

Analysis of The Legal Aspects of Work Accidents

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Abstract

Occupational health and safety related to the work which is done in workplaces in general people full body health and safety provision. In our country, the occupational health and safety risk assessment analysis moral, legal, and indirect costs has become crucial. Located in the workplace or identification of hazards from outside intrusion. It turned into a risk of danger that led to the factors analyzed by ranking of the risks arising from the dangers with and control measures will be utilized for the purposes of risk assessment and analysis work required. These occupational accidents are a problem that must be resolved as a country reality. Any work that does not have security and supervision issues an accident invitation. Today, worker health and work safety remain a problem that needs to be resolved. In this study, the penalty and legal aspects of occupational health and safety have been examined by focusing on work accidents that have been passed on to many nominations.

Keywords: "Occupational Health and Safety, Penalty and Legal Aspects of OHS, Labor Law 6331"

1. Introduction

Definition of a work accident according to ILO, the International Labor Organization is referred to as an unexpected and unplanned event that causes a certain injury (Cotter 1986). According to the World Health Organization (WHO), it is often referred to as an unplanned personal injury, an event that causes machines to lose their tools and equipment for a while (Gens and Jones 1984).

According to Article 13 of the Social Insurance and General Health Insurance Law no. 5510, if the insured person is working independently on his/her behalf and account due to the work being carried out by the employer at the time of insured employment, the insured employee working under an employer, is defined as an event that happened at the last time without having the actual work because of being sent to another place and when the insureds went to the place where the work was done with a vehicle provided with the employment and the insured came to the city immediately afterwards. These occupational accidents are a problem that must be resolved as a country reality. Any work that does not have security and supervision issues an accident invitation.

The dangers brought by the industrialists have increased job accidents in developing countries. Rapid migration from rural to urban areas, inability of low-educated employees to adapt to jobs, adverse conditions of work and inadequate job inspections have led to increased job accidents. Occupational health and safety system including prevention of accidents should be established and implemented without accidents. After the accident, income decrease and health expenditure increase should be arranged for the persons who are responsible for the work accident and the employees who are obliged to look after them. While the production of heavy and dangerous jobs is carried out from developed countries to undeveloped or developing countries and the labor force in developed countries mainly works in research and development and marketing activities, the heavy and dangerous side of production is fulfilled by precarious and low wage workers in undeveloped or developing countries. While undeveloped or developing countries receive less share than the world's national income, the workforce in these countries is at high risk of accidents and works in high quality jobs. Old technologies that are not allowed in developed countries cause negative working and living conditions in developing countries. In Figure 1, according to the International Labor Organization (ILO), countries are given job accidents. It is understood from this that our country is the country with the highest number of work accidents among these countries and the highest incidence of accidents.

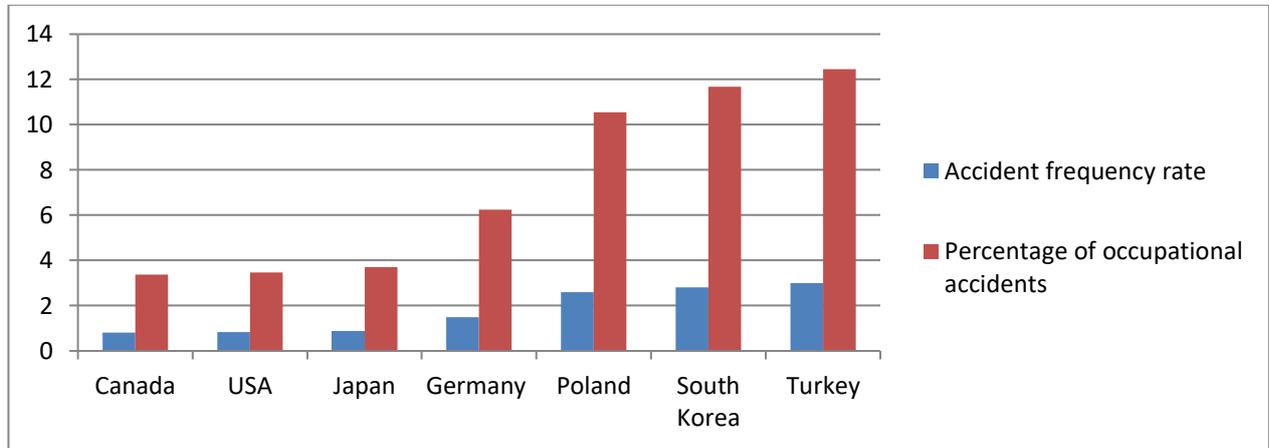


Fig 1. Job Accident Ranking of Countries

Today, worker health and work safety remain a problem that needs to be resolved. In this study, the criminal and legal aspects of occupational health and safety have been examined by focusing on work accidents that have been passed on to many nominations (Zile 2013).

