

HEALTH AND SAFETY IN THE WORKPLACE CONCLUSIONS

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Abstract

The Comparative Labor Law Dossier (CLLD) in this issue 2/2015 of IUSLabor is dedicated to Health and Safety in the Workplace. Aside from Spain, we have had the collaboration of internationally renowned academics and professionals of the following countries: Belgium, France, Italy, Luxembourg, the United Kingdom, Chile, Costa Rica, Mexico, Peru, Uruguay, Canada and the United States.

Without detriment to recommend our readers the reading of these articles, we have drawn the top 10 conclusions. Furthermore, we have elaborated a summary table with the most relevant issues regarding health and safety in the workplace in the different legal systems analyzed in this issue of IUSLabor.

El Comparative Labor Law Dossier (CLLD) de este número 1/2015 de IUSLabor está dedicado a la sucesión y transmisión de empresas. Además de España, hemos obtenido la participación de académicos y profesionales de prestigio de los siguientes países: Bélgica, Francia, Italia, Luxemburgo, Reino Unido, Chile, Costa Rica, México, Perú, Uruguay, Canadá y Estados Unidos.

Sin perjuicio de recomendar a nuestros lectores la lectura del capítulo correspondiente a cada uno de los países citados, en las páginas que se suceden hemos incluido las 10 conclusiones principales que hemos alcanzado. Asimismo, hemos elaborado un cuadro-resumen con aquellas cuestiones más relevantes en materia de seguridad y salud laboral en los distintos ordenamientos jurídicos analizados en este número de IUSLabor.

Título: Seguridad y salud laboral. Conclusiones

Keywords: health and safety in the workplace, risk prevention, employer liability

Palabras clave: seguridad y salud laboral, prevención de riesgos laborales, responsabilidad empresarial

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1. «Top ten» conclusiones

El Comparative Labor Law Dossier (CLLD) de este número 2/2015 de IUSLabor está dedicado a la **seguridad y salud laboral** e incorpora artículos, elaborados por académicos de prestigio a nivel internacional, sobre la regulación de esta importante materia.

A pocos meses de que la Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales (en adelante LPRL) cumpla 20 años, hemos considerado que es un buen momento para analizar desde una **perspectiva comparada** las cuestiones más relevantes en esta disciplina, tanto a nivel comunitario como a nivel internacional. Así, en el presente dossier abordamos 10 cuestiones principales en materia de seguridad y salud laboral en los ordenamientos jurídicos de **Bélgica, Francia, Italia, Luxemburgo, España, Reino Unido, Chile, Costa Rica, México, Perú, Uruguay, Canadá y Estados Unidos**.

El CLLD ha partido del siguiente **test de preguntas** a las que han dado respuesta los colaboradores internacionales de la revista:

- 1.a. *[A responder únicamente en relación con los países no comunitarios.]* ¿La regulación en materia de seguridad y salud laboral en su país establece la obligación empresarial de prevención de riesgos laborales? En caso afirmativo, ¿qué obligaciones de prevención establece la regulación de seguridad y salud laboral en su país?
- 1.b. *[A responder únicamente en relación con los países comunitarios.]* ¿Cuál es la norma estatal que transpone la Directiva 89/391/CEE del Consejo, de 12 de junio de 1989, relativa a la aplicación de medidas para promover la mejora de la seguridad y de la salud de los trabajadores en el trabajo? ¿Qué obligaciones de prevención establece la regulación de seguridad y salud laboral en su país?
2. La obligación de prevención de riesgos laborales, ¿es una obligación de medios o de resultado?
3. ¿De qué manera puede la empresa, según la regulación en su país, organizar o gestionar la prevención de riesgos laborales en la empresa? Específicamente, ¿puede la empresa gestionar la prevención de forma interna o debe acudir a servicios de prevención externos?
4. ¿Tiene la empresa en su país la obligación de controlar periódicamente el estado de salud de sus trabajadores en atención a los riesgos inherentes al trabajo? En su caso, ¿tiene el trabajador la obligación de someterse a estas medidas de vigilancia de la salud?
5. ¿Qué obligaciones legales de prevención se prevén en relación con las trabajadoras embarazadas o en período de lactancia natural?

6. La regulación en materia de seguridad y salud laboral en su país, ¿prevé obligaciones de prevención específicas en relación con trabajadores especialmente sensibles? ¿Cuáles son estas obligaciones de prevención?
7. ¿Prevé la normativa en seguridad y salud laboral obligaciones de prevención específicas en materia de riesgos psicosociales?
8. ¿Qué especificidades en materia de prevención de riesgos laborales prevé la regulación de su país en supuestos de pluralidad empresarial?
9. ¿Se prevé la participación de los representantes de los trabajadores en la prevención de riesgos laborales en la empresa?
10. ¿Cuál es el sistema de responsabilidades –civil, administrativa y/o penal– que puede derivarse del incumplimiento por parte de la empresa de sus obligaciones en materia de seguridad y salud laboral?

A continuación se exponen, siguiendo el mismo orden de las preguntas, **las 10 conclusiones principales en materia de seguridad y salud laboral** alcanzadas en base a los artículos elaborados por nuestros académicos internacionales.

A modo de **introducción**, destacar la **importancia cuantitativa** que tienen, todavía hoy, los **accidentes de trabajo y enfermedades profesionales**. En términos generales, se ha registrado un notable descenso en la siniestralidad laboral en las últimas décadas, principalmente como consecuencia del paso de una economía basada en la industria a otra fundamentada en el sector servicios. No obstante lo anterior, **la seguridad y salud laboral es una asignatura pendiente** en muchos de los países analizados: en **Bélgica** el número de enfermedades profesionales no sigue la tendencia a la baja que sí registran los accidentes de trabajo; en **Italia** los costes sociales derivados de contingencias profesionales alcanza 45€ billones anuales; **España** ocupa el tercer puesto en el ranking de accidente de trabajo con baja laboral en la Unión Europea; en **Luxemburgo** han aumentado significativamente los accidentes *in itinere* por el aumento en el uso del transporte privado; en el **Reino Unido**, el estrés, depresión o ansiedad derivada del trabajo son la primera causa de bajas laborales; **Chile** cuenta con una tasa de fatalidad de 4,5 por 100.000 trabajadores; y **Méjico** y **Canadá** pierden más de 900 trabajadores cada año por accidentes de trabajo.

La **respuesta normativa** a esta situación es, no obstante, compleja y, en ocasiones, contradictoria, también dentro de la Unión Europea. Así, mientras **Bélgica** ha apostado por el endurecimiento de la normativa en materia de prevención de riesgos laborales, en el **Reino Unido** parece imponerse una tendencia a la desregulación –la *Deregulation Act 2015* pretende eximir de la obligación de prevención a los trabajadores autónomas en actividades con escaso riesgo. En cualquier caso, es fácil compartir que debemos

tender hacia una regulación adecuada para garantizar el objetivo de riesgo cero en el trabajo.

1. Todos ordenamientos jurídicos europeos analizados han **traspuesto** la **Directiva 89/391/EEC** del Consejo, de 12 de junio de 1989, relativa a la aplicación de medidas para promover la mejora de la seguridad y de la salud de los trabajadores en el trabajo, incluyendo, en su regulación interna, una **obligación empresarial general de prevención** similar a la establecida en la Directiva marco de “*garantizar la seguridad y salud de los trabajadores en todos los aspectos relacionados con el trabajo*” (artículo 5). También los **estados extracomunitarios** analizados cuentan con una **regulación específica** en materia de seguridad y salud laboral, que incluye un **deber general de prevención de la empresa**.

