines, quarries and tunnels which require the application of mining techniques, and to those involved in the manufacture, transport, storage, handling and use of explosive devices or nuclear energy, by the specific bodies mentioned in their regulatory legislation.

The responsibilities referred to in the previous paragraph are understood not to affect the provisions of the specific legislation on industrial products and installations.

#### **Article 8. - National Institute of Occupational Safety and Hygiene.**

1. The National Institute of Occupational Safety and Hygiene is the scientific and technically specialised body within the General Administration of the State whose mission is the analysis and study of safety and health conditions in the workplace, and also the promotion and encouragement for the improvement of same. To that end, it shall establish the necessary co-operation with the bodies of the Autonomous Communities with responsibility in this matter.

The Institute, in fulfilling this objective, shall have the following duties:

a) To provide expert advice in the drafting the legislation and its development, both at national and international level.

b) To promote and, where appropriate, to carry out the activities of training, information, research, study and dissemination relating to the prevention of risks at work, with adequate co-ordination and collaboration, where appropriate, with the technical bodies of the Autonomous Administrations responsible for preventing risks.

c) To provide technical support and collaboration to the Labour and Social Security Department in compliance with its role of monitoring and control, pursuant to Article 9 of this Act, within the scope of the Public Administrations.

d) To collaborate with international bodies and develop programmes of international co-operation within this 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 which are conferred to it within the scope of its responsibilities, in accordance with the National Commission of Occupational Safety and Health which is governed by article 13 of this Act, and with the collaboration, where appropriate, of the technical bodies of the Autonomous Communities with responsibility in this matter.

2. The National Institute of Occupational Safety and Hygiene, within the framework of its activities, shall ensure the co-ordination, shall support the exchange of information and the experiences among the various public Administrations, and specifically shall promote and provide support for activities that promote safety and health within the Autonomous Communities.

It shall likewise provide, in accordance with the competent Administrations, technical specialised support in the matter of certification, testing and accreditation.

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

4. The National Institute of Occupational Safety and Hygiene shall work in the General Secretariat of the National Commission of Occupational Safety and Health, providing

the necessary technical and scientific assistance for the development of their responsibilities.

#### **Article 9. - Labour and Social Security Inspectorate.**

1. The Labour and Social Security Inspectorate is responsible for the activity of monitoring and control of the legislation regarding the prevention of occupational risks.

In fulfilling this objective, it shall have the following duties:

a) To ensure the compliance with the legislation on the prevention of risks at work, and also of the legal-technical provisions related to the prevention of risks at work, although they may not have the direct responsibility for employment legislation, and to propose to the competent employment authority the adequate penalty, where a breach of legislation on prevention of risks at work has been established in accordance with Chapter VII of this Act.

b) To advise and inform firms and workers about the most effective way to comply with the provisions when monitoring has been entrusted to them.

c) To prepare reports which Industrial Tribunals may ask for in cases of occupational injuries and diseases.

d) To notify the employment authority regarding fatal, very serious and serious accidents at work, and about those others which, because of their characteristics or the affected persons, are considered to require a notification, and also regarding occupational diseases which meet those qualifications and, in general, whenever said employment authority asks for it in order to fulfil their responsibility for legislation on the prevention of risks at work.

e) To verify and to assist in fulfilling the obligations taken on by the prevention services established in this Act.

f) To order the immediate stoppage of work where, in the inspector's opinion, the existence of a serious and imminent risk to the safety or health of workers has been noted.

2. The General Administration of the State and, where appropriate, the Autonomous Administrations shall adopt the necessary measures to guarantee expert collaboration and technical advice required by the Labour and Social Security Inspectorate that are within their respective areas of responsibility.

These public agencies shall draft and coordinate plans of action in their respective areas of responsibility and territoriality, to contribute to the development of preventive measures within companies, especially those of a medium and small size and those of a higher level of risk or with higher accident rates, by conducting assessments, providing information, training and technical assistance.

In exercising their missions, the public employees of said administrations that carry out technical work on preventing work risks referred to in the above paragraph, may carry

out the assessments, provide information and verification of the conditions of security and health of the companies and business places, within the scope of the law indicated in item 3 of this article and with the ability to require that referred to in Article 43 of this law, all in accordance with the regulations.

Said compliance actions shall be drawn up by the respective Territorial Committee for the Inspection of Labour and Social Security referred to in Article 17.2 of Law 42/1997 of November 14, Head of Labour and Social Security Inspectorate to be integrated in the action plan of the Labour Security and Health of the Inspectorate of Employment and Social Security.

3. When during the verification proceedings referred to in the above paragraph, an infraction is deemed to exist, as long as they have determined incompliance with said requirement, the public official in charge shall send a report to the Inspectorate of Labour and Social Security, in which the proven facts shall be listed so that the corresponding deed of an offence committed can be drawn up, should it proceed in that way.

For this purpose, the facts relative to the activities of verification of the material or technical conditions of safety and health gathered in said reports shall be deemed to be certain as referred to in the additional regulation fourth, item 2, of Law 42/1977, of November 14, Legal Authority for the Inspectorate of Employment and Social Security.

4. The activities foreseen in the two previous sections, shall be subject to the terms established in article 14, item 2 of Law 42/1997, dated November 14, Legal Authority for the Inspectorate of Labour and Social Security.

#### **Article 10. - Proceedings of the competent Public Administrations on health.**

The proceedings of public Administrations responsible for occupational health shall be carried out in accordance with the acts and the aspects established in Chapter IV, Part 1 of Act 14/1986, of April 25, General Health Authority and provisions for its development.

In particular, the above mentioned Public Administrations shall be responsible for:

a) The establishment of adequate means to assess and control health related activities carried out in companies by the operating services of prevention. To that end, having heard from scientific societies, they shall set up the activities' guidelines and protocols which said services shall comply with.

b) The introduction of appropriate information systems which allow drafting maps of risks at work, together with competent employment authorities, and carrying out epidemiological studies to identify and prevent the pathologies which may affect the workers' health, as well as enabling a quick exchange of information.

c) The supervision of training which must use qualified personnel operating in the authorised services of prevention when the subject is on prevention and promotion of health at work.

d) Production and publication of studies, research and statistics relating to workers' health.

#### **Article 11. - Administrative Co-ordination.**

The creation of preventive provisions and ensuring compliance, the promotion of prevention, the research and epidemiological vigilance on risks at work, accidents at work, and occupational diseases determine the need for the co-ordination of the activities of the Administrations responsible for working conditions, health and industry to more effectively protect the safety and health of workers.