2. Penalty and Legal Responsibilities in Work Accidents

The International Social Security Association (ISSA) has also stated that occupational health and safety are at the very core and center of social security (Hansen 1989). Investing in occupational health and safety measures helps reduce work accidents, protect lives and the welfare of individuals and their families. Moreover, it is undoubtedly much less costly than social security schemes. Inadequate public investments and supervision systems related to occupational health and safety (Jones 1989). Rapid shift of the labor force from the agricultural sector to the industrial sector in the developing countries (Zohar 1980).

Inadequate or unqualified employees working in heavy and dangerous jobs, inadequate level of education of employees and employers and occupational health and safety rule-matching problems are among the major human-induced causes of work accidents (Jones 1991). In the case of work accidents involving forensic cases, 70% of unsafe movements, 25% of insecure conditions and 5% of unknown causes (Jones and Foreman 1984). In the case of job accidents that have been transferred to the judiciary as judicial cases, insecure movements such as jokes, resentment, malicious intentions, startling behaviors, ignoring occupational safety, not using personal protective materials, working without any irresponsible duty warning and warning (Jones 1984). It has been determined that there are behaviors such as the use of faster tools and equipment, disabling of security systems, insecure control of machines and equipment, insecure loading and stacking, dangerous or unstable moving places (Montag and Comrey 1987). In case of unsafe conditions in the job accidents that are transferred to the judicial case.

The use of defective irregular sharp slippery old broken tools and equipment, machine tools and equipment that are not safely manufactured or often fail, the use of irregular and unsafe facilities, clogged equipment, closed doors, inappropriate ambient lighting, dazzling lighting, protective equipment, deficiencies in environmental ventilation, unsafe methods of operation with unsafe accidents, insecure forms of storage, mechanical hazards, chemical hazards, electrical installations and environmental conditions that are incompatible with regulations cause occupational accidents and occupational diseases (Jones and Wuebker 1985).

The crime of causing work accidents and occupational diseases is regulated under the heading of "causing injuries or death of people resulting from inattention and carelessness" in the Turkish Penal Code. In Article 85 of the Law, a person who causes a person to die by taxi is punished with imprisonment of two years to six years. If the verb has resulted in the death of more than one person or the injury of one or more persons with the death of one or more persons, the person shall be punished with imprisonment from two years to fifteen years.

In Article 89 of the Turkish Penal Code, "the person who painfully afflicts another person with the taxi, or causes the health or deterioration of his or her ability to perceive, is punished with imprisonment or forensic punishment for three months or more". As stated in many decisions of the Criminal General Assembly of the Supreme Court of Appeals, it is defined as a willingness to act in a willful manner by finding a causal link between the effect of the taxation action and the effect. The conscious taxi is the 22/3 of the TCK numbered 5237. Although it does not want the result that the person foresees, it is defined as the conclusion of the conqueror. The person who caused the death of one or more people by making the act done by finding the attachment of the causality between the taxi and the action in the business accidents is penalized with penalty of two years up to six years in Article 85 of the Turkish Penal Code. In the case of occupational injuries or occupational diseases, the person who

has suffered pain or suffered a loss of health or impairment of his body by doing a willing act by finding a tie between causality with the taxi. That is to say with the action, is imprisoned for up to three months and up to nine months in the Turkish Penal Code he shall be punished by his penalty. In addition, due to the work accident, a legal case can be opened in addition to the criminal case and material and moral damages can be demanded. In the event of death of the worker, compensation can be claimed by the worker's heirs. Work accidents are against fully committed employers who do not take precautions and fail to fulfill their obligations (Jones and Wuebker 1988).