El deber general de prevención exige –aunque con formulaciones ligeramente distintas– la **adopción de las medidas de prevención necesarias para garantizar la seguridad y salud de los trabajadores**, hasta el punto de exigir a la empresa una diligencia superior al mero cumplimiento de las concretas obligaciones de prevención –así se ha posicionado la **jurisprudencia española, canadiense o estadounidense**.

No obstante, **la deuda general de seguridad no debe, necesariamente, identificarse con una obligación de resultado** o la existencia de responsabilidad objetiva; existen, en algunos de los ordenamientos jurídicos analizados, límites a dicho deber empresarial: en **Bélgica** el deber general de prevención se encuentra sujeto a la razonabilidad económica, técnica o social de la medida, en el **Reino Unido** al principio de viabilidad razonable y la regulación de **Estados Unidos** incluye la referencia “*en la medida de la posible*”.

Más allá de una obligación general de prevención, la regulación de **todos los países analizados** incluye también **obligaciones específicas de prevención**, tales como evaluación de riesgos, adopción de un plan de prevención, información y formación a los trabajadores en materia de riesgos laborales, facilitar equipos de protección individual, control del cumplimiento de las medidas adoptadas, etc. Destacar únicamente la excepción del **Quebec**, cuya regulación no exige a todas las empresas que realicen una evaluación de riesgos laborales y la adopción de un plan de prevención.

2. En la mayoría de ordenamientos jurídicos analizados la obligación empresarial de prevención de riesgos laborales es una **obligación de medios**, por cuanto la actuación diligente de la empresa le exime de responsabilidad, incluso si no se ha conseguido el fin ulterior de evitar un daño derivado del trabajo (accidente de trabajo o enfermedad profesional). Lo anterior sin perjuicio de que algunas de las obligaciones específicas –

expresamente reguladas en la norma aplicable– puedan cualificarse de obligaciones de resultado.

Conviene destacar, no obstante, las **excepciones de Luxemburgo, Chile o Méjico**, que configuran la obligación empresarial de prevención de riesgos laborales como una obligación de resultado, de tal manera que producido un accidente resultará una responsabilidad empresarial. Así, en el caso del **ordenamiento jurídico chileno** la empresa únicamente se exime de toda responsabilidad empresarial en supuestos de fuerza mayor o dolo del trabajador en la causación de la contingencia.

3. Existe una **diversidad normativa importante** en relación con la **organización o gestión de la prevención de riesgos laborales en la empresa** en los distintos ordenamientos jurídicos analizados –ninguno tan complejo como el existente en la regulación española.

La **práctica totalidad de los países** analizados **combinan servicios de prevención internos y externos**, con las únicas excepciones de **Chile** –que exige la existencia de un servicio interno, admitiendo asesoramiento externo pero prohibiendo la externalización de la gestión de la prevención– y **Estados Unidos** –que, por el contrario, dispone únicamente los servicios externos.

La **opción entre servicios de prevención internos o externos no es, sin embargo, una decisión empresarial libre en todos los países**. Así, en **Francia** –contrariamente a la regulación española– se exige la constitución de un servicio interno en las empresas con menos de 500 trabajadores y un servicio externo en las empresas que superan dicho número; en **España** la constitución de un servicio de prevención interno es únicamente obligatorio en empresas de más de 500 trabajadores, entre 250 y 500 trabajadores y en sectores peligrosos y cuando así es requerido por la Inspección de Trabajo; y en **Uruguay** se exige un servicio interno en empresas de más de 300 trabajadores y un externo en aquéllas entre 5 y 50 trabajadores. **Bélgica** y **Luxemburgo**, lejos de establecer lindares numéricos, exigen la constitución de un servicio de prevención externo cuando no todas las especialidades se encuentran cubiertas con el servicio interno. No obstante lo anterior, en **Bélgica** no es posible la total sustitución del servicio de prevención interno por uno de externo; tampoco en **Italia**, donde se prohíbe acudir a un servicio de prevención externo para la evaluación de riesgos laborales. En el **Reino Unido**, aunque se admiten tanto el servicio de prevención interno como externo, existe una preferencia por aquél interno.

Finalmente, es interesante apuntar que en **Bélgica** y **España** –en este último caso, salvo la vigilancia de la salud– se admite la asunción de la organización de la prevención por

parte del empresario en empresas pequeñas. Y en **Francia** y **España** se regula la figura del trabajador designado en materia de seguridad y salud laboral.

4. En la **totalidad de ordenamientos jurídicos** analizados existe la obligación empresarial de **vigilar el estado de salud de sus trabajadores** en atención a los riesgos inherentes al trabajo. No obstante lo anterior, esta vigilancia de la salud es generalmente exigible **únicamente en relación con trabajadores que ocupan puestos de trabajo peligrosos** y se concreta, principalmente, en **exámenes médicos**. Por el contrario, **Francia, Uruguay** y **Perú** imponen a la empresa la vigilancia de la salud de todos los trabajadores. La vigilancia de la salud en la **regulación española**, aunque teóricamente también exigible en relación con todos los trabajadores de la empresa, en la práctica es practicada normalmente sólo en relación con aquéllos que ocupan puestos de trabajo peligrosos.

El sometimiento a dicha vigilancia de la salud es, generalmente, **voluntaria, salvo** en relación con **aquellos trabajadores que ocupan puestos de trabajo peligrosos**. Destacar, no obstante, la **regulación francesa** que incluye la obligación de todos los trabajadores a someterse a los sistemas de vigilancia de la salud adoptados por la empresa; la **inglesa** que, además de obligar a todos los trabajadores a cooperar con una vigilancia de la salud “apropiada”, admite la introducción de cláusulas contractuales de sumisión obligatoria a la vigilancia de la salud; en **Uruguay** el sometimiento a la vigilancia de la salud de la empresa es una obligación para todos los trabajadores; y en **Canadá** existe la obligación de los trabajadores de colaborar con dicha vigilancia.

5. En los **estados miembros de la Unión Europea** analizados, existe una clara **homogeneidad** en sede de **prevención de riesgos laborales en relación con las trabajadoras embarazadas, en situación de parto reciente o en período de lactancia natural**; homogeneidad esperable como consecuencia de la Directiva 92/85/CEE de 19 de octubre de 1992.

Así, en los ordenamientos jurídicos europeos existe la obligación empresarial de realizar una evaluación de riesgos específica en relación con trabajadoras embarazadas o en período de lactancia, complementada con la obligación de informar de dicha evaluación a los trabajadores en **Luxemburgo** o de elaborar un listado de puestos de trabajo exentos de riesgo en **España**. Ante una trabajadora embarazada o en período de lactancia que ocupa un puesto de trabajo que puede ocasionar un daño a la salud, los estados miembros analizados prevén **medidas preventivas que actúan en tres claras fases**: (i) adaptación del puesto de trabajo, (ii) cambio de puesto de trabajo y, en última instancia, (iii) suspensión del contrato de trabajo.

Asimismo –con la **excepción de la regulación española** que únicamente incluye una referencia genérica a la posibilidad de no realización de trabajo nocturno o a turnos– la **regulación de los estados miembros** analizados incluye **prohibiciones específicas**, más allá de los agentes, procedimientos y condiciones de trabajo contenidas en el Anexo I de la Directiva, en relación con las trabajadoras embarazadas o en período de lactancia natural: (i) prohibición de prestar servicios 8 semanas previas y posteriores al parto en **Francia o Luxemburgo**; (ii) trabajo nocturno (prohibición absoluta en **Italia o Bélgica** –8 semanas previas al parto– o por acreditarse la ausencia o existencia de riesgo, respectivamente, mediante certificado médico como en **Luxemburgo, Bélgica o el Reino Unido**); o (iii) horas extraordinarias en **Luxemburgo**.

