

1 Description of national OSH regulatory framework

1.1 Description of OSH regulatory framework

Summary/citation

Since the moment when Burundi was colonized by Belgium, the legal system evolved from customary law into positive law and adopted the civil law system.

At the time when Burundi achieved its independence, positive law covered almost all branches of law.

The judicial system is organized through the Code of Organization and Judicial Competence of 17 March 2005. The independence of the judiciary is guaranteed by the Constitution, which separates the judiciary, the executive and legislative body.

The Labour Code, the Social Security Code and the Law No. 1/011 reorganizing the Pension Regime constitute the regulatory framework for safety and health at work.

References

Code du Travail.

Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale.

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

Occupational Safety and Health Country Profile of Burundi

2 Scope, coverage and exclusions

2.1 Health and safety covers physical and psychological health

2.2 Definition of worker

Summary/citation

A worker is any natural person, regardless of age, gender or nationality who is engaged by an employer through an employment contract.

References

Code du Travail. (Art. 15 B))

2.2.1 Coverage of particular categories of workers

2.2.1.1 Migrant workers

Summary/citation

Migrant workers are included in the scope of application of OSH legislation. The Labour Code states that a worker is any natural person regardless of nationality who is engaged by an employer through an employment contract.

(Labour Code, Art. 15 B)

Foreign workers enjoy the same rights as national workers and they are subject to the Labour Code.

(Labour Code, Art. 17)

References

Code du Travail. (Art. 15 B) et (Art.17)

2.2.1.2 Domestic workers

Summary/citation

Domestic workers are not specifically excluded from the definition of worker, which covers any natural person, regardless of age, gender or nationality who is engaged by an employer through an employment contract.

References

Code du Travail. (Art. 15 B))

2.2.1.3 Home workers

Summary/citation

Home workers are not specifically excluded from the definition of worker, which covers any natural person, regardless of age, gender or nationality who is engaged by an employer through an employment contract.

References

Code du Travail. (Art. 15 B))

2.2.1.4 Self-employed persons

Summary/citation

Self-employed persons are not specifically excluded from the definition of worker, which covers any natural person, regardless of age, gender or nationality who is engaged by an employer through an employment contract.

References

Code du Travail. (Art. 15 B))

2.3 Definition of employer**Summary/citation**

An employer is any natural or legal person, governed by public or private law who uses the services of one or more workers under an employment contract.

References

Code du Travail. (Art. 15 C))

2.4 Exclusion of branches of economic activity

2.4.1 Agriculture

Summary/citation

Agriculture is included in the scope of application of OSH legislation. The Labour Code is applicable to public and private companies and to farms.

References

Code du Travail. (Art. 14)

2.4.2 Construction

Summary/citation

Construction is included in the scope of application of OSH legislation. The Labour Code applies to companies whose business is exercised in the territory of the Republic of Burundi and governs the relationship of these and their staff when the workplace is located in Burundi.

It is applicable to personal of industrial and commercial services and other mixed company, and more generally to workers governed by specific status, when this status need to be interpreted or supplemented.

References

Code du Travail. (Art. 14)

2.4.3 Services

Summary/citation

Services are included in the scope of application of OSH legislation. The Labour Code applies to companies whose business is exercised in the territory of the Republic of Burundi and governs the relationship of these and their staff when the workplace is located in Burundi.

It is applicable to personal of industrial and commercial services and other mixed company, and more generally to workers governed by specific status, when this status needs to be interpreted or supplemented.

References

Code du Travail. (Art. 14)

2.4.4 Public sector

Summary/citation

The Labour Code is applicable to staff engaged through an employment contract by the State or by the regional and local authorities.

The Labour Code is applicable to public and private companies.

Restrictions / obligations

Public servants, magistrates, armed forces and the staff of different police forces are excluded from the scope of application of the Labour Code.

References

Code du Travail. (Art. 14)

2.5 Definition of occupational accident

Summary/citation

An occupational accident is considered, whatever the cause is, as an accident occurred to a worker due to work or in the course of work.

(Social Security Code, Art. 48)

The following accidents are also considered as occupational accidents:

- the accident that occurred to a worker during the round trip between the worker's usual residence or the place where he/she usually takes his/her meals and the workplace or the place where he/she receives remuneration, insofar the course has not been interrupted or diverted due to a personal interest or non-job-related reason.
- the accident that took place during travels when expenses shall be borne by the employer according to the legislation in force.

(Social Security Code, Art. 49)

References

Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale. (Art. 48 and Art. 49)

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

2.6 Definition of occupational disease

Summary/citation

Any pathology resulting as a necessary consequence of a special risk inherent to the type of profession performed by the worker or from the environment in which he/she has to work, including physical, chemical or biological agents, is considered as occupational disease.

(Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale, Art. 51(2))

Local endemic or epidemic diseases will be considered as occupational diseases only if they are contracted by persons charged with combating them because of their professions.

(Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des travailleurs régis par le code du travail et assimilés, Art. 37)

References

Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale. (Art. 51)

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

2.6.1 List of occupational diseases

Summary/citation

The list of occupational diseases, procedures updating it and deadlines are established by joint order of Ministers in charge of Public Health and Social Security.

(Social Security Code, Art. 51)

A joint order of the Minister of Labour and of the Minister of Public Health issued after consultation with the National Labour Council shall establish the list of occupational diseases which indicates for each disease, works, processes, occupations implying handling and use of harmful agents or which are performed in the conditions, regions or specific ways that expose workers on a regular basis to the risk of contracting these diseases as well as the time limit in which the disease can be contracted as from the time of exposure.

The list shall be periodically updated.

(Art. 38, loi numéro 1/011 du 29 novembre 2002 portant réorganisation des Lois régimes des pensions et des risques professionnels en faveur des travailleurs régis par le code du travail et assimilés)

Occupational diseases that occur after the date on which the worker ceases to be exposed to the risk qualify for benefits if they are declared during the time limits specified in the list of occupational diseases.

(Art. 39, loi numéro 1/011 du 29 novembre 2002 portant réorganisation des Lois régimes des pensions et des risques professionnels en faveur des travailleurs régis par le code du travail et assimilés)

There is a ministerial decree number 110/731 from 15 June 1965 on compensation from occupational diseases.

References

Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale. (Art. 51)

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

ARRÊTÉ MINISTÉRIEL n° 110/731 - Maladies professionnelles réparées du 15 juin 1965

2.6.2 Mechanism for compensating other diseases as occupational ones

Summary/citation

Medical conditions not specified in the list of occupational diseases which result from the employment and the environment in which the insured has to work can also be considered occupational diseases.

References

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

3 Institutions and programmes relating to OSH administration and/or enforcement

3.1 Competent national authority for safety and health at work

Summary/citation

Labour Inspectorate is included among the services of the Ministry in charge of labour issues. Any natural or legal person covered by the Labour Code is under the legal supervision of the Labour Inspectorate
(Labour Code, Art. 154)

Labour administration and employment related activities are competences of the Ministry in charge of labour and responsible for ensuring the improvement of working conditions.
(Labour Code, Art. 152)

Orders issued by the Minister of Labour after consultation with the National Labour Council lay down hygiene and safety conditions for workers in the work places and the conditions in which the labour inspectors will have to use the formal notice procedure.

The Social Security agency shall organize a prevention program which aims to reduce occupational hazards. It helps ensure efficiency of safety and hygiene rules and procedures in the workplaces.
The agency shall ensure the collection and the use of statistics and research about occupational risks.
(Social Security Code, Art. 63)

The agency shall use any form of publicity and popularisation to promote prevention methods.
(Social Security Code, Art. 64)

The agency may grant discounts or advances to reward or to encourage enterprises to accomplish preventive measures.

(Social Security Code, Art. 65)

References

Code du Travail. (Art. 154 and Art.152)

Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale. (Art. 63, Art. 64, Art. 65)

3.1.1 Objectives, roles and/or functions

Summary/citation

According to the Labour Code, Labour Inspectorate is assigned with the mission to ensure the implementation of legal provisions related to working conditions and workers' protection such as provisions on safety, hygiene, well-being at work, employment of young workers, children and women and social security organization.

References

Code du Travail. (Art. 156)

3.1.2 Chairperson and composition

Remarks / comments

Labour inspection services are managed by labour inspectors.

3.2 National OSH research programme or institute

3.2.1 Objectives, roles and/or functions

3.2.2 Governance board constitution and chairmanship

3.2.3 Source of funding

3.3 National OSH programme

3.3.1 Consultation on the national OSH programme

4 Employers' duties and responsibilities to protect the safety and health of workers and others

4.1 Duty to ensure the health and safety of employees

Summary/citation

The employer has the obligation to ensure that work is accomplished in suitable conditions regarding safety, dignity and health of workers taking into account the regulations in force and the nature of the work which is being performed.

(Labour Code, Art. 35)

The employer is required to comply with the provisions in force regarding the hygiene and safety of workers, organization and operation of medical and health services of the company, and special working conditions for pregnant women and young people.

(Labour Code, Art. 146)

References

Code du Travail. (Art. 35, Art. 146)

4.2 Duty to protect the health and safety of people other than their own employees

4.3 Collaboration among two or more employers at the same workplace

Summary/citation

The employer is liable when the accident qualifies for some benefits in the occupational risks regime, or the employer intended the death, injury or illness of the worker or a material accident.