Within the framework of that co-ordination, the Administration responsible for working conditions shall ensure, in particular, that the information obtained by the Employment 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 stipulated in Article 10 of this Act and Article 21 of Act 14/1986 of April 25, General Health Authority, as well as to the Administration responsible for industry for the purposes stipulated in Act 21/1992, of July 16, of Industry.

#### **Article 12. - Participation of employers and workers.**

The employers and workers participation through the employers' and unions' most representative organisations, in the planning, programming, organisation and control of management related to improving working conditions and the protection of the safety and health of workers in the workplace is a basic principle of the policy for preventing occupational hazards, to be developed by the competent public Administrations at the various territorial levels.

#### **Article 13. - National Commission on Occupational Safety and Health.**

1. The National Commission on Occupational Safety and Health is established as a corporate body for advising Public Administrations on setting up preventive policies and also as a body that will participate as an institution in occupational safety and health.

2. The Commission shall consist of a representative of each of the Autonomous Communities and of an equal number of members of the General Administration of the State and in a situation of parity with the former will be members of the most representative organisations of employers and unions.

3. The Commission shall be aware of the activities taken by the competent public Administration to promote prevention of occupational hazards, technical advice,

vigilance and control referred to in Articles 7, 8, 9 and 11 of this Act and it shall inform and put forward proposals relating to said activities, specifically those regarding:

- General operating criteria and programmes.
- Regulatory projects of a general nature.
- Coordinating the activities developed by public Administrations responsible for workplace matters.
- Coordinating among the public Administrations responsible for workplace, health and industrial matters.

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

5. The Commission shall consist of a Chairman and four Vice-Chairmen, one for each one of the groups which make it up. The Chairmanship of the Commission goes to the General Secretary for Employment and Industrial Relations [Secretario General de Empleo y Relaciones Laborales] and the Vice- Chairmanship conferred to the General Administration of State and occupied by the under-Secretary for Health and Consumer Affairs [Subsecretario de Sanidad y Consumo].

6. The Secretariat of the Commission as an entity of technical and administrative support goes to the Management of the National Institute of Occupational Safety and Hygiene [Dirección del Instituto Nacional de Seguridad e Higiene en el Trabajo].

7. The National Commission of Occupational Safety and Health shall operate as a plenary session, as a Permanent Commission or as Working Groups, in accordance with the provisions set-up in the internal Regulation which the Commission shall establish.

With regard to any matter not foreseen in this Act or the internal Regulations referred to in the foregoing paragraph, the Commission shall be subject to Act 30/1992, of the Legal Framework 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 hazards.**

1. Workers have the right to effective protection when it comes to occupational safety and health.

That right assumes the existence of a corresponding obligation for the employer to protect workers from occupational hazards.

This obligation of protection also constitutes an obligation on the part of Public Administrations with regard to their employees.

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

2. In compliance with the obligation to protection, the employer shall guarantee the safety and health of his workers in all aspects relating to work. To this end, within the context of his responsibilities, the employer shall put in place occupational hazards prevention by adopting all measures necessary for protecting the safety and health of workers, with the specialities listed in the following articles relating to preventing occupational hazards, conducting risk assessments, information and participation and training of workers, action plans in case of emergency and serious and imminent risk, health monitoring, and through the creation of an organisation and the necessary means according to the terms stipulated in Chapter IV of this Act.

The employer shall develop a permanent monitoring activity for the purpose of continuously improving the activities of identification, evaluation and control of risks that they have not been able to avoid and the existing levels of protection and shall arrange whatever may be required to adapt the preventive measures listed in the foregoing paragraph to the possible changes of circumstances affecting work performance.

3. The employer shall comply with the obligations established in the provision on the prevention of occupational risks.

4. The workers' obligations set forth in this Act, the establishment of duties for workers and company departments to protect and prevent occupational hazards, and the option to formalize agreements with specialised organisations to develop prevention measures shall complement the employer's actions. This shall not discharge the employer from his responsibilities in this matter, notwithstanding 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 make up the general prevention obligation set forth in the preceding article, in accordance with the following principles:

- a) Avoid risks.
- b) Evaluate the risks which cannot be avoided.
- c) Combat the risks at their source.



d) Adapt the work to the individual, especially as regards the design of the work place, the choice of work equipment and the choice of working and production methods, with the intent, in particular, of alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health.

e) Adapt to technical progress.

f) Replace dangerous with non-dangerous or the least dangerous substances.

g) Develop a coherent overall prevention policy which covers technology, organisation at work, working conditions, social relationships and the influence of environmental factors at work.

h) Give priority to collective protective measures over individual 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 those tasks on safety and health.

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 lapses of concentration or reckless imprudence by the workers. For the adoption of such efficiency additional risks which could be involved with certain preventive measures shall be taken into account, which may only be adopted when the magnitude of those risks is substantially lower than those being controlled and no safer alternatives are available.

5. The following entities may take out insurance policies for the purpose of guaranteeing coverage as a precaution against the risks derived from work: companies for their workers, self-employed persons for themselves and the co-operatives for their members who provide personal work.

#### **Article 16. - Risks assessment, evaluation of the risks and planning preventive measures.**

1. The prevention of occupational hazards in firms shall be integrated into the general administration both in their overall activities as well as their hierarchical levels by means of the introduction and application of an occupational hazards prevention plan as specified in the following paragraph.

This preventive plan for occupational hazards must include the organizational structure, responsibilities, duties, practices, procedures, processes and the necessary resources to carry out the plan in the company, within the regulatory terms established.

2. The essential tools for administering and putting the plan for preventing risks in place, that may be conducted by phases in a programmed manner, are the evaluation of labour risks and the planning of preventive measures referred to in the following paragraphs:

a) The employer must carry out an initial evaluation of the risks to the security and health of the labourers, taking into account, in a general manner, the nature of the activity, the characteristics of the existing jobs and of the workers performing them. A similar evaluation must be made when work equipment is selected, or the substances or prepared chemicals and for the fitting out of the workplace. The initial evaluation shall take into account all other activities that must be developed in accordance with the contents of the regulations regarding protection from specific risks and activities that are especially dangerous. The evaluation shall be conducted when the work conditions change and, in all cases, it must be submitted for consideration and shall be revised, if necessary, when any damages to health have occurred.

When the results of the evaluation require it, the employer shall carry out periodic controls on the work conditions and the activities of the workers they employ, to determine whether potentially dangerous situations exist.

b) If the results of the assessment referred to in the foregoing paragraph a) determine there are risky situations, the employer shall carry out the necessary preventive activities to eliminate or reduce and control said risks. These actions shall be the employer's planning objectives, including for each preventive measure the term within which it must be completed, who shall be responsible and the human resources and materials required to carry it out.

The employer must be assured regarding the effectiveness of the preventive activities including their planning, and must continually monitor same.

