

# Health and safety protection of workers in Poland

## The legal framework

### Legal status

The sources of ordinary law in Poland are the Constitution, statute law, ratified international agreements and regulations. The Polish Constitution guarantees everyone the right to safe and healthy working conditions. The means of enforcing that right, and the employer's rights and duties, are laid down in the code of labour laws or Labour Code.

The Labour Code and associated delegated legislation govern the rights and duties of both sides in the employment relationship (employer and employee), liability for breaches of health and safety regulations, supervision of working conditions, procedures for dealing with accidents at work and occupational diseases, and benefits and payments. The Labour Code confers delegated powers to issue administrative measures laying down detailed duties in respect of health and safety at work.

The health and safety regulations and administrative measures contained in the Labour Code are mandatory, and so cannot be excluded by agreement between the employer and employee. The Labour Code places a duty on the employer to ensure compliance, and on the employee to comply, with health and safety rules and regulations in the workplace. Section X of the Labour Code was written so as to be readily accessible to everyone - employers, employees and their representatives.

The employer has legal responsibility for work safety and hygiene and a duty to protect the health and life of employees by appropriate use and application of scientific and technological means.

While the Labour Code and regulations do much to promote health and safety, they are deficient in some respects, not least in addressing biological hazards in the workplace.

Recent changes in Polish labour law bear the imprint of economic and political change, integration with Western European countries, and the economic situation. Flouting and evasion of labour regulations are becoming widespread.

For some years, the labour market has been witnessing a growth in "bogus self-employment", whereby employees leave to become self-employed and then do the same work as before, very often using the former employer's equipment. This is foisted on workers by employers in a bid to cut labour costs

and is now commonly found in the building and transport sectors, manufacturing industry, health care institutions and educational establishments. Obviously, the new "business entities" lack any of the protection they had as employees.

Polish law, especially on health and safety at work, is not yet properly harmonized, enforced, or brought into line with EU standards and current knowledge and technology.

### Observance of labour regulations

Solidarność filed an addendum to the National Labour Inspectorate's work programme for 2002 on detailed inspections of compliance with labour regulations in small companies conducted according to standardized inspection checklists. The unsatisfactory state of compliance with the rules in small companies is mainly due to ignorance of the regulations and fundamental duties of the employer, and in some cases deliberate flouting of regulations.

A flagging economy, high unemployment and constant changes to labour regulations do nothing to improve matters. Even so, some Polish employers find that it pays to invest in occupational health and safety, because their bottom line and market competitiveness reveal the benefits of health and safety-mindedness. Investing in workers' health and safety becomes a marketing strategy. Decent working conditions not only add to workers' health and safety protection, but also help create an image of quality and efficiency, which in turn enhances the competitiveness of goods or services.

In 2002, changes to the Labour Code making health and safety services compulsory only for employers with more than 100 employees led to much existing in-house health and safety provision being dismantled and bought in from outside specialists. Since 2002, only workplaces with more than 250 workers need to set up health and safety commissions.

Health and safety commissions had been on Solidarność's agenda as far back as 1996, long before they became a statutory requirement. Solidarność believes that the Labour Code requirements on the setting-up and running of health and safety commissions were and are too incomplete and fail to regulate many crucial issues, like :

- how health and safety commissions should work in large businesses with very often up to several thousand employees ;
- the size of health and safety commissions ;
- members' time off for their commission duties on



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full pay ;

- access for commission members to work stations and employees ;
- participation in training for their official duties ;
- protection of commission members from dismissal and other discriminatory practices by company management, etc.

In 1996, Solidarność joined with the Swedish trade unions LO and TCO in a project to draw up a training manual and training programmes for health and safety commission members (who were then still candidate members), provide training for trade union instructors and those standing for health and safety commission membership. One big benefit delivered by the project was joint training for all health and safety commission members on both the employer and employee sides. The programme met with immense interest among participants and subsequent training courses have been given according to its guidelines.

A word should be said about the current trend in collective bargaining in Poland. The process is clearly stalled, with the numbers of new collective agreements and additional protocols declining. Recent new provisions in agreements have very rarely conferred wider rights than those of generally binding labour regulations. The general trend is to limit the scope of employees' rights. Changes that actually reduce some of the benefits guaranteed by collective agreements have been added in additional protocols. Added pay components, if maintained, tend to be in the form of incentives for quality and productivity gains. Strained company finances are the reason why collective agreements limit rights and cut back on additional pay entitlements. As a result, there is a growing industry-wide trend to conclude agreements that suspend application of all or part of collective agreements. The provisions most often suspended relate to length-of-service rewards, bonuses, retirement bonuses, pay supplements, reimbursed commuting costs, and higher write-offs for company social benefits funds.