In this case it is considered as employer the person who used the services of the victim, temporarily subleased by another enterprise.

When two employers engage in temporary partnership, they are jointly liable for any accident for which the worker is entitled to benefits, occurred during the partnership.

References

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

4.4 Surveillance of workers' health in relation to work

Summary / Citation

The employer may, if he/she considers it useful, conduct a medical examination prior to employment.

References

Code du Travail. (Art. 24)

4.4.1 Specific hazards for which surveillance is required

Summary / Citation

For unhealthy and hazardous occupations, the Minister of Health will issue an Order specifying the modalities of the medical examination to be undergone prior to employment.

(Labour Code, Art. 24)

The mandatory retirement age may be extended beyond 60 years but without exceeding 70 years by collective agreement or individual written contract. In this case, a doctor certified by the Government shall issue a medical opinion assessing the physical capacity of the worker to honour her/his obligations.

(Labour Code, Art. 66 and Art. 67)

References

Code du Travail. (Art. 24, Art. 66 and Art. 67)

4.5 Surveillance of the working environment and working practices

Summary / Citation

All employers must keep themselves informed of the hazards linked to the technical progress and organize safety accordingly through preventive measures. The employer is required to integrate safety into the processes of design of buildings, machines and products.

References

Code du Travail. (Art. 150)

4.6 Duty to provide personal protective equipment

4.7 Duty to ensure the usage of personal protective equipment

4.8 Duty to provide first-aid and welfare facilities

4.8.1 Arrangements for first-aid

4.8.2 Sanitary installations

Summary / Citation

Employers are required to comply with the provisions in force concerning the organization and functioning of health services.

References

Code du Travail. (Art. 146)

4.8.3 Drinking water

4.8.4 Rest and eating areas

5 Employers' duty to organize prevention formally along generally accepted OSH management principles and practices

5.1 Elements of an OSH management system

5.1.1 Policy or plan specifying responsibilities and arrangements for health and safety

Summary/citation

Prevention of occupational accidents is a mandatory obligation for all company managers.
(Labour Code, Art. 11)

All firms and establishments employing at least 15 permanent workers have the obligation to establish internal rules of procedure.

The rules of procedure shall contain provisions about hygiene and safety and shall be established upon consultation with the Council of the enterprise.

An order from the Minister of Labour shall specify the implementing rules.

(Labour Code, Art. 111)

References

Code du Travail. (Art. 11, Art. 111)

5.1.2 Appointment of a person for health and safety

5.1.3 Written risk assessment

5.1.4 Safe operating work systems and procedures

5.1.5 Training and information on risks

Summary/citation

Safety trainings for workers shall be organized in all enterprises.
(Labour Code, Art. 11)

The employer is required to periodically organize practical training in safety and hygiene for newly hired staff and workers who change their position in the undertaking. This training shall include accident prevention.

(Labour Code, Art. 150)

References

Code du Travail. (Art. 11 and Art. 150)

5.1.6 Review or assessment of the results of preventive measures

5.1.7 Consultation with workers in health and safety

5.2 Obligation to implement a specific OSH management system or standard

6 Employers' duty to ensure availability of expertise and competence in health and safety

6.1 OSH competence

Summary/citation

Employers are required to comply with the provisions in force concerning the organization and functioning of health services.

References

Code du Travail. (Art. 146)

6.1.1 Requirement to access expert advice and/or support in health and safety

6.1.1.1 Qualifications of experts or professional services

6.2 Appointment of an OSH practitioner

6.2.1 Workforce size threshold for the appointment of OSH practitioners

7 Workers' rights and duties**7.1 Duty to take reasonable steps to protect their own safety and health****Summary / Citation**

Workers are under the obligation to comply with a strict discipline on hygiene and safety and shall comply with the measures established by the employer or his/her representative.

References

Code du Travail. (Art. 148)

7.2 Duty to take reasonable steps to protect the safety and health of others**Summary / Citation**

Workers have to refrain from doing anything that could harm their own safety, that of their colleagues or third parties. Workers have also to comply with the rules of the establishment or places where they perform their job.
(Labour Code, Art. 34)

When a worker compromises the safety of the establishment, the working processes, the staff or a third party, this can be considered as a serious negligence to his/her contractual obligations and those provided by the company rules.
(Labour Code, Art. 58§1)

References

Code du Travail. (Art. 34 and Art. 58§1)

7.3 Supervisors' duty to take reasonable steps to protect the safety and health of others

7.4 Senior officers' duty to take reasonable steps to protect the safety and health of others

7.5 Self-employed persons' duty to take reasonable steps to protect their own and other people's health and safety

7.6 Duty to comply with OSH-related requirements

7.7 Right to enquire about risks and preventive measures

7.8 Right to remove themselves from a dangerous situation

7.9 Right to be reassigned to non-hazard work

Summary / Citation

When the worker returns from a sick leave or a maternity leave, the worker shall be reinstated to her/his job or to an equivalent post if the worker is found medically fit to work.