Aunque con diferencias sustanciales, en la **mayoría de países extracomunitarios** analizados, existe una **regulación específica** en relación con la prevención de riesgos laborales para trabajadoras embarazadas o en período de lactancia natural, constituyendo únicamente la excepción **Costa Rica y Estados Unidos (OSHA)**. En un sentido similar a la regulación comunitaria, la regulación **chilena, mejicana, peruana, uruguaya y canadiense** (también la de la provincia del **Quebec**) incluyen entre las medidas preventivas a adoptar en relación con trabajadoras embarazadas o en período de lactancia natural la obligación empresarial de cambiar a la trabajadora de puesto de trabajo, manteniendo generalmente las mismas condiciones laborales.

También existen prohibiciones de prestar servicios (i) en actividades cualificadas de riesgo en **Chile, Méjico, Perú y Uruguay**, (ii) seis semanas previas y ocho posteriores al parto en **Uruguay** o (iii) realizar trabajo nocturno u horas extraordinarias cuando pueda afectar negativamente a la salud en **Méjico**. Destacar también el derecho a cambiar de turno de trabajo regulado en **Uruguay** y la obligación contenida en la **regulación peruana** de realizar una evaluación de riesgos específica e informar a los trabajadores de los riesgos existentes para trabajadoras embarazadas y en período de lactancia. Sorprende, asimismo, la **regulación federal canadiense** que, ante la negativa de la empresa a cambiar a la trabajadora de puesto de trabajo a pesar de la existencia de riesgos laborales, reconoce a la trabajadora una excedencia no remunerada.

Finalmente, es interesante destacar la obligación empresarial, contenida en los ordenamientos jurídicos de **Bélgica, Luxemburgo, el Reino Unido, Méjico y Uruguay**, de disponer de un espacio de descanso para las trabajadoras embarazadas o en período de lactancia.

6. En relación con la regulación en materia de seguridad y salud laboral relativa a los trabajadores especialmente sensibles existe una clara diferencia entre los

ordenamientos jurídicos de los **estados miembros de la Unión Europea** y los **estados extracomunitarios**.

Así, la **mayoría de los estados miembros** analizados prevén **obligaciones de prevención específicas** referentes a los **trabajadores especialmente sensibles a determinados riesgos**; esencialmente, vigilancia de la salud y adaptación del puesto de trabajo o, en caso de resultar técnica u objetivamente imposible o insuficiente, suspensión o extinción del contrato de trabajo. La **excepción** la constituyen el **Reino Unido** y **Luxemburgo** que, sin hacer referencia expresa a los trabajadores especialmente sensibles, prevén la obligación empresarial de realizar los **ajustes razonables** al puesto de trabajo ocupado por trabajadores con alguna discapacidad.

En los **ordenamientos jurídicos extracomunitarios** analizados **no existe una regulación específica** de prevención de riesgos laborales de los **trabajadores especialmente sensibles**. No obstante lo anterior, **generalmente** se recoge una regulación de prevención de riesgos laborales específica referente a **trabajadores con alguna discapacidad**, imponiéndose la obligación de adaptar el puesto de trabajo en **Méjico**, **Canadá** (también en **Quebec**) y **Estados Unidos**. La única excepción la encontramos en la **regulación peruana** que, a pesar de no disponer de una regulación específica, incluye la obligación empresarial de prevención en relación con aquellos trabajadores que, como consecuencia de un examen médico, se detecta una especial sensibilidad a un determinado riesgos del puesto de trabajo que ocupa.

7. En **todos los países** analizados –**salvo Estados Unidos**– existe la obligación empresarial de prevenir los riesgos psicosociales. No obstante lo anterior, ésta es una obligación derivada del deber general de prevención, por cuanto en la **mayoría de ordenamientos jurídicos** analizados no existe una regulación específica en esta materia. Las únicas excepciones las constituyen el caso de **Italia** –estrés laboral–, **Chile** y **Uruguay** –*call centers*. Asimismo, los ordenamientos jurídicos de **Bélgica**, **Luxemburgo**, **Costa Rica**, **Uruguay** y **Canadá** contienen regulaciones específicas en materia de violencia laboral o acoso moral o sexual en el trabajo.

8. **Todos los estados** analizados –**salvo Méjico**– incluyen **especificidades en materia de prevención de riesgos laborales en supuestos de pluralidad empresarial**, que, generalmente, se traducen en una **obligación de información y coordinación**.

Existe, no obstante, una **importante variabilidad** en las obligaciones de prevención en los distintos ordenamientos jurídicos analizados, evidenciando en algunos supuestos – como es el caso del **ordenamiento jurídico español**– un **intervencionismo normativo**

excesivo a la hora de pautar una obligación cuyo cumplimiento es finalista: garantizar la seguridad y salud de los trabajadores también en supuestos de pluralidad empresarial.

Así, existen ordenamientos jurídicos que simple y llanamente **atribuyen la obligación de prevención a la empresa titular del centro de trabajo**, también respecto de los trabajadores que prestan servicios por otras empresas –**Chile, Costa Rica, Perú, Canadá o Estados Unidos** (que atribuye responsabilidad solidaria a todas las empresas). Otros prevén especificidades en materia de prevención de riesgos laborales únicamente en supuestos de **subcontratación y/o Empresas de Trabajo Temporal** – **Francia, Italia o Uruguay**. Finalmente, otras regulaciones extienden las obligaciones de información y coordinación a **todas las empresas intervinientes en un mismo centro de trabajo**, independientemente de la existencia de una relación contractual entre ellas –**Bélgica** (incluso en centros de trabajo vecinos dentro de la misma propiedad inmobiliaria), **España** o el **Reino Unido**.

Las formas de coordinación en materia de prevención de riesgos laborales en supuestos de pluralidad empresarial, **así como el sujeto responsable** de llevar a cabo dicha coordinación, **son también variables**. Así, en **Bélgica** se impone la obligación de supervisión de la actividad preventiva a la empresa principal en supuestos de subcontratación y una prohibición de contratación con empresas subcontratistas infractoras de la normativa de seguridad y salud laboral; en **Francia** se establece la obligación de la empresa principal de realizar una visita/inspección del centro de trabajo, adoptar un plan de prevención conjunto y dar las instrucciones correspondientes a las demás empresas; también en **Italia** se impone a la empresa principal las obligaciones de información y coordinación, así como la elaboración de un documento de prevención; en **Chile** la empresa principal también tiene la obligación de supervisión de la actividad preventiva en supuestos de subcontratación y se imponen instrumentos concretas de coordinación en atención al número de trabajadores en el centro de trabajo –constitución de un comité paritario o adopción de un reglamento conjunto. La regulación más compleja, entendemos, es la **española** que distingue las obligaciones preventivas en función de tres sujetos empresariales y dejando a la decisión de las empresas la opción por el instrumento de coordinación más adecuado en atención a las circunstancias.

9. Todos los ordenamientos jurídicos analizados prevén la **participación de los trabajadores en la prevención de riesgos laborales** en la empresa.

La participación es generalmente atribuida a **representantes de los trabajadores específicos en materia de seguridad y salud laboral** –**Italia y España**–; constituyéndose (en ocasiones únicamente a partir de un número de trabajadores) en

Bélgica, Francia, España, Chile, Costa Rica, Méjico, Uruguay y Canadá un Comité paritario en materia de seguridad y salud laboral. No obstante, en otros ordenamientos jurídicos la participación en esta materia es atribuida a los representantes de los trabajadores –**Francia** (en empresas de menos de 50 trabajadores), **Luxemburgo** o **Estados Unidos**– o a los representantes sindicales –el **Reino Unido** o **Perú**.