The main reasons given by employers for the decline in collective agreements are :

- under-representation of the social partners – mainly employers, at both company and industry levels - but also trade unions, especially in the private sector ;
- the inflexibility created by very detailed Labour Code regulations that set a rigid framework of collective agreements ;
- the added cost burden of collective agreements, especially industry-wide ones, when companies find themselves in a declining economic situation.

## Summary

The National Labour Inspectorate's inspection findings suggest a number of reasons why labour laws are being flouted in Poland. Solidarność argues that the main reason for breaches of the law is employers' attempts to cut down on labour costs, either from a shortage of cash, or to turn a quick profit. Other reasons for disregarding labour law and safety at work are :

- rising unemployment ;
- unregulated company ownership ;
- ignorance of regulations in force ;
- misunderstanding of legal regulations ;
- ignorance of workplace risks ;
- disregard of regulations by employers and health and safety services ;
- disregard of regulations by employees ;
- lack of effective supervision ;
- poor work organization ;
- outdated technologies ;
- long years of neglect ;
- reluctance to learn new working methods.

Not all employers are fully aware of the effects of dangerous, harmful and arduous working conditions, and the costs of inadequate working conditions are still high. The total volume of one-off compensation payments and occupational accident pensions paid in Poland in 2002 amounted to 4 billion zlotys, while analyses done by the Central Occupational Safety and Health Institute and the experience of EU member states suggest that the total cost of occupational accidents and diseases may have topped 16 billion zlotys in 2002.

There is no doubt, however, that the main condition for achieving significant improvements in workplace health and safety is stronger economic growth. High unemployment makes many workers ready to work on almost any terms to get and keep a job on even a minimum living wage.

## Oversight of working conditions

State oversight of working conditions in Poland is the purview of the National Labour Inspectorate, National Health Inspectorate, Technical Inspection Agency, mining offices, other public supervisory bodies and the state prosecution service under Penal Code provisions governing flagrant breach of duty by persons responsible for occupational health and safety, that exposes a worker to a direct risk of death or serious bodily harm.

### The National Labour Inspectorate

The National Labour Inspectorate has the widest statutory powers of oversight on working conditions in Poland. It operates under the auspices of the Polish Sejm (parliament) and its work is monitored by the Labour Protection Council, on which trade union representatives also sit.

The National Labour Inspectorate carries out its work through cooperation with trade unions, employers' organizations, workers' self-management bodies and social labour inspectors (akin to employee health and safety reps). At the request of trade unions, the National Labour Inspectorate may provide training or instruction and help with training social labour inspectors, as well as actions to improve and increase the effectiveness of social labour inspectors' activities. General Labour Inspectors may also meet with national trade union and national employers' organization officials to discuss and share information on work health and safety. These meetings tend to discuss such issues as changes to the Labour Code, especially on working time and new forms of employment, as well as issues around company restructuring in different branches of industry, most recently health services and transport. Similar meetings and discussions also take place at regional labour inspectorate level.

Inspections requested by trade unions and social labour inspectors are another key form of cooperation with the social partners. The number of such inspections has for long been stable at between 1.2% and 1.5% of all inspections conducted by the National Labour Inspectorate.

In 1996, Provincial Labour Protection Commissions composed of representative trade union officials, representatives of employers' organizations, health and safety service staff and social labour inspectors, were set up as discussion forums on work protection issues in particular regions. The make-up of these Commissions has now changed to include representatives of regional institutions, associations and organizations for whom local labour protection issues are of the utmost importance. While the Commissions' work is now done by representatives of many groups connected with work protection, trade union and employer representatives still dominate. In some provinces, these Commissions are genuinely engaged and proactive forums for identifying and getting to grips with work protection issues, while elsewhere, they are merely talking shops with no visible effects.

### Union oversight of working conditions

Trade unions exercise oversight of occupational health and safety in Poland under the Trade Union Act of 23 May 1991 (as amended). The powers of workplace trade unions extend to :

- controlling company compliance with labour law,

especially occupational health and safety rules and regulations ;

- administering the social labour inspectors scheme, and cooperation with the National Labour Inspectorate.