Worker who has suffered a work accident according to compensation items as a result of an unfair act held in the 51st and following years of the Turkish Code of Obligations; the body will be able to claim the damage in case of damage. Apart from this, the worker who has suffered death and bodily harm will be able to claim some expenses. The heirs of the worker who has suffered a fatal work accident can claim financial losses due to the loss of funeral expenses, treatment expenses, loss of working power due to diminished or lost working power, deprivation of support of the deceased. A worker who has suffered a bodily injured work accident may claim damages arising from expenses for treatment, loss of profits, loss or loss of working power and financial damages arising from the shaking of the economic future (Wuebker and Jones 1985). It is understood that the employer is obliged from the 4th, 5th and 15th articles of the Labor Law No. 6331 to ensure all kinds of occupational health and safety of the employees and to perform health surveillance of the employees. Employer is obliged to provide all kinds of education related to the work and to ensure that the work equipment is completely safe from the health and safety aspect, as can be understood from article 17 of the Labor Law No. 6331 and Article 11.11 and item 2.8 of the Health and Safety Conditions Regulation in the Use of Work Equipment. It is stated in article 332 of the Code of Obligations that the private law governing the borrowing of employers' work safety measures arising from the employment contract shall be borrowed. According to this article, the employer is obliged to supply the necessary precautions against the dangers posed by the worker. The worker and the nature of his work, at the point of his right to self-sufficiency, in the workplace and in the supply of suitable and sanitary working places. Employers who are not covered by occupational health and safety precautions are held liable for criminal penalties for criminal jurisdictions, criminal penalties for jurisdictional and administrative penalties for fines (Wuebker 1987).

3. Law 6331 and Related Legislation

The definition of work accident in Article 13 of the Social Insurance and General Health Insurance Act No. 5510 published in the Official Gazette dated 16.06.2006 Number 26200: Work accident;

a) When the insured is in the workplace

b) It is the person who comes to the "due to the work being carried out by the employer ..." and inflicts the insured person immediately or later on bodily or forbidden. It is expressed in the form.

Labor Law 6331; In Article 4;

(1) The employer is obliged to ensure the health and safety of the employees related to the work;

a) To carry out studies to prevent occupational risks, to take any kind of measures including education and information, to make organization, to provide necessary tools and equipment, to make health and safety measures compatible with changing conditions and to improve the current situation.

b) monitors the compliance with the occupational health and safety measures taken at the workplace, inspects and ensures the elimination of nonconformities.

c) Performs or carries out a risk assessment.

ç) When employing employees, it takes into account the suitability of the employee for health and safety.

d) Takes necessary measures to ensure that employees who are not adequately informed and instructed do not enter vital and special dangerous places.

(2) Taking services from outside experts and organizations will not remove the employer's responsibilities.

(3) The obligations of employees in the area of occupational health and safety do not affect the employer's responsibilities.

(4) The employer can not reflect the cost of occupational health and safety measures to employees.

In Article 5 of the Labor Law 6331;

In fulfillment of the employer's obligations the following principles shall be taken into account:

- a) Avoiding risks.
- b) To analyze risks that cannot be avoided.
- c) To fight against risks at source.
- ç) In order to make the work suitable for the people, to care about the design of the workplaces, work equipment, working style and production methods, especially to prevent negative effects on the health and safety of the uniform work and production tempos,
- d) To adapt to technical developments.
- e) Replace the dangerous with a hazardous or less dangerous one.
- f) To develop a coherent and general prevention policy covering the effects of factors related to technology, work organization, working conditions, social relations and working environment.
- g) To prioritize collective protection measures according to personal protection measures.
- j) To give appropriate instructions to employees.

In Article 15 of the Labor Law 6331; Employer;

- a) Ensure that employees are subject to health surveillance, taking into account the health and safety risks to which they may be exposed at work.
- b) They have to provide the health examinations of the employees in the following cases:
 - 1) Upon entry into employment.
 - 2) Business change.
 - 3) They are able to claim when they return to work after a job accident, occupational disease or health detachment.
 - 4) During the course of the work, the nature of the employee and the workplace and the danger class of the workplace at regular intervals determined by the Ministry.
 - 5) They cannot start work in a dangerous and dangerous workplace without a medical report indicating that they are fit for the job.
 - 6) Medical reports to be taken under the scope of this Law shall be taken from the workplace physician in the workplace health and safety unit or in the joint health and safety unit receiving the service. Appeals against reports The arbitrator appointed by the Ministry of Health is made to the hospitals, decisions are made.
 - 7) Costs arising from health surveillance and any additional costs arising from this surveillance shall be covered by the employer and shall not be reflected to the employee.
 - 8) The health information shall be kept confidential for the protection of the employee's private life and reputation.

It is understood that the employer is obliged from the 4th, 5th and 15th articles of the Labor Law 6331 to ensure all kinds of occupational health and safety of the employees and to perform health surveillance of the employees.

In Article 17 of the Labor Law 6331;

(1) The employer shall ensure that employees receive training in occupational health and safety. In particular, before starting work, at the workplace or work shift, when the work equipment is changed or when new technology is applied. The trainings are renewed in accordance with the new and emerging risks, and they are repeated when necessary and at regular intervals.