Preventive measures shall be changed when the employer considers, as a result of the periodical controls referred to in the foregoing paragraph a), their inadequacy to the objective of the required protection.

3. Where some damage has been caused to the health of workers or where, on the occasion of the health monitoring 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 Equipment and means of protection.**

1. The employer shall adopt the necessary measures in order to adapt the work equipment to the work which must be carried out so that they guarantee the safety and health of workers 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 in order to ensure that:

a) The use of working equipment is reserved for those in charge of its use.

b) The repairs, transformation, maintenance or conservation are carried out by workers specifically trained for that.

2. The employer shall provide his workers with adequate equipment for individual protection in the performance of their activities and shall ensure the actual use of the said equipments where, because of the nature of work, it is necessary .

The personal protective equipment shall be used where the risks are unavoidable or cannot be reduced by technical means of collective protection or by measures, methods or procedures for organizing the 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 adequate measures in order that workers receive all the necessary information relating to:

a) Risks to workers' occupational safety and health, not only those which affect the firm as a whole but those 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.

c) The measures adopted in accordance with the provisions of Article 20 of this Act.

In firms 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 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 occupational safety and health, in accordance with the provisions laid down in Chapter V of this Act.

Workers shall be entitled to put forward proposals to the employer, as well as 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 there are changes in the performance of his duties, or new technologies or new work equipment is introduced.

The training must be specifically related to the workstation of the worker or to the job of each worker; it must be adapted to the development of risks and the appearance of new ones, or to the periodical repetition of risks, should it be necessary.

2. The training referred to in the preceding paragraph must take place, whenever possible, during working hours, otherwise, in off hours but training must be deducted from the working hours. The training shall be given by the firm using its own means or external services, and in no case may its expense be devolved upon the workers.

#### **Article 20. - Emergency measures.**

The employer, taking into account the size and the nature of the activities of the firm, and also the possible presence of persons unaware of same, shall analyse the possible emergency situations 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 functioning. Said 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 for protection.

b) Take action and give the necessary instructions to enable workers in the event of serious, imminent and unavoidable danger, to stop work and, if necessary, immediately leave the workplace. In this case workers shall not be required to resume work while the danger persists, except when duly justified by safety reasons and duly regulated.

c) Arrange whatever is needed for the worker who may not be able to contact his immediate superior, in the event of serious and imminent danger to his safety, the safety of other workers or of third parties, to take the appropriate steps given 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 necessary, 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 the necessary measures to ensure the safety and health of workers, their legal representatives shall be able to decide by majority to stop the activity of workers affected by the said danger. Such decision shall be communicated immediately to the firm 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 can be taken by a deciding majority of the Delegates of Prevention when it is not possible to gather in the required timeframe the representative body of workers.

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

## **Article 22. - Health monitoring.**

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

This monitoring shall be carried out only with the worker's consent. The only exceptions to this voluntary nature shall be, subject to a report of the workers' representatives, those cases in which the carrying out of medical examinations is essential to assess the effects of working conditions on the workers' health or to verify whether the state of health of the worker may constitute a danger to himself, to other workers or to other persons related to the firm or when it is thus stipulated in a legal provision related to the protection of specific risks and activities of special danger.

At all times the option must be to carry out those examinations or tests which cause least inconvenience to the worker and are proportional to the risk.

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

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

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

The access to private medical records shall be restricted to medical staff and to the health authorities who carry out the health monitoring of workers, with neither the employers nor other persons being allowed access to those records without the expressed consent of the worker concerned.

Notwithstanding the above, 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 ability of the worker for the performance of his

job or to the necessity of introducing or improving protective and preventive measures in order that they may carry out properly their responsibilities in the preventive area.

5. In cases where the nature of the risks inherent in the work makes it necessary, the workers' right to periodical health monitoring shall be extended beyond the termination of contract, in accordance with the terms laid down by regulations.

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

### **Article 23. - Documentation.**

1. The employer shall draw up and keep at the disposal of the employment authority the following documentation relating to the obligations set up in the preceding articles:

- a) Occupational hazards prevention plan pursuant to item 1 of article 16 of this Act.
- b) Assessment of the risks to safety and health at work, including the results of periodic controls of the work conditions and workers' activities, pursuant to paragraph a) item 2 of Article 16 of this Act.
- c) Protective and preventive measures to be taken and, where appropriate, protective equipment which must be used pursuant to paragraph b) of item 2 of Article 16 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 item 4 of the article cited.
- e) List of occupational injuries and diseases resulting in a worker being unfit for duty for more than one working day. In those cases the employer shall also carry out the notification referred to in item 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 the employment authority in writing regarding the hazards for the health of workers which had been produced because of their activities, in accordance with the procedure established by regulations.

4. The documentation referred to in this article shall also be submitted to the health authorities in order for them to comply with the provisions of article 10 of this Act and article 21 of Act 14/1986, 25th April, General Health Authority.

## **Article 24. - Co-ordinating business activities.**

1. Where workers from two or more firms share the same workplace for their activities, each firm shall co-operate with the other in the application of the legislation on the prevention of occupational hazards. To this end, they shall arrange the necessary means of co-ordination relating to protection and prevention of occupational hazards 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, who is host of the work-place, shall take the necessary measures in order that the other employers who carry out activities in his workplace receive information and adequate instructions on the existing risks at the workplace, the appropriate measures for protection and prevention and also the emergency measures to be applied, in order for them to pass this information on to their workers.

3. Businesses who contract or subcontract others in order to carry out works or services corresponding to the 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 prevention of occupational hazards.

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

5. The obligations of co-operation, information and instruction stipulated in items 1 and 2 shall apply to self-employed persons who carry out activities in said workplaces.

6. The obligations contained in this Article shall be carried out in accordance with the regulations.

## **Article 25. - Protection of workers especially sensitive to given risks.**

1. The employer shall guarantee particularly the protection of workers who are especially sensitive to the risks derived from work because of their personal characteristics or known biological state, including those who have a recognised condition of physical, psychical or sensorial disability. To this end, the employer shall take into account those aspects assessing the risks and shall therefore 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 placing themselves, other workers or other persons related to the firm in a dangerous position or, in general, where they find themselves openly in

transitional states or situations which do not respond to the psychophysical requirements of the respective jobs.

2. Likewise, the employer shall take into account while assessing the risk those factors which can affect the procreation function of male and female workers, particularly in the case of exposure to physical, chemical and biological agents which can cause mutagenic or toxinogenic effects for procreation, not only with regards to fertility but also regarding the development of descendants, with the object of taking the necessary preventive measures.