Las **funciones en materia de prevención de riesgos laborales** de dichos representantes de los trabajadores son **comunes** en los ordenamientos analizados: generalmente, obtener información, consultas, participar en la prevención en la empresa, controlar el cumplimiento de las obligaciones de prevención, denunciara la autoridad correspondiente incumplimientos preventivos, etc.

10. La responsabilidad derivada del incumplimiento empresarial de la normativa de seguridad y salud laboral es, en la **totalidad de los ordenamientos jurídicos** analizados, la **responsabilidad administrativa y/o penal**, dando lugar a sanciones económicas y, en su caso, condenas privativas de libertad. En este punto, es interesante destacar la existencia de tipos penales especiales por incumplimiento empresarial de sus obligaciones preventivas en **Bélgica, Francia, Italia, Luxemburgo, España, Perú, Uruguay** o **Canadá**.

Asimismo, **ante la producción de un accidente de trabajo o enfermedad profesional** como consecuencia del incumplimiento empresarial, son **muchos los ordenamientos jurídicos** que reconocen una **responsabilidad adicional por los daños y perjuicios sufridos**. Este es el caso de **España** –responsabilidad civil y recargo de prestaciones de la Seguridad Social–, el **Reino Unido** –*common law*–, **Chile** –responsabilidad civil y incremento de las prestaciones derivadas del seguro–, **Costa Rica** y **Perú**. La regulación de **Uruguay** prevé un sistema de responsabilidad limitada, salvo en supuestos de dolo o negligencia grave de la empresa; similarmente, **Francia** no admite la responsabilidad civil –compensándose el daño mediante las prestaciones de la Seguridad Social–, salvo en supuestos de falta intencional o inexcusable de la empresa; y, finalmente, **Canadá** y **Estados Unidos** prevén un sistema de compensación tasada del daño mediante *workers' compensation systems*, independientemente de la existencia de incumplimiento empresarial e impidiendo una reclamación civil por daños y perjuicios.

2. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 2/2015 of IUSLabor is dedicated to health and safety in the workplace and it includes articles, elaborated by internationally renowned academics and professionals, regarding this important matter.

just under 20 years since the adoption of the Spanish Occupational Safety and Health Act (Law 31/1995 of 8 November on Prevention of Occupational Risks, hereinafter LPRL) we considered it a good time to analyze, from a comparative perspective, the most relevant issues in this matter, both at EU and international level. In this dossier we analyzed the most relevant 10 issues in the legal systems of Belgium, France, Italy, Luxembourg, Spain, United Kingdom, Chile, Costa Rica, Mexico, Peru, Uruguay, Canada and the United States.

The international advisors of the law review have responded to the following questions:

- 1.a. [*Answer only non-EU countries.*] Does the regulation on health and safety in the workplace in your country establish the employer's obligation to prevent occupational hazards? If the answer is positive, what prevention obligations does your country's regulation on health and safety in the workplace establish?
- 1.b. [*Answer only EU countries.*] Which national law implements Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work? What prevention obligations does your country's regulation on health and safety in the workplace establish?
2. Is the obligation to prevent occupational hazards an obligation of means or an obligation of results?
3. According to the regulations in your country, how can the employer organize or manage the prevention of occupational hazards in the company? Specifically, can the company manage its prevention internally or must it hire external preventive services?
4. In your country does the company have the obligation to periodically monitor their workers' health in relation to the risks and hazards inherent in their workplace? If the answer is positive, does the worker have the obligation to bear these health surveillance measures?
5. What prevention obligations does the legal regulation establish regarding pregnant workers or women workers during breastfeeding?
6. Does the regulation on health and safety in the workplace in your country establish the obligation to adopt preventive measures regarding especially sensitive workers? What are these prevention obligations?

7. Does the regulation of health and safety in the workplace provides specific preventive obligations regarding psychosocial risks?
8. What specificities does your country's regulation establish regarding prevention of occupational hazards in cases of business plurality?
9. Does the regulation of health and safety in the workplace provides for participation of workers' representatives in the prevention of occupational hazards in the company?
10. What are the liabilities –tort, administrative and/or criminal– that can arise as a consequence of the company's breach regarding workplace health and safety?

Following, and in the same order of the above questions, are the 10 most important conclusions regarding health and safety in the workplace, drawn from the articles written by our international consultants.

As an **introduction**, it is important to highlight the **quantitative importance of labor accidents and occupational diseases**. Overall, there has been a marked decline in workplace accidents in recent decades, mainly due to the conversion of an industry based economy to a one based on the service sector. Notwithstanding the foregoing, **workplace health and safety is an unresolved matter** in many of the countries studied in this paper: in **Belgium** the number of occupational diseases does not follow the downward trend of labor accidents; in **Italy** social costs arising from occupational contingencies reach 45€ million annually; **Spain** ranks third in the ranking of occupational accidents with sick leave in the European Union; in **Luxembourg** commuting accidents have significantly raised as a result of the increase use of private transportation; in the **United Kingdom**, stress, depression or anxiety derived from work are the leading cause of sick leave; **Chile** has a fatality rate of 4.5 per 100,000 workers; and **Mexico** and **Canada** los more than 900 workers each year due to labor accidents.

The **normative response** to this situation is, however, complex and, sometimes, contradictory, also within the European Union. In this sense, while **Belgium** has opted for tightening the rules on prevention of occupational hazards, in the **United Kingdom** it seems to have imposed a trend towards deregulation –the Deregulation Act 2015 seeks to exempt from the obligation of workplace prevention to self-employed workers that develop a low risk activity. In any case, it is easy to agree on the need to move towards a proper regulation so as to achieve the objective of zero risk at work.

1. All of the European legal systems analyzed have transposed Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, introducing, in their internal regulations, a **general obligation of prevention** similar to that established in the

framework Directive to “*ensure the safety and health of workers in every aspect related to the work*” (article 5). Also the **non-EU countries** analyzed in the study include in their legal systems a **specific regulation** on workplace health and safety, including a **general duty of care for the employer**.

The general duty of prevention requires –in spite of slightly different formulations– the employer to **adopt the necessary preventive measures so as to ensure the safety and health of workers**, to the point of demanding the company a level diligence higher than the mere compliance with the specific legal obligations –this is the position adopted by the **Spanish, Canadian or American case law**.

Nonetheless, **the general duty of prevention should not necessarily be identified with an obligation of result** or the existence of strict liability, as in some of the analyzed legal systems there are limits to this general duty of care: in **Belgium** the general duty of prevention is subject to the social economic, technical or social reasonableness of the measure, in the **United Kingdom** it is subject to the principle of reasonable feasibility and the regulation of the **United States** includes the reference “*so far as possible*”.

Apart from the general duty of prevention, the regulation of **all the analyzed countries** include **specific prevention obligations**, such as risk assessment, adoption of a prevention plan, information and training of workers on labor hazards, facilitating individual protection equipment, control of compliance of the adopted prevention measures, etc. Highlight only the exception of **Quebec**, where its regulation does not require all companies to make an assessment of occupational risks and the adoption of a prevention plan.

2. In the majority of analyzed legal systems the employer’s obligation of occupational risk prevention is an **obligation of means**, as the diligent performance of the company exempts from liability, even if the ulterior objective of avoiding damages arising from work (labor accident or occupational diseases) has not been reached. The foregoing notwithstanding the fact that some of the specific preventive obligations –those specifically regulated in the law– can be qualified as obligations of result.

It is interesting to note, however, the **exceptions** of **Luxembourg, Chile** or **Mexico**, which qualify the company’s general duty of prevention as an obligation of results, in the sense that the occurrence of a labor accident or occupational disease leads to corporate liability. Thus, in the case of **Chilean legal system** the company can only exempt from liability in cases of *force majeure* or worker’s intention in the causation of contingency.