(2) Employee representatives are specially trained.

(3) Persons who are unable to certify that they have received vocational training on the basis of their occupation cannot be employed in the dangerous and dangerous class of occupations with the obligation to obtain vocational training.

(4) Before starting work for a worker who has a work accident or is caught up in the occupational disease, additional training is provided about the reasons for the said accident or occupational disease, ways of protection and safe working methods. In addition, those who have been away from work for six months or more for any reason are given information refresh training before starting work again.

(5) In establishments engaged in dangerous and dangerous class; employees who come to work from other establishments cannot start work without a document showing that they have received sufficient information and instructions on health and safety risks to be met in the work to be done.

(6) The employer who establishes a temporary business relationship shall provide the necessary training to work against the risks of occupational health and safety.

(7) The cost of training under this article cannot be reflected to employees. Training time considers as working time. If the duration of the training is above the weekly working time, these periods are considered overtime or overtime.

In Using Article 11 of Health and Safety Regulations; Employees employed by employment equipment shall be provided with training on the risks that may arise from their use and ways to avoid them. In addition, adequate training for employers is provided to employees who are employed in the repair, modification, control and maintenance of work equipment specified in subparagraph (b) of paragraph 1 of Article 8. Where the use of work equipment Annex I. 2.8 of the Health and Safety Conditions Directive may result in accidents involving mechanical contact with moving parts of work equipment, work equipment is equipped with suitable protectors or protective equipment to prevent access to the hazardous area or to stop moving parts before reaching this area.

Protective equipment and protection in 2.8.1;

a) the equipment is of such a nature as not to interfere with the points of operation which are to be observed,

b) it shall be of such a nature as to be in a stable state,

c) to be a feature which does not cause any additional hazard,

d) to be easily removed or ineffective, It restricts access only to the area being processed, and it is possible to carry out the necessary operations for fitting, removing and maintaining parts without having to remove them.

Health and safety in the use of work equipment regulation 5. clause;

(1) The employer is to be made of the equipment to be used in the workplace to employees in terms of health and safety if this equipment is appropriate and shall take all necessary measures to avoid any damage.

(2) The employer:

a) special working conditions when selecting work equipment in the workplace, health and safety in terms of dangers, considering notice that the use of this equipment does not create an additional risk.

b) in terms of the health and safety of workers of work equipment to make sure that it's completely safe if it is not down to the level of acceptable risk, shall take appropriate measures.

Article 17 of the Law 6331 Business. Article 11 of the regulation in the use of work equipment and health and safety. Clause 5. 11. 2.8 and Appendix I. as the article suggests, an employer providing training in all kinds of work related to health and safety of employees and equipment is obliged to ensure that it is understood that in terms of is completely safe. 4857 law which is in force 2. according to the article, jointly and severally with the principal employer the employer also bottom material and moral damage of its employees are jointly responsible for occupational accidents and diseases. 4857 law which is in force 2. item "an employer in the workplace or in auxiliary work for the production of its goods or services in a section of the work and the nature of the business of the business work in jobs that require expertise for technological reasons.

The workers designated for this job only in the workplace the employer the employer is that it receives other running he got the job with the relationship between between the employer and subcontractor relationship (Zile 2015). In this relationship, the

main contractor, sub-this as those against the employer related to workplace law, employment contracts, or sub-bottom where the employer is a Party of the obligations arising from collective bargaining agreements rests with the employer.” (Labor Law 6331). The employer arising from the employment contract regulating the safety measures of importing Private Law, Law of obligations article 332 of the debt. stated in the article. According to this article: “this agreement will be specific to the business owner and the nature of the work from the point of fairness can be requested from the apartment itself to the degree. That the required measures against the risks the business is exposed to due to work its application. It is limited accordingly and is obliged to supply sanitary and convenient working spaces...” (Zile 2017).