The social labour inspectorate system was established by the Social Labour Inspectorate Act of 24 June 1983. It is a trade union service set up and performed by employees themselves. Social labour inspectors supervise compliance with the law on :

- occupational health and safety ;
- working time and leave ;
- protection of work by women, young adults and people with disabilities ;
- occupational accident and disease benefits.

The social labour inspectorate system comprises :

- corporate social labour inspectors for the entire enterprise ;
- branch, departmental and workplace social labour inspectors for individual branches, departments and workplaces ;
- group social labour inspectors for divisions.

Social labour inspectors must have the necessary knowledge of social labour inspection issues and sufficient job seniority in the company. Social labour inspectors have the right to inspect workplaces, request data and information from management and workers, and bring breaches of labour protection regulations to the employer's notice. Their findings are recorded in a special remarks and recommendations book, and the company manager / employer then has a duty to rectify the situation. Company social labour inspectors also have the right to issue written improvement recommendations, which the company manager / employer must act on within a specified time. The company manager may appeal against the social labour inspector's recommendations to the relevant National Labour Inspectorate service inspector.

Social labour inspectors work with the National Labour Inspectorate and other agencies responsible for supervising and inspecting working conditions. The National Labour Inspectorate must :

- help social labour inspectors perform their duties, especially through legal advice and training ;
- conduct inspections and institute legal proceedings for violations of workers' rights at the request of company social labour inspectors agreed with company-level trade unions, where there is a risk to workers' health and life.

Company social labour inspectors have the right to take part in inspections conducted by inspectors of the National Labour Inspectorate. Participation in these inspections has for years been a vexed issue and a regular topic of discussion at National Labour Inspectorate meetings with trade unions. There have been complaints from social labour inspectors about National Labour Inspectorate inspectors' failure to

contact them when on workplace visits. There are many reasons why this may happen, and the issues are raised as they arise with National Labour Inspectorate management, who are deeply sympathetic about the problem.

The company must provide appropriate conditions for them to perform their duties. The operating costs of the social labour inspection system are borne by the employer.

The Social Labour Inspectorate Act provides for financial penalties on any person acting on the company's behalf who contravenes the Act's provisions and prevents a social labour inspector from carrying out his duties. There are also financial penalties for failure to implement the social labour inspector's recommendations.

The Social Labour Inspectorate Act prevents an employer from dismissing or otherwise terminating the employment contract of a worker who is a social labour inspector during and up to a year after his / her term of office except in circumstances justifying summary dismissal. In such a case, the employment contract can be terminated with the prior agreement of the relevant company-level trade union. Nor may the employer reduce a social labour inspector's working conditions or pay except as part of new pay rules affecting the entire workforce or category of workers to which the inspector belongs, or due to impaired working ability proved by a medical certificate, or non-culpable loss of skills needed to perform the work.

Under the Collective Redundancies Act, the social labour inspector's employment relationship is protected during and up to a year after his / her term of office in the same way as company-level trade union officials. The SLI Act stipulates that social labour inspectors' duties should normally be carried out outside working hours, but may be performed in working hours (at no loss of pay for the time not worked) in cases of necessity. The Act also provides that the company-level trade union may request a social labour inspector to be paid a flat-rate monthly allowance where the post entails a significant burden of duties, regardless of whether the post is that of company or branch social labour inspector.

The amount of the social labour inspector's flat-rate monthly allowance may not exceed the pay for 30 hours' work, or in some specially justified cases, 60 hours' work. In companies with particular and potentially fatal health hazards, where working conditions must be monitored on an ongoing basis, company-level trade unions may request the company manager to release the company social labour inspector from his work obligations at no loss of pay.