3. There is an important regulatory diversity in relation to the organization or management of occupational risks prevention in the company in the different legal systems analyzed –none as complex as the existing in the Spanish regulation.

Substantially, all of the countries analyzed combine internal and external prevention services, with the only exceptions of **Chile** –which requires the existence of an internal service, admitting however external counsel services but banning outsourcing the management of risk prevention– and **United States** –on the contrary, it only allows for external services.

However, **the choice between internal or external prevention services is not a free business decision in every country**. In this sense, in **France** –contrary to the Spanish regulation– companies with less than 500 employees are required to adopt an internal prevention service, while companies that exceed this number of employees must employ an external service; in **Spain** the adoption of an internal prevention service is compulsory only in companies with more than 500 workers, between 250 and 500 workers in hazardous sectors and when required by the Labor Inspection; and in **Uruguay** an internal prevention service is required for companies with more than 300 workers and an external in those between 5 and 50 workers. **Belgium** and **Luxembourg**, far from establishing numerical thresholds, only require an external prevention service when not all specialties are covered by the internal service. Nevertheless, in **Belgium** the absolute substitution of the internal preventive service for an external one is not possible; neither in **Italy**, where it is forbidden to employ an external prevention services for the evaluation of occupational hazards. In the **United Kingdom**, although both internal and external service prevention services are accepted, there is a preference for internal services.

Finally, it is interesting to note that in **Belgium** and **Spain** –in this last case, except health surveillance– the organization or management of occupational risk prevention can be assumed by the employer in small companies. Finally, **France** and **Spain** regulate the figure of the designated worker on workplace health and safety.

4. In all the legal systems analyzed exists the company's obligation to monitor workers' health in regard to risks arising from work. Notwithstanding the foregoing, this health surveillance is **generally only required** with respect to workers that occupy **hazardous job posts** and is mainly based on check-ups or medical tests. On the contrary, **France**, **Uruguay** and **Peru** impose the employer the obligation to monitor the health of all workers in the company. Health surveillance in the **Spanish regulation**, although theoretically also required in relation to all workers, is usually practiced only in relation to those workers that occupy hazardous job positions.

Submission to health surveillance is generally voluntary, except in relation to those **workers that occupy hazardous job positions**. Note, however, that the **French regulation** includes the obligation of all workers to undergo surveillance systems of health adopted by the company; the regulation of the **United Kingdom**, in addition to workers' obligation to cooperate with an "appropriate" health surveillance, allows the introduction of a mandatory contractual clause to the submission to health surveillance measures; in **Uruguay** all workers are obliged to submit to the company's health surveillance; and in **Canada** there is the obligation of workers to collaborate with such monitoring.

5. In the analyzed **EU member states** there is a clear **homogeneity in prevention of occupational risks concerning pregnant workers and workers who have recently given birth or are breastfeeding**; expected homogeneity as a result of the Council Directive 92/85/EEC of 19 October 1992.

Thus, in the European legal systems there exists the obligation to develop a specific risk assessment regarding pregnant or breastfeeding workers, complemented with the obligation to inform workers of such assessment in **Luxembourg** or elaborate a list of risk-free job positions in **Spain**. Given a pregnant worker, who has recently given birth or is breastfeeding in a hazardous job post, the member states provide **preventive measures operating in three distinct phases**: (i) adaptation of the workplace, (ii) change of the worker's job post and, ultimately, (iii) temporary suspension of the employment contract.

Furthermore –with the **exception of the Spanish regulation** that only includes a general reference to the possibility of non-performing night or shift work– the regulation of the analyzed **member states** include **specific prohibitions**, exceeding the agents, processes and working conditions contained in Annex I of the Directive: (i) prohibition to work eight weeks before and after delivery in **France** or **Luxembourg**; (ii) night work (absolute prohibition in **Italy** or **Belgium** –8 weeks prior the birth– or due to the absence or existence of risk, respectively, accredited by a medical certificate in **Luxembourg**, **Belgium** and the **United Kingdom**); or (iii) overtime in **Luxembourg**.

Although with substantial differences, in the **majority of non-EU countries** analyzed, there exists a **specific regulation** in relation to the prevention of occupational risks of pregnant workers or during the breastfeeding period, with the only exception of **Costa Rica** and the **United States** (OSHA). Very similar to the EU regulation, the regulation of **Chile**, **Mexico**, **Peru**, **Uruguay** and **Canada** (also the province of **Quebec**) include among the preventive measures to be taken regarding pregnant or breastfeeding workers

the employer's obligation to change the worker's job post, generally maintaining the same working conditions.

There is also the prohibition to work (i) in qualified hazardous activities in **Chile, Mexico, Peru and Uruguay**, (ii) six weeks before and eight after the delivery in **Uruguay** or (iii) night shift or overtime when it could affect the worker's health in **Mexico**. It is important to also mention the worker's right to change shift in **Uruguay** and the employer's obligation contained in the **Peruvian regulation** to develop a specific risk assessment and inform workers of the risks existing in their job posts for pregnant and breastfeeding workers. It is surprising, however, the **Canadian federal regulation** that, given the employer's refusal to change the worker's job post despite the existence of occupational hazards, recognizes the workers an unpaid leave.

Finally, it is interesting to note the employer's obligation, contained in the legal systems of **Belgium, Luxembourg, the United Kingdom, Mexico and Uruguay**, to make available to workers a resting place for pregnant workers or for breastfeeding.

6. With regard to the regulation of workplace health and safety on especially sensitive workers there is a clear difference between the legal systems of EU member states and non-EU countries.

In this sense, **the majority of the analyzed EU member states provide specific prevention obligations concerning workers especially sensitive** to certain risks; essentially, health monitoring and adaptation of the workplace or, when proven technically or objectively impossible or insufficient, suspension or termination of the employment relationship. The exceptions are the regulations of the **United Kingdom and Luxembourg** that, with no explicit legal reference to especially sensitive workers, establish the employer's obligation to carry out **reasonable adjustments** of the job post of workers with any type of disability.

In the **non-EU countries** analyzed there is **no specific regulation regarding health prevention of especially sensitive workers**. Nevertheless, generally, there is a **specific regulation** with regard to workplace health and safety of **workers with disabilities**, imposing the employer's obligation to adapt the workplace in **Mexico, Canada** (also in **Quebec**) and the **United States**. The only exception is found in the **Peruvian regulation** that, despite not having a specific regulation, includes the employer's obligation of risk prevention in relation to those workers who, as a result of a medical examination, have had detected a special sensitivity to a specific work related risk.

7. All countries analyzed –with the **exception** of the **United States**– include the **employer’s obligation to prevent psychosocial risks**. Nevertheless, this is an expression of the general duty of care or prevention, as in **most legal systems** analyzed there is **no specific regulation** in this issue. The only exceptions are **Italy** –work related stress– and **Chile** and **Uruguay** –call centers. Also, the legal systems of **Belgium, Luxembourg, Costa Rica, Uruguay** and **Canada** contain specific regulations on workplace violence and/or moral or sexual harassment at work.

8. All the legal systems analyzed –except **Mexico**– include a **specific regulation of workplace health and safety in cases of business plurality**, which generally result in **information and coordination obligations**.

There is, however, a **significant variability** in the prevention obligations in the different legal systems analyzed, showing in some cases –such as in **Spain**– an **excessive regulatory intervention** in specifying a preventive obligation that, in essence, has finalist objective: ensure the health and safety of workers, also in cases of business plurality.