If at the moment of reinstatement, the worker is not found medically fit to continue performing his/her previous work, the employer has to offer him/her another post compatible with his/her health condition.

If there is not a possibility to open the post or if the worker refuses to accept the new post which has been offered to him/her, the dismissal procedure has to be followed.

References

Code du Travail. (Art. 143)

7.9.1 Right to withdraw with compensation when workers are not reassigned to non-hazard work

8 Consultation, collaboration and co-operation with workers and their representatives

8.1 National OSH committee, commission, council or similar body

8.1.1 Objectives, roles and/or functions

8.1.2 Constitution and chairmanship modalities

8.2 Employers' duty to consult workers on risks

8.3 Workers' right to select their representatives for health and safety matters

Summary / Citation

A health and safety committee has to be created in some enterprises following objective criteria defined by an order of the Minister in charge of labour. In other cases, the role of the committee is accomplished by the council of the enterprise.

Remarks / comments

Workers representatives shall be part of this committee.

References

Code du Travail. (Art. 149)

8.3.1 Workforce size conditions for workers' representation in health and safety

Summary / Citation

A health and safety committee has to be created in some enterprises following objective criteria defined by an order of the Minister in charge of labour. In other cases, the role of the committee is accomplished by the council of the enterprise.

References

Code du Travail. (Art. 149)

8.3.2 Conditions of eligibility to represent workers in health and safety

Summary / Citation

The election modalities for committee members and committee operation will be determined by an order of the Minister in charge of labour.

(Labour Code, Art. 147)

The members of the council of the enterprise are elected by secret ballot. They may be re-elected. Fixed and alternate members are elected.

All workers constitute a unique electoral college and all of them are electors, except the ones who represent the employer and who receive a delegation of power from the later.

Only workers with more than one year of experience are eligible.

(Labour Code, Art. 255)

References

Code du Travail. (Art. 147 and Art. 255)

8.4 OSH representatives' functions, rights and powers

- 8.4.1 Right to inspect the workplace
- 8.4.2 Right to access OSH information
- 8.4.3 Right to be present at interviews
- 8.4.4 Right to receive professional assistance from OSH experts
- 8.4.5 Right to accompany inspectors
- 8.4.6 Right to use facilities
- 8.4.7 Right to have time off work with pay to perform duties
- 8.4.8 Right to issue remedial notices
- 8.4.9 Right to resolve OSH issues in consultation with employers
- 8.4.10 Right to direct that dangerous work cease

8.5 Right of workers' representatives from outside the undertaking to address OSH issues at the workplace

- 8.5.1 Right to enter the workplace
- 8.5.2 Right to investigate suspected non-compliance with OSH legislation
- 8.5.3 Right to consult with workers
- 8.5.4 Right to advise workers
- 8.5.5 Right to initiate enforcement action

8.6 Joint OSH Committee

- 8.6.1 Participation of workers' representatives in joint OSH committee
- 8.6.2 Conditions for establishing a joint OSH committee

Summary / Citation

A health and safety committee has to be created in some enterprises following objective criteria defined by an order of the Minister in charge of labour. In other cases, the role of the committee is accomplished by the council of the enterprise.

The enterprise's council is compulsory in all establishments where 20 permanent workers or more are appointed.

The initiative belongs to the employer. In case of abstention, the labour inspector may send him/her a formal notice.

References

Code du Travail. (Art. 149)

- 8.6.3 Objectives, roles and/or functions of joint OSH committees

Summary / Citation

The functions of the health and safety committee are:

- to ensure compliance with rules and procedures relating to health and safety;
- to identify any potential hazards relating to safety and health of workers;
- to study all prevention measures which have to be taken;
- to act in case of accident.

(Labour Code, Art. 149)

The enterprise's council has to ensure a permanent contact between the employer and the staff by giving to the staff the opportunity to:

- present any individual or collective requests concerning working conditions and protection of workers which were not satisfied;
- communicate to the employer all useful suggestions to improve the safety and hygiene of workers.

The committee have to meet at least once every three months.

(Labour Code, Art. 259 and Art. 260)

At the request of the majority of workers' representatives in the enterprise's council, the employer shall provide one hour per quarter for staff meetings. The date and the agenda of the meetings shall be agreed with the employer.

The employer may participate or be represented at the meetings.