4. Conclusion

These occupational accidents are a problem that must be resolved as a country reality. Any work that does not have security and supervision issues an accident invitation. Today, worker health and work safety remain a problem that needs to be resolved. The legal responsibility of the employer is primarily due to the occupational accidents in the workplace. In addition to the imperfections for the birth of responsibility, there is also a need to include elements of damage, causality and non-compliance in the responsibility of fault. The flaw element is the founding element of responsibility. In addition to the flaw, the employer must also have the appropriate causal link between the hazard arising from workplace conditions and the damage caused by the employer's liability, otherwise the employer's liability can not be exploited. The Court of Cassation has adopted the idea that the source of responsibility is the faultless responsibility based on the principle of danger, acting in the light of the fact that responsibility for defects has been inadequate due to developments and changes in social, economic and cultural circumstances. It is sufficient for the employer to be responsible for finding the appropriate causality between the work accident and the accident resulting. There is no need for anyone who has been harmed to try to prove the fault. Exceptional responsibility is not regulated in the domestic legal system. For this reason, it has been a matter of debate in the application of the rule of indemnity to the employer against the employer based on the understanding of perfect responsibility. For this reason, it is seen that the decisions regarding the final turning by the Court of Cassation have adopted the concept of objectified defects. The objective flaw is an understanding that brings the responsibility of defect to perfect accountability. It does not completely turn it into perfect responsibility. Because of the obligation of objectivity, it is imperative to have an imperfection. While the causality between workplace and injury is sufficient in perfect responsibility, only the fault is sought for responsibility in objectifying the fault. In such a case, the employer is liable if it can not be objectively determined that all precautions have been taken so that harm does not arise. Due to the objective flawed understanding, the compensations made to workers or their rightsholders who have been damaged by a job accident gain a legal basis. It is also very important what the legal responsibility of the employer will be because of work accidents that can not be avoided. Employers can be held responsible for fairness. In cases where job accidents are totally unavoidable, the responsibility of the employer can not be mentioned. In this study, the criminal and legal aspects of occupational health and safety have been examined by focusing on work accidents that have been passed on to many nominations. Employers who do not take precautions, the occupational health and safety compensation claims in connection with legal, administrative and financial penalties with prison sentences in defect rates responsible for the maintenance of related penalties.

References

- Cotter, D.M. (1986). Work-related deaths in 1984: BLS survey findings, *Monthly Labor Review*, 109, 42–45.
- Gens, D., Jones, J.W. & Nesbit, G. (1984). *The Employee Injury Profile*, St. Paul, MN: The St. Paul Companies.
- Hansen, C. (1989). A casual model of the relationship among accidents, biodata, personality, and cognitive factors, *Journal of Applied Psychology*, 74 (1), 81–90.
- Jones, J.W. (1989). A personnel selection approach to industrial safety, Paper presented at the 97th Annual Convention of the American Psychological Association, New Orleans, August 13.
- Jones, J.W. (1991). Accident prevention through personnel selection, In J. Jones, Editor, *Preemployment Honesty Testing: Current Research and Future Directions*. Westport, CT: Quorum Books.
- Jones, J.W. & Foreman, R. (1984). Relationship of PSI-3S safety scale scores to motor vehicle reports, St. Paul, MN: Technical Report: The St. Paul Fire and Marine, The Human Factors Department.
- Jones, J.W., & Wuebker, L.J. (1985). Development and validation of the Safety Locus of Control Scale, *Perceptual and Motor Skills*, 61, 151–161.
- Jones, J.W., & Wuebker, L.J. (1988). *The psychological assessment of employees' safety potential*, Park Ridge, IL: Technical Report, London House, Inc., Research and Development Group.

Montag, I., & Comrey, A. (1987). Internality and externality as correlates of involvement in fatal driving accidents, *Journal of Applied Psychology*, 72 (3), 339-343.

Wuebker, L.J. (1987). The Safety Locus of Control Scale: a construct validation study, Unpublished manuscript.

Wuebker, L.J., Jones, J.W. (1985). Safety locus of control and employees' accidents, Paper presented at the Sixth Annual Industrial/Organizational Psychology Graduate Student Conference, University of Akron, Akron, Ohio, April 12-14.

Zohar, D. (1980). Safety climate in industrial organizations: theoretical and implied implications. *Journal of Applied Psychology*, 65, 96-102.

Zile M. (2017). Determination of Electricity Work Accidents and Defect Rates in Our Country, International Conference on Multidisciplinary, Science Engineering and Technology (IMESET'17 Bitlis), Oct 27-29, Bitlis.

Zile, M. (2015). Modeling Job Security Risk Assessment Analysis and Fuzzy Logic Generation of Software, *Çukurova University Journal of the Faculty of Engineering and Architecture*, 30 (2), pp. 267-273, ISSN 1019-1011, Çukurova University.

Zile M. (2013). Formation of Occupational Safeguards and Occupational Safety in Forensic Cases Based on Electric Energy, VIII National Occupational Health and Safety Congress, Publication No: E/2013/600, ISBN: 978-605-01-0469-1, 293-300, University of Cukurova, Adana.