There are legal systems that simply **attribute the duty of care or risk prevention to the company owner of the workplace**, also with regard to workers employed by other companies that provide services in such workplace –**Chile, Costa Rica, Peru, Canada** and the **United States** (which attributes joint liability to all companies). Others provide a specific regulation on workplace health and safety only in cases of **outsourcing and/or Temporary Employment Agencies** –**France, Italy** and **Uruguay**. Finally, other legal systems extend the information and coordination obligations to **all the companies providing services in the same workplace**, regardless of the existence of a contractual relationship between them –**Belgium** (even in neighboring job centers within the same property), **Spain** or the **United Kingdom**.

The forms of coordination in workplace health and safety in the event of business plurality, as well as the **person responsible** for carrying out such coordination, **are also variable**. In **Belgium** the main or parent company has the obligation to monitor the prevention activity of the subsidiary companies in cases of outsourcing and there is a prohibition of contracting with companies infringing the workplace health and safety rules; in **France** the parent company has de obligation to carry out inspections of the workplace, adopt a joint prevention plan and give instructions to subsidiary companies; also in **Italy** the parent company has information and coordination obligations, as well as the obligation to adopt a prevention document; in **Chile** the main company also has the obligation to monitor the preventive activity of the subsidiary companies in cases of outsourcing and the regulation establishes different coordination mechanisms depending

on the number of workers in the work center –joint committee or adoption of a joint regulation. The more complex regulation is, according to our point of view, the **Spanish regulation**, that imposes different preventive obligations to three types of companies, leaving, however, the decision of which coordination instrument to use to the different participating companies in view of the specific circumstances.

9. All legal systems analyzed recognize the participation of workers in the company's risk prevention activity.

Workers participation is generally attributed to **workers' representatives especially appointed with regard to workplace health and safety** –Italy and Spain–; establishing (from a specific number of employees) in **Belgium, France, Spain, Chile, Costa Rica, Mexico, Uruguay and Canada** a joint committee on health and safety. Nonetheless, in other legal systems participation in this field is attributed to workers' representatives –**France** (companies with less than 50 workers), **Luxembourg** or the **United States**– or to union representatives –**United Kingdom** or **Peru**.

The **functions** of these workers' representatives in **workplace health and safety are common in the different legal systems**: generally, information, consultation, participation in the company's prevention activity, monitoring company's compliance with the prevention plan, denounced normative breaches, etc.

10. The liability derived from a breach of the regulation on workplace health and safety is, in all the legal systems analyzed, an administrative and/or criminal liability, leading to economic sanctions and, when appropriate, prison sentences. Notice the existence of specific criminal offences in workplace health and safety in **Belgium, France, Italy, Luxembourg, Spain, Peru, Uruguay and Canada**.

Furthermore, the existence of a **labor accident or occupational disease as a result of the employer's breach of workplace health and safety regulation** leads to, in **many of the legal systems** analyzed, an **additional liability for pain and suffering**. This is the case of **Spain** –civil claim and surcharge on Social Security benefits–, the **United Kingdom** –common law–, **Chile** –civil claim and increase of insurance benefits–, **Costa Rica** and **Peru**. The regulation in **Uruguay** establishes a limited liability, except in cases of fraud or the company's serious negligence; similarly, **France** does not accept civil claims –compensating damages through Social Security benefits–, except in cases of the company's intentional or inexcusable fault; and finally, **Canada** and the **United States** establish workers' compensation systems, regardless of the existence of employer's breach and not allowing for a civil claim for damages.

3. Summary table

3.1. Europe

	Belgium	France	Italy	Luxembourg	Spain	United Kingdom
<p>1. Which national law implements Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work?</p> <p>What prevention obligations does your country's regulation on health and safety in the workplace establish?</p>	<p><i>Act of 4 August 1996 and Code on the well-being at work.</i></p> <p>Evaluation, prevention plan, accommodate work to the person, information, instructions, install measures, etc.</p>	<p><i>Law 91-1414, 31.12.1991 and Code du travail.</i></p> <p>Evaluation, information, training in risk prevention, etc. and general prevention obligation.</p>	<p><i>Consolidated Act on Health and Safety at Work (Legislative Decree n. 81/2008).</i></p> <p>Evaluation, prevention plan, health monitoring, information, training in risk prevention, etc.</p>	<p><i>Labour Code (articles L311-1 to L351-5).</i></p> <p>Removal of risk, information, training in risk prevention, etc.</p>	<p><i>Law 31/1995, 8.11, de Prevención de Riesgos Laborales.</i></p> <p>Evaluation, prevention plan, accommodate work to the person, information, instructions, adopt risk preventive measures, control, etc.</p>	<p><i>Management of Health and Safety at Work Regulations 1999.</i></p> <p>Evaluation, information, training in risk prevention, adopt risk preventive measures, control, etc.</p>
<p>2. Is the obligation to prevent occupational hazards an obligation of means or an obligation of results?</p>	<p>Obligation of means.</p> <p>General duty of care = economically, technically and socially reasonable.</p>	<p>Obligation of results (<i>Cour de cassation</i>, 2002).</p> <p>General duty of care.</p>	<p>Absolute obligation.</p>	<p>Obligation of results.</p>	<p>Obligation of means.</p> <p>General duty of care (beyond specific obligations).</p>	<p>Obligation of means.</p> <p>General duty of care = "reasonable practicability".</p>

<p>3. According to the regulations in your country, how can the employer organize or manage the prevention of occupational hazards in the company? Specifically, can the company manage its prevention internally or must it hire external preventive services?</p>	<p>1. Employer: < 20 workers. 2. Internal service (minimum 1 advisor). 3. External service: only for skills not included and never fully substitute internal service.</p>	<p>1. Internal service: < 500 workers. 2. External service: > 500 workers. 3. Designated worker. Multidisciplinary team (occupational physicians)</p>	<p>1. Internal service: if appropriate and sufficient training. 2. Possibility delegate functions. However: (i) obligation to monitor; (ii) prohibition: evaluation, documentation and appointment.</p>	<p>1. Internal service. 2. External service: compulsory when required skills not available.</p>	<p>1. Employer: < 10 (or 25) workers: except health surveillance. 2. Designated worker. 3. Internal service: only compulsory: (i) > 500 workers; (ii) 250 > 500 workers and dangerous activity; (iii) required Labor Inspection. 4. External service: allows full substitution.</p>	<p>1. “Competent persons”: internal or external. Preference of internal.</p>
<p>4. In your country does the company have the obligation to periodically monitor their workers’ health in relation to the risks and hazards inherent in their workplace? If the answer is positive, does the worker have the obligation to bear these health surveillance measures?</p>	<p>Yes. Periodical health surveillance system for certain workers/ jobs. Voluntary: compulsory only certain workers/ jobs.</p>	<p>Yes. Individual monitoring of worker’s health. Compulsory.</p>	<p>Yes. Voluntary: compulsory only legally established or indication Committee for Health and Safety at Work.</p>	<p>Yes. Medical exam by public entity beginning contract (prior for certain workers/ jobs). Periodical exams for certain workers/ jobs. Compulsory.</p>	<p>Yes. Periodical surveillance workers’ health (medical exams, statistics, surveys...) Voluntary: compulsory only certain workers/ jobs.</p>	<p>Yes. Voluntary: cooperation with “appropriate surveillance”. Compulsory: contract clause or certain workers/ jobs.</p>