(Labour Code, Art. 261)

References

Code du Travail. (Art. 147, Art. 259, Art. 260 and Art. 261)

8.6.4 Keeping record of the work of joint OSH committees

Summary / Citation

The employer has to draw-up a minute of each meeting of the enterprise's council.

The original one shall be kept by the employer in a special file readily accessible by the labour inspector.

References

Code du Travail. (Art. 263)

8.6.5 Sharing the minutes of joint OSH committees meetings

Summary / Citation

A copy of the minute has to be addressed to the Labour Inspectorate.

References

Code du Travail. (Art. 263)

8.7 Mandatory training for members of joint OSH committee(s)

8.8 Protection against reprisals

Summary / Citation

All obstacles to a transparent election of the workers' representatives within the enterprise's council or all obstacles to the regular exercise to their functions including violations of disciplinary procedures are dealt with by criminal sanctions.

(Labour Code, Art. 257)

All dismissals of any workers' representatives at the enterprise's council or of any alternate member planned by the employer or by his/her representatives are subjected to the authorization of the labour inspector.

The labour inspector organizes a conciliation session to verify if there is or not a professional fault or if the request to authorize the dismissal is linked to the mandate held by the current workers' representative or the candidates standing for elections.

If there is not professional fault or if there is a link between the request for dismissal and the mandate of the workers' representative, the authorization is refused in case of non-conciliation.

Otherwise, if there is a professional fault or if there is not a link between the request and the mandate, and in case conciliation was not reached, the labour inspector authorizes the dismissal.

These rules are also applicable to candidates on the electoral lists until the representatives are elected.

The procedure is
not suspensive.

The labour inspector decision has to be reasoned. It may be subject to a judicial review before the Labour Court.

Any act occurred without respecting this procedure is invalid.

(Labour Code, Art. 258)

References

Code du Travail. (Art. 257 and Art. 258)

8.9 Immunity from civil and criminal liability for exercising OSH related rights and duties

9 Specific hazards or risks

9.1 Biological hazards

9.2 Chemical hazards

9.2.1 Handling, storage, labelling and use

9.2.2 Duty of manufacturers, suppliers and importers of chemicals in relation to the safety and health of users

9.2.3 Pesticides

9.3 Ergonomic hazards

9.4 Physical hazards

9.4.1 Ionising radiation

9.4.2 Vibration and noise

9.4.3 Working at height

9.4.4 Working in confined spaces

9.4.5 Risks arising from poor maintenance of workplace facilities

9.4.6 Exposure to extreme temperatures

9.4.7 Fire risks

9.4.8 Tobacco

9.4.9 Asbestos

9.4.10 Risks related to nanotechnology

9.4.11 Contraction of HIV in the workplace

Summary / Citation

A compulsory blood test to detect an HIV infection is forbidden as a condition to access to a work or for the worker to be maintained in this work.

(Art. 30, Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS)

Every person infected with HIV or suffering with AIDS who is a candidate to a job enjoys the same rights as the ones recognized to healthy candidates and must not be deprived of the chance to get the job.

In particular, a new recruitment shall not be determined or be linked to an AIDS test result.

(Art. 34, Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS)

The worker infected with HIV or suffering from AIDS has to be maintained in his/her job with all corresponding benefits until the moment when the worker is recognized by a medical commission as physically or mentally incapable to the task he/she has to perform. This inability shall be established and governed by the Social Security Code.

(Art. 35, Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS)

Employers have to ensure an environment free of humiliation of persons infected with HIV or suffering from AIDS.

(Art. 36, Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS)

References

Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS 2005-05-12 (Art. 30, Art. 34,

9.5 Psychosocial hazards

9.5.1 Psychosocial risks

9.5.2 Occupational violence

9.6 Other hazardous substances

9.7 Machineries

9.7.1 Risks related to machinery and tools

9.7.2 Duty of designers and/or manufacturers of machineries in relation to the occupational safety and health of operators of machineries

9.7.3 Duty of designers, manufacturers, importers or suppliers of machineries to provide machineries information

9.7.4 Duty to purchase machineries from authorised/certificated suppliers or only if approved/certificated

9.7.5 Maintenance of machinery and equipment

Summary / Citation

The visits, receptions, tests, inspections and examinations carried out by agencies provided by the laws or rules relating to safety and hygiene and the verification of electrical installations of enterprises or institutions that implement electrical currents shall be performed by persons or agencies approved by the Minister in charge of labour.

References

Code du Travail. (Art. 147)

9.7.5.1 List of equipment where applicable

9.8 Provisions to protect workers in specific condition of vulnerability

9.8.1 Protection of pregnancy at work

Summary / Citation

Every female worker whose state of pregnancy has been previously attested by a doctor may suspend her work without previous notice.