#### **Article 26. - Maternity protection.**

1. The assessment of risks referred to in article 16 of this Act shall include the determining the nature, the degree and length of time of the exposure of pregnant workers or of those who have given birth recently, to agents, procedures or working conditions which can negatively affect the health of female workers or foetus, in any activity liable to present a specific danger. If the results of the assessment reveal a risk to safety and health or a possible consequence for the pregnancy or breastfeeding of those female workers, the employer shall take the necessary measures in order to avoid the exposure to such a risk, through a change in the working conditions or working hours of the female worker concerned. Said measures shall include, where it proves necessary, not to carry out night or shift work.

2. Where the change of working conditions or working hours is not possible or, despite such change, the working conditions of a job could negatively influence the health of the pregnant worker or foetus, and this is certified by the National Health Service doctor who is looking after the female worker concerned, she should perform a different job or activity compatible with her state. The employer shall determine, subject to consultation with workers' representatives, the list of positions exempt from risks for these purposes.

The change of job or activity shall take place in accordance with the rules and criteria which are applied to the cases of functional mobility and shall have effect until the moment in which the state of health of the female worker allows her to return to her former job.

In the event that, even applying the rules laid down in the previous paragraph, there were no job or activity compatible with her state of health, the female worker could be posted to a position not related to her group or equivalent category, although she shall retain the right to the overall payments of her original position.

3. If that change of position is not technically or objectively possible, or cannot be reasonably required for justifiable motives, during the necessary period the step may be taken for the affected worker to a situation of contract suspension for risk during the pregnancy, as stipulated in Article 45.1 d) of the Workers Statute, in order to protect her safety or health and while it remains impossible to reincorporate her in her former position or to another position compatible with her state.

4. The provisions of the items 1 and 2 of this article shall also be applied during the period of breastfeeding, if the working conditions could negatively influence the health



of the woman or the child and it is thus certified by the National Health Service doctor who is in charge of looking after her. The worker affected by the contract suspension for risk during breastfeeding of children under nine months included in Article 45.1.d) of the Workers' Statute, could also be declared transferred if the conditions included in item 3 of this article are met.

5. - Pregnant workers shall be allowed to be absent from work with right to pay for prenatal care, provided the employer is previously notified and the need of having such care during the working hours is justified .

## **Article 27. - Protection of minors.**

1. Before hiring minors, under eighteen, and before making any important change to their working conditions, the employer must carry out an evaluation of the jobs available to them, for the purpose of determining the nature, degree and period of exposure, in any activity liable to present 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 evaluation shall specially take into account the specific risks to the 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.

The employer shall always inform those minors and their parents or guardians who have taken part in the contract, about possible risks and all measures taken for the protection of their safety and health pursuant to the provision laid down in the letter b) article 7 of the revised text of the Workers' Statute (Estatuto de los Trabajadores) passed by Legislative Royal Decree 1/199, of 24 March.

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

## **Article 28. - Temporary workers, fixed-term contracts and temporary work agencies.**

1. Temporary workers or fixed-term employment contracts, as well as workers contracted by temporary agencies, shall enjoy the same level of protection in the field of safety and health as the rest of workers employed in the same firm.

The existence of an employment relationship mentioned in the previous paragraph shall in no case justify 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 section 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 monitoring 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.

Said workers shall be provided, in all cases, with sufficient training suitable to the nature of the job to be covered, taking into account their qualifications and professional experience and the risks to which they are going to be exposed.

3. The workers referred to in this article shall be entitled to a periodical health monitoring 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 protection and prevention activities or, where appropriate, the preventive service foreseen in Article 31 of this Act, regarding the incorporation of workers referred to in this article, in such a way that they can perform in an adequate manner their duties to all the workers of the firm.

5. In the work relationships through temporary agencies, the user firm shall be responsible for the execution of working conditions in all matters foreseen in sections 2 and 4 of this article. The user firm shall also be responsible for fulfilling the obligations on information foreseen in sections 2 and 4 of this article.

The temporary agency shall be responsible for fulfilling the obligations in the area of training and health monitoring referred to in sections 2 and 3 of this article. To that end, and without affecting the provision referred to in the previous paragraph, the user firm shall inform the temporary work agency, and the latter shall inform the workers concerned before the assignment, about the specific characteristics of the work to be carried out and about the qualifications required.

The user firm shall inform its workers' representatives about the appointment of workers provided by the temporary work firm. Said workers shall be able to approach those representatives in the exercise of the duties recognised in this Act.

## **Article 29. - Obligations of workers in the matter of risks prevention.**

1. It shall be responsibility to the extent possible of each worker to look after his own safety and health and that of other persons who may be affected by his actions at work in accordance with the 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. - Adequately use, in accordance with its nature and foreseeable risks, machinery, equipment, tools, dangerous substances, transport equipment and, in general, of any other items used to carry out their job.

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 correctly use the existing safety devices or those that may be fitted in the equipment related to their activity or in the place of work where their activity takes place.

4th. - Immediately inform their direct supervisor and the workers designated to carry out activities of protection and prevention or, where appropriate, the protection service, about any situation which, in their opinion, entails, due to reasonable causes, a risk to the safety and health of workers.

5th. - Co-operate in fulfilling the obligations established by the competent authority for the purpose of protecting the safety and health of workers in the workplace.

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

3. The breach by workers of the obligations in the area of prevention of risks 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. This shall also be applicable to the members 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 hazards.**

1. In compliance with the obligation to prevent occupational hazards, the employer shall designate one or more workers to carry out that activity, shall set-up a preventive service or shall arrange for said service from a separate 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 firm and the hazards to which the workers are exposed and their distribution throughout the entire firm, with the means determined in the provisions referred to in section 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. To carry 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 hazards in the firm. In the exercise of these activities, said workers shall enjoy, in particular, the guarantees established for workers' representatives in the sections a), b) and c) of Article 68, and number 4 of Article 56 of the consolidated text of the Workers' Statute [Ley del Estatuto de los Trabajadores].

This guarantee shall also be extended to the workers who make up the preventive service, when the firm decides to set it up in accordance with the provision stipulated in the following article.

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

5. In firms of fewer than six workers, the employer shall be able to personally take over the activities described in the preceding number 1, whenever he works regularly in the work place and has the necessary ability to deal with the hazards to which workers are exposed and the danger of the activities, with the scope which shall be determined in the provisions referred to in section a), number 1 of article 6 of this Act.

6. The employer who did not arrange for the preventive service through an outside specialised organisation shall submit his prevention plan to be checked by an external audit or assessment, in accordance with the terms determined by regulations.

### **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 firm, the hazards to which the workers are exposed or the danger of the activities carried out, with the scope determined in the provisions referred to in section e) number 1 of Article 6 of this Act, the employer shall resort to one or several preventive services either his own or from outside the firm, which shall collaborate where necessary.