<p>5. What prevention obligations does the legal regulation establish regarding pregnant workers or women workers during breastfeeding?</p>	<p>Specific risk evaluation.</p> <p>Preventive measure: a) temporary adjustments; b) change functions; c) suspension contract.</p> <p>Prohibition: night work (8 weeks or certificate).</p> <p>Right to rest and breastfeeding facilities.</p> <p>Obligation to inform employer.</p>	<p>Preventive measure: a) temporary adjustment; b) change functions; c) suspension contract.</p> <p>Prohibitions: a) 8 weeks prior and after birth; b) certain jobs.</p>	<p>Specific risk evaluation.</p> <p>Preventive measure: a) temporary adjustments; b) change functions; c) suspension contract.</p> <p>Prohibition: a) night work; b) hazardous areas; c) weight; d) contamination.</p> <p>Right to rest facilities.</p>	<p>Specific risk evaluation and inform workers.</p> <p>Prohibitions: a) 8 weeks prior and after birth; b) overtime; c) night work (unless, medical certificate).</p>	<p>Specific risk evaluation and list of risk free job posts.</p> <p>Preventive measure: a) temporary adjustments; b) change functions; c) suspension contract.</p>	<p>Specific risk evaluation.</p> <p>Preventive measure: a) temporary adjustments; b) change functions; c) suspension contract.</p> <p>Prohibition: night work (medical certificate).</p> <p>Right to rest facilities.</p>
<p>6. Does the regulation on health and safety in the workplace in your country establish the obligation to adopt preventive measures regarding especially sensitive workers? What are these prevention obligations?</p>	<p>Yes.</p> <p>Unfit occupation: a) temporary; b) permanent: adapt workplace + if impossible extinction contract.</p> <p>Non binding advice prevention advisor-physician or Committee.</p>	<p>Yes.</p> <p>Obligation to periodically monitor their workers' health.</p> <p>Proposals occupational physicians to modify worker's job post.</p>	<p>Yes.</p> <p>Specific preventive measures: health surveillance, workplace organization (workstation and access point).</p>	<p>Yes/No.</p> <p>Companies > 25 workers: obligation to hire % of disabled workers.</p> <p>Obligation to adapt as possible the disabled workers workplace.</p>	<p>Yes.</p> <p>Broad concept especially sensitive.</p> <p>Unfit occupation: a) obligation adapt workplace; b) if impossible: suspension or, if permanent, extinction contract.</p> <p>Prohibition of labor in case of risk.</p>	<p>Yes/No.</p> <p>No specific regulation especially sensitive.</p> <p>Only worker with disability: reasonable adjustments.</p>

<p>7. Does the regulation of health and safety in the workplace provides specific preventive obligations regarding psychosocial risks?</p>	<p>Yes. Obligation to prevent psychosocial risks. Specific preventive measures: violence, bullying and sexual harassment. Analysis of a specific work situation.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks. Specific preventive measures: work-related stress.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks. Specific preventive measures: moral and sexual harassment.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks.</p>
<p>8. What specificities does your country's regulation establish regarding prevention of occupational hazards in cases of business plurality?</p>	<p>Companies same workplace: information and coordination. Neighboring places + same real state property: coordination Outsourcing or Agency work: surveillance + prohibition contract offending companies. Possibility: communal committee.</p>	<p>Companies involved in transaction: health and safety obligations: 1. Agency work: issue equipment + surveillance. 2. Outsourcing: user company: a) information + coordination; b) Prior joint inspection + plan prevention.</p>	<p>Outsourcing: user company: a) information + prevention and emergency measures; b) promote coordination; c) prevention document.</p>	<p>Prevention obligation: permanent, fixed-term and interim workers.</p>	<p>Companies same workplace: 1. Company's work center: information + instructions. 2. Concurrent companies: information + coordination. 3. Principal company (own activity): information + control.</p>	<p>Reasonably practicable preventive measures towards third parties. Companies same workplace: 1. Company's work center: information + instructions. 2. Agency work: information, skills, health surveillance</p>

<p>9. Does the regulation of health and safety in the workplace provides for participation of workers' representatives in the prevention of occupational hazards in the company?</p>	<p>Yes. Committee on protection and prevention at work: companies > 50 workers. Functions: advice, control, investigate complaints, etc. Unanimous advice: obligation to comply.</p>	<p>Yes. Companies: a) < 50 workers: workers' representatives; b) > 50 workers: committee on health, safety and working conditions. Functions: prevention, surveillance, compulsory consultation, etc.</p>	<p>Yes. Safety representatives (territorial, branch, or company level). Functions: information, consultation, proposals, surveillance, etc.</p>	<p>Yes. Workers' representatives. Functions: information, consultation, proposals, surveillance, etc.</p>	<p>Yes. Safety representatives and Health and Safety Committee. Functions: information, consultation, proposals, surveillance, etc.</p>	<p>Yes. 1. Unionized workplaces: trade union safety representatives. 2. Non-unionized workplaces: employees or elected representatives. Functions: information, consultation, etc.</p>
<p>10. What are the liabilities –tort, administrative and/or criminal– that can arise as a consequence of the company's breach regarding workplace health and safety?</p>	<p>Liability: 1. Criminal sanction: specific offence. 2. Administrative fines. Sanctions variable to number affected workers and type of breach.</p>	<p>Liability: 1. Criminal sanction: specific offence. 2. Tort: intentional or inexcusable fault. Social insurance system = limited liability.</p>	<p>Liability: 1. Criminal sanction: specific offence. 2. Administrative fines.</p>	<p>Liability: 1. Criminal sanction: specific offence.</p>	<p>Liability: 1. Criminal sanction: specific offence. 2. Administrative fines. 3. Tort: damages. 4. Surcharge on Social Security benefits.</p>	<p>Liability: 1. Enforcement: improvement or prohibition notice. 2. Criminal sanction: detention and/or fines. 3. Civil law claim: only if expressly provided. 4. Common law claim: damages.</p>

<p>11. Other relevant aspects regarding health and safety in the workplace <i>[optional]</i></p>	-	-	-	<p>Parliamentary debate regarding age policy: health prevention and improvement working condition.</p>	-	<p>Deregulatory trend. Deregulation Act 2015: self-employed workers with risk-free activities: no obligation to protect their own health and safety.</p>
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3.2. America

	Chile	Costa Rica	Mexico	Peru	Uruguay	Canada	USA
<p>1. Does the regulation on health and safety in the workplace in your country establish the employer's obligation to prevent occupational hazards?</p> <p>If the answer is positive, what prevention obligations does your country's regulation on health and safety in the workplace establish?</p>	<p>Yes.</p> <p><i>Law 16.744.</i></p> <p>General duty of care.</p> <p>Specific obligations: information, provision equipment, control, etc.</p>	<p>Yes.</p> <p><i>Código de Trabajo.</i></p> <p>General duty of care.</p> <p>Specific obligations: identification and evaluation, information, provision equipment, investigate accidents, etc.</p>	<p>Yes.</p> <p><i>Reglamento Federal de Seguridad y Salud en el Trabajo</i></p> <p>General duty of care.</p> <p>Specific obligations: evaluation, prevention plan, adopt preventive measures, information, provision equipment, etc.</p>	<p>Yes.</p> <p><i>Law N° 29783.</i></p> <p>General duty of care.</p> <p>Specific obligations: evaluation, prevention plan, inform and train workers, etc.</p>	<p>Yes.</p> <p><i>Decree N° 406/88.</i></p> <p>General duty of care.</p> <p>Specific obligations: evaluation, prevention, machinery, chemical or biological substances, etc.</p>	<p>Yes.</p> <p>Quebec: <i>Occupational Health and Safety Act.</i></p> <p>General duty of care (beyond specific obligations)</p> <p>Specific obligations: information, training, provision equipment, etc.</p> <p>Quebec: not all companies: evaluation and prevention plan.</p>	<p>Yes.</p> <p><i>Occupational Health and Safety Act.</i></p> <p>General duty of care (beyond specific obligations).</p> <p>OSHA standards.</p>
<p>2. Is the obligation to prevent occupational hazards an obligation of means or an obligation of results?</p>	<p>Obligation of results (majority jurisprudence).</p> <p>No liability: <i>force majeure</i> or workers fault.</p>	<p>Obligation of means.</p>	<p>Obligation of results.</p>	<p>Obligation of means.</p>	<p>Obligation of means.</p>	<p>Obligation of means.</p>	<p>Obligation of means.</p>