Under the Social Labour Inspectorate Act of 24 June 1983, the social inspection system can operate only

in companies where there is trade union representation. Post-1989 social and economic changes have also produced a situation where several trade unions may be present in a workplace and cannot agree on the joint administration of social labour inspectors. Also many new business entities have come and are still coming into being where there is no trade union representation, and so the social labour inspector system cannot operate. In 1993, therefore, based on its day-to-day activities, and after numerous social consultations, Solidarność drew up and submitted to the Labour Protection Council and the Sejm (lower house of Parliament) **draft amendments** to the Social Labour Inspectorate Act. The proposals were :

- to allow social labour inspectors to be elected in companies where there is no trade union representation ;
- to allow trade unions to run social labour inspection by letting them appoint union inspectors (social labour inspectors acting alone are not yielding the hoped-for results) ;
- to protect social labour inspectors from dismissal as part of collective redundancies ;
- to facilitate the proper operation of social labour inspection by allowing paid time off for the performance of duties ;
- to scrap the length-of-service requirement for the position ;
- to introduce a requirement that social labour inspectors be given training.

The draft was sent to the Sejm in 1993, but the bill did not complete its passage through parliament. As a result, social labour inspection in Poland is still governed by the SLI Act of 24 June 1983 and can operate only in workplaces where there is trade union representation. The main problem with monitoring of working conditions is the growing decline in social labour inspection activity, as confirmed by the National Labour Inspectorate that monitors compliance with the Social Labour Inspectorate Act. Social labour inspectors operate mainly in state-owned companies or enterprises run by local government, and rarely in private companies.

## Improving workers' health and safety in Poland

Since regaining legal status in 1989, the independent trade union Solidarność has been putting forward proposals for the protection of workers at work which have lost none of their relevance. These focus on the need for an effective legal and organizational framework for the protection of workers' health and safety.

That framework should comprise :

- good, enforceable legal regulations ;
- financial mechanisms that impose the provision of healthy and safe working conditions ;
- properly functioning oversight of working conditions ;



- health protection of workers ;
- high quality training and education in health and safety at work.

Work on the preparation and rapid implementation in practice of legal solutions has brought diverse results. While successive legislative amendments to the Labour Code have introduced new provisions that bring Polish law into line with EU directives, pressure from different political groups has produced solutions that run counter to workers' interests. One example is the amendments to the Labour Code that entered into force on 29 November 2002, making significant changes in employers' duties as regards setting-up health and safety commissions. The pre-amendment Labour Code required such commissions to be established in companies with over 50 workers – that level has now been raised to more than 250 workers. This means that commissions which were active and working well in a large number of businesses will now be scrapped, and members of our union at different levels have reported that this is already happening. It is also worth noting that the overwhelming majority of companies in Poland have fewer than 50 workers.

Another significant amendment to the Labour Code which is also bad for workers is the change in the employer's duty to set up a company health and safety service. Pre-amendment, such a service was required where more than 10 workers were employed – now, the threshold is more than 100 workers. Admittedly, an employer who is not obliged to establish such a service must himself take responsibility for it, or he may enlist a competent external service or entrust it to a worker performing another type of work ; however, the general situation and way in which a permanent, in-company health and safety service operates differs significantly from the on-call service of an outside specialist.

Solidarność has repeatedly voiced its opinion on this issue. Our union has taken a public stand against proposed changes to limit the rights of company-level trade unions to co-determine with the employer :

- jobs in which employees with their consent can use their own workwear that meets health and safety standards ;
- the type of personal protective measures and workwear required by some jobs, and the foreseeable duration of their use.

Those proposals were withdrawn in the face of trade union opposition.

Solidarność has observed a similar trend as regards **financial mechanisms** to enforce decent working conditions. Since 1989, the size of fines imposed by the National Labour Inspectorate on employers in breach of labour protection regulations has risen from 500 zlotys to 5000 zlotys, and has now fallen

again to 1000 zlotys. Solidarność's National Commission spoke out against cutting the size of fines, but unfortunately the measure went through and so financial leverage is no longer being exerted on employers. Another financial incentive to provide healthy and safe working conditions is occupational accident and disease insurance contributions graduated by work-related risks and their effects.

The regulations establish risk categories for different types of activity for risks defined by frequency indicators :

- the total number of personnel injured in accidents in the workplace ;
- the number of personnel injured in fatal and serious accidents at the workplace ;
- the number of occupational diseases diagnosed ;
- the number of personnel employed in hazardous conditions.

The differential contribution rate will be phased in up to 2009, so it is as yet hard to say how this mechanism, long pressed-for by Solidarność and a source of hope for improvement, will work in practice. What makes it uncertain is the situation identified by our trade union and confirmed by the National Labour Inspectorate, that there is a lack of full and proper identification of occupational risks in individual workplaces. The National Labour Inspectorate confirms that this will cause problems in recognizing the real situation and identifying the elements necessary to set the level of accident insurance contributions.