At the time of the birth, every female worker is entitled to maternity leave, subject to a medical certificate indicating an approximate date of birth. Maternity leave cannot be considered as a cause for termination of the employment contract.

The duration of the maternity leave shall be of 12 weeks, with the possibility of extension up to 14 weeks, of which at least 6 have to be taken after the birth.

When the birth takes place after the presumed date, the pre-natal leave can be extended until the effective date of birth, without having the compulsory leave duration after the birth reduced.

During the maternity leave, the employer cannot terminate the labour contract. The employer is also forbidden to terminate the contract before or after the referred leave arguing the birth or the pregnancy.

References

Code du Travail. (Art. 122)

9.8.2 Protection of lactating women at work

Summary / Citation

During the breastfeeding period, the worker is entitled to one hour breastfeeding break during 6 months. This period shall be paid as working time.

(Labour Code, Art. 124)

The pregnant worker cannot be held in a work that exceeds her physical capabilities and shall be transferred to another convenient work. If that is not possible, the labour contract shall be terminated, having the employer to pay an indemnity in lieu of notice, and where appropriate, severance pay.

(Labour Code, Art. 125)

References

Code du Travail. (Art. 124 and Art. 125)

9.8.3 Limits to women's access to specific occupations, undertakings or shifts

9.8.4 Limits to workers' access to specific occupations, undertakings or shifts by reason of age

Summary / Citation

Workers under the age of 16 are not allowed to work.

(Labour Code, Art. 67)

Nevertheless an order from the Minister in charge of labour may provide some exceptions to this principle according to the article 126 from the Labour Code and only if the worker is more than 12 years old.

Children shall not be hired in an enterprise before the age of 16, except for light and healthy work or trainings only when this work is not harmful to their health or to their normal development, or detrimental to their attendance at school or their capacity to learn.

(Labour Code, Art. 126)

(Art. 5, Ordonnance ministérielle n°630/1 du 5 janvier 1981 - Règlementation du Travail des enfants)

An order from the Minister of Labour after consultation with the National Labour Council shall lay down the nature of works and the type of business which are forbidden to children and young workers and the age-limits applicable. The Labour inspector may ask a doctor to examine some children or young workers to ensure that their work does not exceed their physical capabilities. Young workers have the right to request such an examination as well. The young worker shall not be maintained in a work recognized as a work which exceeds his/her physical capabilities and shall be transferred to another convenient work. If that is not possible, the labour contract shall be terminated, having the employer to pay an indemnity in lieu of notice, and where appropriate, severance pay. (Labour Code, Art. 127 and 128)

Children under the age of 18 shall not be employed to work during the night in public or private establishments. According to the Ordinance, night work is performed between 7pm and 7am. (Labour Code, Art. 119)
(Art. 9 and Art. 2, Ordonnance ministérielle n°630/1 du 5 janvier 1981 - Règlementation du Travail des enfants)

The mandatory daily rest for children shall be at least 12 consecutive hours between shifts. (Labour Code, Art. 120)

Exemption may be granted because of specific circumstances, and in particular these related to the job or the needs of trainings or professional education for young workers. These exemptions shall be provided by a ministerial order according to the article 127 of the Labour Code which concerns working conditions of young workers and children. (Labour Code, Art. 121)

Restrictions / obligations

The ministerial ordinance n°630/1 lists all the maximum limits and all tasks forbidden for children under 18, including the immoral jobs.

References

Code du Travail. (Art 67, Art. 126, Art. 127, Art. 128, Art. 119, Art. 120 and Art. 121)

Ordonnance ministérielle n°630/1 du 5 janvier 1981 - Règlementation du Travail des enfants (Art. 5, Art. 9, Art. 2)

10 Recording, notification and investigation of accidents/incidents and diseases

10.1 Duty to record and/or investigate the causes of work accidents, near misses incidents and cases of occupational diseases

10.1.1 Work-related accidents

Summary / Citation

The Labour Inspection has the function to bring together and to coordinate the information and statistics concerning labour issues. (Labour Code, Art. 156)

The victim of an occupational accident has to immediately report to his/her employer or one of his/her representative. The notification may be postponed in case of force majeure, exceptional circumstances or legitimate reason.

In case of the death of the victim, the right-holders have the same obligation.

(Art. 40, Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des travailleurs régis par le code du travail et assimilés)

References

Code du Travail. (Art. 156)

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

10.1.2 Near miss incidents

10.1.3 Occupational diseases

10.2 Employers' duty to notify OSH authorities of work related death and/or injuries to health

Summary / Citation

The employer has to declare any occupational accident or occupational disease to the social security agency and to the Labour Inspectorate in the time-limit of 4 working days, except in case of force majeure, exceptional circumstances or legitimate reason.