<p>3. According to the regulations in your country, how can the employer organize or manage the prevention of occupational hazards in the company? Specifically, can the company manage its prevention internally or must it hire external preventive services?</p>	<p>Internal service (Health and Safety Department). Possibility external counsel. Prohibition external service.</p>	<p>1. Internal service. 2. External service. Assessment public entities.</p>	<p>1. Internal service. 2. External service. Assessment public entities.</p>	<p>1. Internal service. 2. External service.</p>	<p>1. Companies > 300 workers: Internal service 2. Companies 50 > 300 workers: internal or external service. 3. Companies 5 > 50 workers: external service. 4. Companies < 5 workers: no regulation.</p>	<p>No obligation external service. Quebec: public health system: health and prevention programmes.</p>	<p>External service.</p>
<p>4. In your country does the company have the obligation to periodically monitor their workers' health in relation to the risks and hazards inherent in their workplace? If the answer is positive, does the worker have the obligation to bear these health surveillance measures?</p>	<p>Yes. Health surveillance: a) occupational diseases; b) certain workers/ jobs. Compulsory.</p>	<p>Yes. Voluntary: compulsory only certain workers/ jobs or determined by public authority.</p>	<p>Yes. Health surveillance: a) certain workers/ jobs; b) after labor accident. Voluntary: compulsory only certain workers.</p>	<p>Yes. Health surveillance (medical exams) every 2 years or periodically for certain workers/jobs. Compulsory.</p>	<p>Yes. Periodical health surveillance and medical exams. Compulsory.</p>	<p>Yes. Quebec: specific health programs in certain industries and establishments. Compulsory.</p>	<p>Yes. Health surveillance some activities.</p>

<p>5. What prevention obligations does the legal regulation establish regarding pregnant workers or women workers during breastfeeding?</p>	<p>Prohibition: risk activities. Preventive measure: change job post (same salary).</p>	<p>No specific regulation.</p>	<p>Prohibition: (i) medical certificate; (ii) night time, overtime and hazardous conditions, when negative effect. If possible, breastfeeding facilities. Preventive measure: change job post (same salary). Obligation to inform employer.</p>	<p>Specific evaluation and information workers. Prohibition: hazardous conditions. Preventive measure: change job post (same conditions).</p>	<p>Prohibition: (i) 6 weeks prior and 8 weeks after birth; (ii) load weights; (iii) hazardous substances. Preventive measure: (i) change job post (same conditions), when medical certificate; (ii) right to day shift. Certain activities, obligation breastfeeding facilities.</p>	<p>Quebec: preventive measure, when medical certificate: (i) change job post; (ii) contract suspension (90% salary). Federal: (i) change job post or (ii) contract suspension (unpaid leave).</p>	<p>State law. Not OSHA standard.</p>
<p>6. Does the regulation on health and safety in the workplace in your country establish the obligation to adopt preventive measures regarding especially sensitive workers? What are these</p>	<p>Yes/No. No obligation to adapt job post to worker. Disabled workers: preventive measures.</p>	<p>Yes/No. Specific preventive measures regarding HIV.</p>	<p>Yes/No. Disabled workers: specific evaluation, preventive measures, adapt job post, etc. Prohibitions</p>	<p>Yes/No. Disabled workers: specific evaluation and preventive measures. Especially sensitive: no specific</p>	<p>Yes/No. References to disabled workers, diabetes or cardiac pathologies. Only prohibitions.</p>	<p>Yes/No. Federal: disabled workers: obligation adapt workplace. Quebec: contact contaminants + health affectation:</p>	<p>Yes/No. Disabled workers: reasonable adaptation.</p>

prevention obligations?			minor workers.	regulation. Prevention if medical exam.		obligation adapt workplace.	
<p>7. Does the regulation of health and safety in the workplace provides specific preventive obligations regarding psychosocial risks?</p>	<p>Yes. Specific legal provision: obligation to prevent psychosocial risks.</p>	<p>Yes. Obligation to prevent psychosocial risks. Specific preventive measures: moral and sexual harassment.</p>	<p>Yes. Obligation to prevent psychosocial risks.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks.</p>	<p>Yes. Specific preventive measures: (i) sexual harassment; (ii) psychosocial risks in call centers.</p>	<p>Yes. Regardless no specific provision, obligation to prevent psychosocial risks. Specific preventive measures: (i) workplace violence; (ii) harassment;</p>	<p>No.</p>
<p>8. What specificities does your country's regulation establish regarding prevention of occupational hazards in cases of business plurality?</p>	<p>Prevention obligation: all workers in the work center: 1. Outsourcing: surveillance + coordination measures (risk and number workers).</p>	<p>Prevention obligation: all workers in the work center (also other employers' workers).</p>	<p>No specific regulation.</p>	<p>Companies same workplace: 1. Company's work center: prevention obligations.</p>	<p>Companies outsource or us intermediaries: collaborate in health and safety.</p>	<p>Federal: prevention obligation: all workers in the work center (also other employers' workers).</p>	<p>Joint liability.</p>

<p>9. Does the regulation of health and safety in the workplace provides for participation of workers' representatives in the prevention of occupational hazards in the company?</p>	<p>Yes. Companies > 25 workers: committee. Plurality businesses > 50 workers: joint committee. Functions: assess workers, control, propose, etc.</p>	<p>Yes. Companies > 10 workers: committee. Functions: investigate, propose measure and control.</p>	<p>Yes. Committee: union representatives or workers.</p>	<p>Yes. Participation workers and union representatives. Functions: information, consultation, etc.</p>	<p>Yes. Committee: company, sector and national level. Functions: participation prevention.</p>	<p>Yes/No. Federal: companies > 20 workers: committee. Quebec: committee, when required by workers + certain sectors.</p>	<p>Yes. Workers' representatives. Functions: request inspections, control, etc.</p>
<p>10. What are the liabilities –tort, administrative and/or criminal– that can arise as a consequence of the company's breach regarding workplace health and safety?</p>	<p>Liability: 1. Tort: damages. 2. Administrative fine or surcharge on insurance benefits. 3. Criminal sanction: no specific offence. Insurance funded by the employer.</p>	<p>Liability: 1. Tort: damages. 2. Administrative fine. Insurance funded by the employer.</p>	<p>Liability: 1. Administrative fine. Sanctions are doubled if the infraction is not corrected.</p>	<p>Liability: 1. Tort: damages. 2. Administrative fine, cessation or prohibition of activities or changes infrastructure or facilities. 3. Criminal sanction: specific offence.</p>	<p>Liability: 1. Tort: lump sum damages, unless malice or gross negligence. 2. Administrative fine. 3. Criminal sanction: specific offence.</p>	<p>Liability: 1. Administrative fine. 2. Criminal sanction: specific offence. Province: workers' compensation = no tort claim.</p>	<p>OSHA Act: Liability 1. Administrative sanction. 2. Criminal sanction. Workers' compensation = no tort claim.</p>

11. Other relevant aspects regarding health and safety in the workplace [optional]	Pending legislative reform (2015).	-	Module for Evaluating Compliance with Standards for Safety and Health at Work (software).	-	-	Federal and province regulation (Québec).	-
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