To set up those services within public Administrations their organisational structure and existence shall be taken into account and where appropriate the existence of sectorial and decentralised spheres of activity.

2. Preventive service shall be understood as the all of the human resources and necessary materials required to carry out preventive activities in order to guarantee the adequate protection of workers' safety and health, and the employer shall advise and help the workers and their representatives and the bodies of specialised representation. The employer shall provide said service with access to the information and documentation referred to in section 3 of the previous article so that they can carry out their job.

3. The preventive services must be able to provide the firm with the advice and support it may require according to the type of risk involved and also with regard to:

a) The design, application and co-ordination of an occupational hazards plan that allows for integrating prevention in the firm.

b) The assessment of the risk factors which may affect the safety and health of workers pursuant to the terms laid down in Article 16 of this Act.

c) Planning the preventive activities and determining the priorities in adopting adequate preventive measures and monitoring their efficiency.

d) The information and training of workers.

e) The provision of first aid and emergency measures.

f) Monitoring the health of workers in relation to risks derived from work.

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

a) Size of the firm.

b) Sorts of risk to which the workers may be exposed to.

c) Distribution of risks in the firm.

5. In order to be able to act as preventive services, the specialised organisations must be accredited by the Employment Authority, through the verification that they comply with the requirements which shall be established by regulations and subject to the approval of the Health Authority with regard to the health aspect.

### **Article 32. - Preventive measure of the Societies of Occupational Injuries and Diseases.**

For their associate firms the Social Security's Societies of Occupational Injuries and Diseases may carry out the activities corresponding to preventive services, subject to the provision section 5 of Article 31.

The employers' and workers' representatives shall be entitled to participate in the control and monitoring of the actions taken by Social Security's Societies of Occupational Injuries and Diseases concerning the activities referred to in the previous paragraph in accordance with the contents of Article 39, (5), of Act 42/1994, of 30th December, on Financial Administrative and Social Order Measures.

## **Article 32.bis Presence of preventive resources.**

1. The presence of preventive resources in the work centre, however those resources may be organized, shall be required in the following cases:

- a) When the risks can be seen to be aggravated or modified during the conduct of the process or activity, due to the combination of diverse operations being carried out successively or simultaneously which make the control of the correct application of work methods necessary.
- b) When activities or processes are carried out that are deemed dangerous or to have special risks according to the regulations.
- c) When the necessity for said presence is required by the Work and Social Security Inspectorate, should the circumstances of the case so require it due to detected work conditions.

2. The following are considered preventive resources for which the employer could assign that presence:

- a) One or several of the firm's employees.
- b) One or several members of the company's own preventive service.
- c) One or several members of the external preventive services contracted by the company.

When the presence is carried out by different preventive resources they must collaborate with one another.

3. The preventive resources referred to in the above item shall have sufficient capacity, have the necessary means available, and be sufficient in number to oversee compliance with the preventive activities, and they must remain at the work place during the time when the situation requires their presence.

4. Notwithstanding the content of the above paragraphs, the employer may assign the specific presence of one or several employees who, without being part of the preventive service nor designated employees, have the knowledge, qualifications and necessary experience in the activity or process referred to in item 1 and who have taken the corresponding preventive training, as a minimum, regarding the basic level duties.

In this instance, said workers must maintain the necessary collaboration with the company's preventive resources.

## **CHAPTER V**

### **Consultation and participation of workers**

### **Article 33. Consultation of workers.**

1. The employer shall consult workers, giving them plenty of warning, when adopting decisions related to:

a) The planning and organisation of work in the firm and the introduction of new technologies, with everything related to the consequences that these could have on 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 to protect health and prevent occupational hazards in the firm, including the designation of workers for those activities or the arrangement of any necessary preventive measures 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 18.23, section 1 of this Act.

e) The planning and organisation of the training in preventive services.

f) Any other action which may substantially affect the safety and health of workers.

2. In firms that have workers' representatives, the consultation referred to in the previous section 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 firm on questions relating to the prevention of occupational hazards.

In firms 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 is the responsibility of the Company's committees, of employees' Delegates and of union representatives to provide protection of the workers' interests in the prevention of occupational hazards in the terms which are granted to them by, respectively, the Workers' Statute (Estatuto de los Trabajadores), the Representation of Public Servants Act and the Trade Union Freedom Act. 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, monitoring and control and exercise of actions before the firms 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 regarding their diverse activities being performed and the various conditions under which they are carried out, the complexity and dispersion of their organised structure and their peculiarities in collective representation according to the terms set up in 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 those adaptations within the scope of the General Administration of the State, the Government shall take into account the following criteria:

a) Under no circumstances shall the referred adaptations affect the responsibilities, faculties and guarantees recognised by this Act to the Delegates of Prevention and Committees of Safety and Health.

b) The specific scope shall be established which would be adequate in each case in order to exercise the duty of participation in the area of prevention within the organising structure of the Administration. In general, said scope shall be that of the representative bodies of the personnel in the service of the public Administrations, although different ones may be established in accordance with the characteristics of the activities and frequency of risks to which workers may be exposed.

c) Where in said scope there are different representative bodies of personnel, a co-ordinated action of all of them must be guaranteed in the prevention and protection of occupational safety and health, enabling the participation be carried-out jointly among themselves, within the specific scope established to this end.

d) In general, a single Safety and Health Committee shall be established within the scope of the representative bodies foreseen in the Representation of Public Servants Act, which shall be integrated by the designated Delegates of Prevention, not only for personnel of an administrative or statutory nature but also for labour personnel and for a number of representatives from the Administration in number not to exceed those of Delegates. In spite of that, Committees of Safety and Health can be set up in other scopes where the reasons for the activity and the sort and frequency of risks justify it.

### **Article 35. - Prevention Delegates.**

1. The Prevention Delegates are the workers' representatives with specific functions in the area of prevention of occupational hazards.

2. The Prevention Delegates 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 Delegates.

From 101 to 500 workers: 3 Prevention Delegates.



From 501 to 1,000 workers: 4 Prevention Delegates.

From 1,001 to 2,000 workers: 5 Prevention Delegates.

From 2,001 to 3,000 workers: 6 Prevention Delegates.

From 3,001 to 4,000 workers: 7 Prevention Delegates.

From 4,001 on: 8 Prevention Delegates.

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

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

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 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, the collective agreements may establish other methods of designation of Prevention Delegates, provided that it is guaranteed that the power of designation corresponds to 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) they may agree that the powers conferred by this Act on the Prevention Delegates could be exercised by specific bodies created in the collective agreement itself or in the mentioned agreements. Said bodies shall be able to take on, according to the terms and the forms which shall be agreed to, general powers in relation to the whole of workplaces included in the scope of the collective agreement or of the agreement, in order to encourage the best fulfilment of the legislation on the prevention of occupational hazards.