The declaration has to be filed according to the modalities determined by the board of directors of the social security authority. In case the employer does not do it, the declaration shall be filed by the victim or his/her right-holders. In case the worker is not registered within the national social security authority, the latter shall require the employer to pay social insurance contributions and late payment indemnities.

(Art. 40, Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des travailleurs régis par le code du travail et assimilés)

The employer has to declare any occupational accident or commuting accident in a time limit established by the social security authority.

If the declaration is rejected by the social security agency because of the employer's fault, negligence or lateness, the employer has to bear the cost of the occupational or commuting accident.

(Social Security Code, Art. 50)

References

Loi n° 1/10 du 16 juin 1999 portant Code de la sécurité sociale. (Art. 50)

Loi n° 1/011 du 29 novembre 2002, Réorganisation des régimes des pensions et des risques professionnels en faveur des trav

11 OSH inspection and enforcement of OSH legislation

11.1 Appointment of OSH inspectors

Summary / Citation

The Labour Inspectorate is comprised of a body of civil and sworn officers who are independent to inspect the workplaces and to ensure compliance with the applicable rules.

References

Code du Travail. (Art. 155)

11.2 OSH inspectors' powers

11.2.1 Power to enter workplaces

Summary / Citation

Labour inspectors carrying documents which justify their functions may enter freely and without warning in any enterprises or establishments at any time of service.

They may enter a place that is, or that the inspector reasonably suspects is a workplace. They may inspect as often as it is necessary to ensure compliance with the applicable rules.

References

Code du Travail. (Art. 157)

11.2.2 Power to inspect and carry out any examination, test or enquiry

Summary / Citation

The Labour Inspectorate is in charge to ensure compliance with legal rules concerning working conditions and workers protection such as safety, hygiene, and women, children or young workers employment or well-being. (Labour Code, Art. 156)

During their inspections, the labour inspectors shall inform the employer or his/her representative of her/his presence, except when the inspector estimates that this information could prejudice the efficiency of the inspection. (Labour Code, Art. 158)

The right to enter workplaces includes the rights:

- to interview either privately or in the presence of witnesses the employer, his/her representative or a worker;
- to require information from any persons present at the workplace or being aware of the working conditions and whose testimony seems necessary.

Nevertheless, if any of these persons require it, they can be interviewed by the inspector privately.

The right to enter workplaces includes the power to request the employer or his/her representative to provide books, records and documents, and make any copies of those in order to verify their compliance with labour laws.

Nevertheless, labour inspectors are not allowed to take away any of these documents.

The inspectors can carry out any samples of used materials or substances to analyse them. The employer or his/her representative has to be informed of this examination and trade secrets shall be protected.

The inspector may be assisted by an interpreter or by any expert

if necessary to perform efficiently his/her mission. They may conduct all examinations, controls or investigations necessary to their mission according to the Labour Code articles and without prejudice to the effective operation of the business.

(Labour Code, Art. 159)

The labour inspector may be assisted in his/her mission by some technicians from the administration or governmental agencies and by persons or organisms accredited by an order of the Minister of Labour

(Labour Code, Art. 161)

References

Code du Travail. (Art. 156, Art. 158, Art. 159 and Art. 161)

11.2.3 Power to investigate

11.2.4 Duty to provide advice on OSH

Summary / Citation

The Labour Inspectorate may provide advices to employers and workers to encourage harmonious relations for the enforcement of working conditions provisions.

References

Code du Travail. (Art. 156)

11.3 OSH inspectors' enforcement powers

11.3.1 Power to issue orders or notices

Summary / Citation

Orders issued by the Minister of Labour after consultation with the National Labour Council shall lay down hygiene and safety conditions for workers in work places and the conditions in which the labour inspectors will have to use the formal notice procedure.

(Labour Code, Art.146)

To perform their mission, labour inspectors have the power to make relevant comments to the employer, his/her representative or workers. Labour inspectors may also send a formal notice to any of the latter in order to require them to comply with the applicable laws and to take note in a written statement which shall be deemed authentic until proved otherwise. In case the employer does not comply with the inspector's indications, this will be considered as an infringement.

The formal written notice shall be issued at the inspected place if possible. A copy of it has to be sent to the employer and another copy to the Director of the Labour Inspectorate.

(Labour Code, Art. 160)

References

Code du Travail. (Art. 146 and Art. 160)

11.3.2 Power to impose financial penalties

Summary / Citation

The fine is proposed by the labour inspector.

The labour inspector transmits the case to the Labour Court if the fine is contested.

References

Code du Travail. (Art. 299)

11.3.3 Power to revoke or suspend licenses or authorisations

11.3.4 Power to require the cessation of dangerous work

Summary / Citation

The Labour inspectors may prescribe immediately enforceable measures in the event of an imminent danger for the health and the safety of workers.