Examination and measurement of work-related health hazards are governed by one statute, while the list of hazards and allowable concentrations are laid down in a separate enactment. The lack of joined-up legislation means that where employers may not record all hazards and may omit limit values or at least those not tested for. Failure to log all factors to which an employee is exposed may result in a subsequent occupational disease not being recognized. Labour inspectors frequently find that employers have hazard measurements performed only on some and not all jobs exposed to those hazards. In many cases, labour inspectors' hands are tied by the regulations, preventing them from taking appropriate steps. It has been found in practice the National Health Inspection bodies are not fulfilling their legal duties. This effectively leaves it to the employer's discretion whether to conduct examinations and measurements of hazards at a particular work station. This significantly impedes identification of occupational hazards in particular workplaces or jobs, resulting in incomplete identification and documentation of particular work-related occupational risks. This frustrates the purpose for which the regulations were introduced, and undermines their effectiveness in the workplace. Solidarność has repeatedly spoken out against this.

Regulations, however good, are not self-enforcing. The legal solutions have to be implemented, which means having compliance overseen by accredited supervisory and inspection agencies. Oversight of working conditions in Poland is exercised by both state institutions and labour organizations. Our trade union has repeatedly pointed out the failings of this supervision, which does not reach many economic entities, especially smaller firms, and is not delivering the expected results, despite some recent signs of improvement.

One issue still very much on the agenda is whether supervisory agencies should focus more on advising or sanctioning employers, and in what proportions. In small and medium-sized enterprises, where possible and appropriate, supervision and inspection agencies should focus more on advising employers in how to fulfil their health and safety at work obligations. In Poland, however, in a typical period of change, the National Labour Inspection service must concentrate on supervision and inspection plus, if the situation demands, and human and financial resources permitting, prevention measures, including advice and promotion of labour protection. The supervisory agencies also need to work together and coordinate their activities to avoid duplicated inspections in workplaces.

Solidarność supports this approach. **Promotion of labour protection** is particularly important in that only 8% of all companies subject to National Labour Inspectorate oversight are inspected in any year. Promotion of labour protection is also an issue high on Solidarność's agenda, as reflected in the annual celebrations for International Workers' Memorial Day (28 April) which has been held since 1991. Solidarność marks the Day by holding occasional seminars, conferences, events to commemorate victims of accidents at work and occupational diseases, and radio broadcasts. Holy Masses are also occasionally celebrated. These events, organized for many years by Solidarność, have led to the Polish Sejm declaring 28 April the Day of Health and Safety at Work (Resolution of the Sejm of the Republic of Poland dated 9 July 2003). The Resolution reads : "The Sejm of the Republic of Poland resolves that 28 April shall be declared the Day of Health and Safety at Work. The Sejm decides to pay special attention to the need for ongoing, comprehensive actions in favour of improving the health and safety of workers and thereby to commemorate those citizens who have lost their lives as a result of work-related accidents and occupational diseases. By this resolution, the Sejm of the Republic of Poland contributes to the international action for the improvement of working conditions taken by the International Labour Organization through symbolic celebrations of International Workers' Memorial Day."

Protection of workers' health is one of the key elements of the labour protection system, but neither

binding legal regulations nor national practices in Poland are satisfactory.

Another element of any effective system of protecting workers at work is education and training in occupational health and safety. Both the Labour Code and administrative measures place appropriate duties on employers and employees in this respect. But teaching safe working methods and behaviours should start as early as primary school, or even nursery school.

The National Labour Inspectorate argues that the market for training has not yet been brought under control, and that problems still remain. Possible ways of improving the quality of training provided by employers and specialized health and safety training providers include :

- introduction of a qualifications recognition system for health and safety training bodies and registration with approved state administration bodies ;
- inspection of commercial training providers to check their competencies, teaching staff evaluation procedures and teaching methods.

Solidarność strongly supports training for social labour inspectors and trade union activists provided by National Labour Inspectorate inspectors. The aim must be to **change the way labour protection issues are perceived by society and to develop safety-mindedness in and outside work**. Putting labour protection issues on the public agenda is crucially important in this respect.

Solidarność also believes that existing regulations and national practices cannot be considered as a proper national policy on health and safety in Poland. ■

## References

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