Likewise, within the scope of public Administrations they may establish per the terms laid down in Act 7/1990, of July 19 on collective bargaining and participation in determining the working conditions of public employees, other methods of designating Prevention Delegates and may agree that the powers this Act confers upon those Delegates may be exercised by specific bodies.

### **Article 36. - Competencies and powers of the Prevention Delegates.**

1. Prevention Delegates shall carry out the following functions:

- a) To collaborate with the management of the firm in improving the preventive action.
- b) To promote and encourage the co-operation of workers in the enforcement of the law on the prevention of occupational hazards.
- c) To be consulted by the employer, before the implementation of the provisions referred to in article 33 of this Act.
- d) To perform a task of monitoring and control regarding the fulfilment of the legislation in the prevention of occupational hazards.

In the firms that, 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 that purpose, the competencies conferred on it by this Act shall be exercised by the Prevention Delegates.

2. The Prevention Delegates while exercising the duties conferred on them, shall be empowered to:

- a) Accompany the experts in assessments of a preventive nature of the working environment, and so, in accordance with the provisions of article 40 of this Act, 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 prevention of occupational hazards, and make 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 are necessary for the exercise of their duties and, in particular, to the one referred to in articles 18 and 23 of this Act. When 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 the employer has knowledge regarding them, being able to go to the scene of the accident in order to learn about its circumstances even after working hours.
- d) To receive from the employer the information regarding the accident obtained from persons or bodies responsible for the protection and prevention at the firm, 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 Employment and Social Security Inspectorate.
- e) To carry out inspections of the workplace in order to perform a task of monitoring and control of the state of the working conditions, being able, to this end, to enter any area of same and to communicate during the working hours with the workers, in a manner so that the normal working process is not altered.
- f) To obtain from the employer the adoption of preventive measures for the improvement of 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 propose to the representative body of workers that they adopt the stoppage of activities agreement referred to in Article 21.3.

3. The reports which the Prevention Delegates have to issue in accordance with section 1, letter c) of this article must be prepared within the period of fifteen days, or within the essential time when dealing with the need to take measures to prevent imminent risks. Should the period elapse without having receiving the report, the employer shall be able to put in practice his own decision.

4. The negative decision of the employer to adopt the measures proposed by the Prevention Delegate shall be explained in accordance with the provision of section 2, letter f) of this article.

### **Article 37. - Guarantees and Professional Secrecy of the Prevention Delegates .**

1. The provision of Article 68 of the Workers' Statute [Estatuto de los Trabajadores] regarding the guarantees shall be applied to the Prevention Delegates in their role as workers' representatives.

The time spent by the Prevention Delegates in the discharge of the duties stipulated in this Act shall be considered the exercise of the representative duties for purposes of using the credit of the monthly paid hours pursuant to Article 68(e) of the Workers' Statute [Estatuto de los Trabajadores].

Notwithstanding the above, the meetings of the Committee of Safety and Health and any other meetings arranged by the employer in the area of the prevention of risks and the time assigned to the visits foreseen in number 2, sections a) and c) of the previous article shall always be considered as actual worked time, without imputation to said hourly credit.

2. The employer shall provide the Prevention Delegates with the tools and training in preventive matter appropriate for the exercise of their duties.

The training shall be provided by the employer using his own means or through the arrangement with other bodies or specialised organisations in that field and this must be adapted to the technical progress for the risks and development of new measures, and shall be repeated periodically should it be necessary.

The time spent in training shall be considered as worked time for all purposes and its cost shall in no case be charged to the Prevention Delegates.

3. The Prevention Delegates 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 work in the firm, 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 on behalf of the Prevention Delegates shall be understood as referred to, in the case of civil servants, in the regulation contained in Articles 10.2 and

11 of the Act 9/1987, of June 12, on Representative Bodies, Determining 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 a Joint Committee of the group of participation whose purpose is to provide regular and periodical advice to the firm on the prevention of risks subject.

2. A Safety and Health Committee shall be established in all firms or establishments with a workforce of 50 employees or more.

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

In the Safety and Health Committee meetings the Unions' Delegates and the experts responsible for the prevention in the firm who are not included in the composition referred to in the previous paragraph shall participate, with a voice but no vote. Employees of the firm who have special qualifications or information relating to specific issues which are debated in this body and experts in prevention outside to the firm may participate in the Committee's meetings, provided that a member of the Committee requests it.

3. The Safety and Health Committee shall meet quarterly and whenever any of its members request a meeting. The Committee shall adopt its own working rules.

Firms with several workplaces having a Safety and Health Committee shall be able to reach an agreement with their workers regarding the establishment of a multi-plant worker committee, with the duties conferred on it by the agreement.

### **Article 39. - Responsibilities and Authority of the Safety and Health Committee.**

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

a) To participate in the creation, putting into practice and assessment of projects and programmes of preventing occupational hazards. To that end, all projects relating to the planning, the arrangement of work and introduction of new technologies, arrangement and development of activities of protection and prevention and planning and arrangement of training in preventive matters shall be debated internally before being put into practice and regarding any impacts these may have on the prevention of risks.

b) To promote initiatives on methods and procedures for the effective prevention of risks, proposing to the firm the means to improve conditions or correct existing deficiencies.

2. In the exercise of its duties, the Safety and Health Committee shall be authorized to:

a) Be directly knowledgeable about the situation relating to the prevention of occupational hazards and for this purpose carrying out inspections as considered appropriate.

b) Be knowledgeable about as many documents and reports as necessary that relate to working conditions in order to accomplish their duties and, where appropriate, those emanating as a result of the activities of the prevention service.

c) Be knowledgeable about and analyse injuries 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) Be knowledgeable about and inform the annual report and planning of the prevention services.

3. In order to comply with the provisions of this Act regarding the collaboration among firms on the matter of simultaneous development of activities in the same workplace, they may agree on arranging joint meetings of the Safety and Health Committees or, in its absence, of the Prevention Delegates and employers of firms which do not have such Committees, or other measures of co-ordinated action.

#### **Article 40. - Collaboration with the Employment and Social Security Inspectorate.**

1. The workers and their representatives shall be able to appeal to the Employment and Social Security Inspectorate if they consider that the measures taken and the means employed by the employers 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 prevention of occupational hazards is being complied with, 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 Delegate or, in their absence, to the workers' legal representatives, so that they can accompany him while the inspection visit is being conducted and submit the observations which they deem appropriate, unless the Inspector considers that the notice of his presence may damage the outcome of his duties.

3. The Employment and Social Security Inspectorate shall report to the Prevention Delegates regarding 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 Book of Visits of the Employment and Social Security Inspectorate which must be located at each workplace.

4. The most representative unions and employers' organisations shall be consulted prior to working out the arrangements of the Employment and Social Security Inspectorate in the matter of the prevention of occupational hazards, particularly with regards to the specific programmes for firms with fewer than six workers, and shall be informed of the results of said arrangements.

## **CHAPTER VI**

### **Obligations of manufactures, importers and suppliers.**

#### **Article 41. Obligations of manufactures, importers and suppliers.**

1. - Manufacturers, importers and suppliers of machinery, equipment, 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 suppliers 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 safe conditions and their content can be clearly identified together with the risks to the safety or health of workers which their storage or use may entail.

The individuals 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, but also their inadequate handling or use implies.

Manufacturers, importers and suppliers of items to protect workers are obligated to ensure the effectiveness of same, as long as they are installed and used under the conditions and in the manner they recommend. To that end, they must provide information that states the types of risks that could occur, the level of protection required and the correct way to use and maintain same.

Manufacturers, importers and providers shall supply the employers with and these shall demand from the former the necessary instructions in order that the use and handling of machinery, equipment, products, raw materials and working tools do not cause any risk to the safety and health of workers, and also in order that 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. - Responsibilities and their compatibility.**

1. The non-fulfilment by employers of their obligations in the prevention of occupational hazards gives rise to administrative liabilities, and also, where appropriate,

to criminal and civil liabilities for damages which can be derived from such non-fulfilment.

2. ...

3. The administrative liabilities derived from the disciplinary procedure shall be compatible with the compensation for damages due and 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. ...

5. ...

#### **Article 43. - Requirements of the Labour and Social Security Inspectorate.**

1. When the Labour and Social Security Inspector establishes the existence of a breach of the legislation on the prevention of occupational hazards, he shall request the employer to make good the shortcomings observed, unless due to the seriousness and imminence of the risks he decides to proceed with the stoppage of work subject to the provision of Article 44, without prejudice, where appropriate, to the proposal of the corresponding penalty.

2. The request made by the Labour and Social Security Inspector shall be notified in writing to the employer allegedly responsible, pointing out the anomalies and deficiencies observed with information on the timeframe to put them right. Said request shall also notify the Prevention Delegates.

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 requirements made by the public officials referred to in Article 9.2 of this Law, while supporting and collaborating with the Labour and Social Security Inspectorate, shall be exercised in accordance with the requirements and purpose established in the above section, and may be found in the Book on Inspection of Work and Social Security Visits, in accordance with the regulations.

#### **Article 44. - Stoppage of work.**

1. Where the Labour and Social Security Inspector ascertains that the failure to observe the provisions on the prevention of occupational hazards implies, in his opinion, 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 responsible firm which shall immediately inform the affected workers, the Safety

and Health Committee, the Delegate of Prevention or, in their absence, the personnel's representatives, of such a measure. The responsible firm shall report to the Labour and Social Security Inspector regarding compliance with this notification

The Labour and Social Security Inspector shall immediately pass on his decision to the labour authority. The firm, without prejudice to the immediate fulfilment of such decision, shall be able to contest it before the employment 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 immediately inform the Employment and Social Security Inspectorate.

2. The stoppage events regulated by this article, as well as those described by the provisions governing the activities mentioned in Article 7.2 of this Act, shall be understood, in all cases, without prejudice to the payment of salary/wages or damages due and the measures which may be arbitrated as their guarantee.

#### **Article 45. - Administrative Offences.**

1. ...

In spite of the above, with regards to relationships of civilian personnel in the public Administrations Service, the offences shall be object of responsibilities through the imposition, as decided by the competent authority, of executing the corrective measures for the breaches concerned in accordance with the procedure which shall be set-up for that purpose.

In the area of the General Administration of the State, the regulation of said procedure which shall comply with the following principles shall fall to the Government:

a) The procedure shall be initiated 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 require the measures to be taken and the period in which to carry them out. The inspected administrative unit shall be duly informed so that it can formulate 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. ...

#### **Articles 46 to 52.**



Repealed by Legislative Royal Decree 5/2000, of August 4th.

**Article 53. - Suspension or closure of the workplace.**

The Government or, where appropriate, the management bodies of the Autonomous Communities with responsibilities for the matter, where 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 damages due and the measures which may be provided as 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 very serious criminal or administrative offences under the legislation on safety and health at work, shall be governed by the provisions of Act 13/1995, of May 18th, on the Contracts of the Public Administrations.

**ADDITIONAL PROVISIONS.**

**First additional provision. Definitions for the purpose of Social Security.**

Without prejudice to the use of the definitions contained in this Act within the scope of the legislation on the prevention of occupational hazards, not only the definition of the concepts of industrial injury, occupational disease, common injury and disease but also the rules and regulations stipulated for these contingencies in the Social Security legislation shall continue to be applied according to the terms and conditions established in said legal sphere .

**Second additional provision. Organic rearrangement.**

The Organisation of the Medical Services of the Firm shall be abolished and its 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 Medicine at Work 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 responsibilities.

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

**Third additional provision. Basic characteristics of the Act.**

1. This Act, as well as the regulations which the Government stipulates by virtue of Article 6, constitute the labour law enacted pursuant to Article 149.1. 7th of the Constitution.

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

a) The articles set out below constitute the 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 its own or external services.

20.

21.

22.

23.

24.1, 24.2 and 24.3.

25.

26.

28, 1 first and second paragraphs, 28.2, 28.3 and 28.4, except the relating to temporary work firms.

29.

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

31.1, except the reference to Article 6.1, a), 6.2, 6.3 and 6.4.

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 Delegates in special cases.**

Transitional provision, 3rd section.

The rules and regulations which the Government announces by virtue of Article 6 of this Act shall have these same basic characteristics.

b) In the sphere of the Autonomous Communities and local institutions, functions which the law confers to the employment authorities and to the Labour and Social Security Inspectorate can be transferred to different bodies.

c) The remaining articles shall be of general application due to lack of specific legislation approved by the public Administrations, with the exception of what turns out to be inapplicable because of its own legal and employment nature.

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

#### **Fourth. Designation of Prevention Delegates in special cases.**

In workplaces without workers' representatives because there are no workers with sufficient seniority to be either electors or candidates in the elections for the representation of personnel, the workers shall be able to choose by majority a worker who may exercise the responsibilities of the Prevention Delegate, and will have the powers, guarantees and obligations of the professional secrecy of such Delegates. The function of these shall cease at the time where the necessary requirements of seniority for the election of personal representatives are fulfilled, with said function being extended during the indispensable period for the actual holding of the election.

#### **Fifth. 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 small size firms, 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 and proceeding from the excess of the surplus originated by the management carried out by the Societies of Occupational Injuries and Diseases of the Social Security. 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 of 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.

Its collaboration with the Employment and Social Security Inspectorate shall be duly arranged in order to achieve a better fulfilment of its objectives.

The planning, development and funding of actions in the various territorial scopes shall take into account the working population in employment, the size of firms and the indices of occupational injuries and diseases. The budgets which the foundation set aside for the autonomous regions which have assumed the responsibility to enforce the employment legislation in the area of Safety and Hygiene at Work, shall be transferred, for their management, to the tripartite and 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 foundation of sectorial scope, established by employers and workers, 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 their objectives and purposes shall always be carried out in co-ordination with those mentioned in the preceding paragraph.

2. For the purpose of guaranteeing the regularity in complying with the objectives of the Foundation, patrimonial contributions can be made to same, payable to the Prevention and Rehabilitation Fund mentioned in the previous section, with the frequency and in the amounts that are determined in accordance with the regulations.

**Sixth additional provision. Constitution of the National Commission of Occupational Safety and Health.**

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

**Seventh [additional provision]. Compliance with legislation on the transportation of dangerous goods.**

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

**Eighth [additional provision]. Programmes to organize preventive activities.**

Each Ministerial Department, within a period of six months from the date when this Act comes into force and subject to consultation with the most representative union organisations, shall submit an agreed proposal of the programmes to organize preventive activities in the corresponding department and in the centres, bodies and establishments of all sort depending on the Ministry concerned.

The proposal must be accompanied by an explanatory report about the economic cost of the programmes, as well as the timetable of their implementation, with the adequate budgetary predictions.

**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 requirements of national defence, to the organic peculiarities and to the current system of personnel representation in military establishments.

2. The provisions on organisation and competence of the employment authority and Labour Inspectorate in the sphere of the Military Administration contained in the Royal Decree 2205/1980, of June 13th, shall remain in effect, in compliance with the seventh final provision of the Workers' Statute.

**Ninth bis. Military Personnel.**

That envisaged in chapters III, V and VII of this Law shall apply according to the specific military regulations.

**Tenth [additional provision]. Co-operative Societies.**

The procedure for the designation of Prevention Delegates regulated in Article 35 of this Act within cooperative societies which do not have salaried employees shall be determined in their constitution or as the object of agreement to be decided in the General Assembly.

When in addition to the members who provide their personal work, there are employees that are wage earners, then both groups of workers shall be counted for the purposes of the provision of article 35.2. In this case, the designation of Prevention Delegates shall be carried out jointly by the members who work and the employees or, where appropriate, the representatives of the latter.

**Eleventh [additional provision]. Amendment of the Workers Statute with regard to paid time off.**

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

" f) For the essential time that prenatal examinations and techniques for the preparation of childbirth which much be carried out during working hours".

**Twelfth [additional provision]. Institutional participation in the Autonomous Communities.**

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

**Thirteenth [additional provision]. Fund for Prevention and Rehabilitation.**

The resources of the Fund for Prevention and Rehabilitation proceeding from the excess of the surplus originated by the management carried out by the Societies of Occupational Injuries and Diseases of Social Security 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 be carried out as prevention services by the Societies of Occupational Injuries and Diseases of Social Security, in accordance with Article 32 of this Act.

**Fourteenth [additional provision]. Presence of preventive resources at construction sites.**

1. The stipulations in Article 32 bis of this Act on the Prevention of Occupational Hazards shall be applied to construction sites regulated by Royal Decree 1627/1997, dated October 24, wherein the minimal security and health regulations for construction sites are established, with the following specialties:

- a) The precepts for the presence of preventive resources shall apply to every contractor.
- b) Regarding the event foreseen in item 1, paragraph a) of article 32 bis, the presence of preventive resources for each contractor shall be required when, during the work, works are carried out having special risks, as defined in the Royal Decree cited.
- c) The perceived presence of preventative resources shall be for the purpose of ensuring compliance of the measures included in the safety and health plan of the site and for proving the efficiency of same.

2. The contents of the preceding paragraph is understood not to have any detrimental affects on the obligations of the coordinator for security and health during the execution of the work.

**Fifteenth [additional provision]. Authorization of public servants**

In order to be able to carry out the duties established in Article 9.2 of the Act, the public servants from the Autonomous Communities must be provided with specific authorization provided by their Autonomous Community, in the terms set up in accordance with the regulations.

Said public servants must belong to the groups with A or B qualifications and must show specific training in the subject of preventing occupational hazards.

## **TRANSITIONAL PROVISIONS**

### **First [transitional provision]. Implementation of more favourable provisions.**

1. The contents of Articles 36 and 37 of this Act relating to powers, responsibilities and guarantees of the Prevention Delegates 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 hazards stipulated in the collective agreements in force on the date this Act comes into effect.
2. The specific bodies of workers representation in the field of prevention of occupational hazards which, where appropriate, would have been determined by the collective agreements referred to in the preceding paragraph and which are provided with a list of responsibilities, 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 Delegates, except that the legal representative body of workers decides the designation of these Delegates according to the procedure in Article 35.
3. The contents of the preceding paragraphs shall also be applied 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].**

Until the Regulation on the Services of Prevention of Occupational Hazards is approved, it shall be understood that the Societies of Occupational Injuries and Diseases of the Social Security fulfil the requirement established in Article 31.5 of this Act.

## **REPEALING REGULATION.**

### **Sole. Scope of the repeal**

All the provisions that are contradictory to this Act are repealed and specifically:

- a) Articles 9, 10, 11, 36.2, 39, and 40 of the Act 8/1988, of April 7th, on Offences and Penalties in the Social Order.
- b) The Decree of July 26, 1957 which governs 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 develops the precautionary measures contained in article 27.2.

c) The Decree of March 11, 1971 regarding 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, the regulation on the matters comprised in 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 precautionary measures about such matters shall continue to be implemented, together with 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 firms until the preventive services contained in this Act are developed through regulations. The personnel assigned to those services on the date this Act comes into force shall be integrated into the preventive services of their respective firms, where 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 hazards related to operating mines contained in Chapter IV of Royal Decree 3255/1983, of December 21st, which approves the Miners Statute, and in its development provisions, as well as the provisions of Royal Decree 2857/1978, of August 25th which approve 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 in Mines and its additional provisions.

## FINAL REGULATIONS.

### **First. 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 and said request must be adapted to the powers conferred in Article 52.1 of this Act.

### **Second. The coming into force**

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