In case of emergency, the inspector may require the cessation of work. The employer or his/her representative can appeal before the Ministry of Labour without this action having a suspensive effect on the inspectors' decision.

References

Code du Travail. (Art. 160)

11.3.5 Power to initiate prosecutions

Summary / Citation

The fine is proposed by the labour inspector.

The labour inspector transmits the case to the Labour Court if the fine is contested.

References

Code du Travail. (Art. 299)

11.3.6 Power to conduct prosecutions

11.3.7 Other enforcement powers

Summary / Citation

The right to enter workplaces includes the power to require mandatory posting of notices.

References

Code du Travail. (Art. 159)

11.4 Application of sanctions by courts**11.4.1 Financial penalties for legal persons****Summary / Citation**

Persons contravening article 156 of the Labour Code concerning the functions of the Labour Inspectorate are punished by a fine from 5.000 to 1.000 FBU (approximately from 3,24 to 6,4 USD) and in the event of a recurrent offense, from 10.000 to 20.000 FBU (approximately from 6,4 to 12,97 USD).

(Labour Code, Art. 293)

The infringement of article 146 of the Labour Code by which the employer is required to comply with the provisions in force regarding the hygiene and safety of workers, organization and operation of medical and health services of the company, and special working conditions for pregnant women and young people is punished by a fine from 5.000 to 10.000 FBU (approximately from 3,24 to 6,4 USD) and in the event of a recurrent offence from 10.000 to 20.000 FBU (approximately 6,4 USD to 12,97 USD).

(Labour Code, Art. 294)

This fine is incurred as many times as there are infringements, where the amount cannot exceed 10 times the minimum rates prescribed.

(Labour Code, Art. 296)

There is recidivism if in the period of 12 months before the offense is committed, the offender has been convicted for a similar offence.

(Labour Code, Art. 297)

Enterprises are civilly liable for payment of the fines imposed on their representatives or people they are responsible of.

(Labour Code, Art. 298)

Remarks / comments

These fines should be also applicable to legal persons even if it is not specified in the Labour Code.

References

Code du Travail. (Art. 293, Art.294, Art. 296, Art. 297 and Art. 298)

11.4.2 Financial penalties for natural persons**Summary / Citation**

Persons contravening article 156 of the Labour Code concerning the functions of the Labour Inspectorate are punished by a fine from 5.000 to 1.000 FBU (approximately from 3,24 to 6,4 USD) and in the event of a recurrent offense, from 10.000 to 20.000 FBU (approximately from 6,4 to 12,97 USD).

(Labour Code, Art. 293)

The infringement of article 146 of the Labour Code by which the employer is required to comply with the provisions in force regarding the hygiene and safety of workers, organization and operation of medical and health services of the company, and special working conditions for pregnant women and young people is punished by a fine from 5.000 to 10.000 FBU (approximately from 3,24 to 6,4 USD) and in the event of a recurrent offence from 10.000 to 20.000 FBU (approximately 6,4 USD to 12,97 USD).

(Labour Code, Art. 294)

This fine is incurred as many times as there are infringements, where the amount cannot exceed 10 times the minimum rates prescribed.

(Labour Code, Art. 296)

There is recidivism if in the period of 12 months before the offense is committed, the offender has been convicted for a similar offence.

(Labour Code, Art. 297)

Enterprises are civilly liable for payment of the fines imposed on their representatives or people they are responsible of.

(Labour Code, Art. 298)

References

Code du Travail. (Art. 293, Art. 294, Art. 296, Art. 297 and Art. 298)

11.4.3 Non-financial sanctions

Summary / Citation

Sanction might include the provisional closure of the enterprise if health of workers is endangered.

References

Code du Travail. (Art. 294)

11.4.4 Criminal liability

Summary / Citation

Any interference to the mission of the labour inspector constitutes a violation of the Criminal Code.

(Labour Code, Art. 155)

Without prejudice to the provisions of the Criminal Code, any infringement to this law is punishable by a fine from 10.000 to 100.000 FBU (approximately from 6,48 to 64,8 USD).

(Art. 41, Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS)

The person who caused death by a lack of caution or prudence, blunder, negligence, distraction or failure to comply with obligations provided by the law but with no intention to cause death or bodily harm, shall be found guilty of manslaughter.

(Criminal Code, Art. 225)

References

Code du Travail. (Art. 155)

Act No. 1/018 of 12 May 2005 to establish Legal Protection for People Infected with HIV and AIDS 2005-05-12 (Art. 41)

Loi n° 1/05 du 22 avril 2009 portant révision du Code pénal. (Art. 225)

11.4.5 Terms of imprisonment for natural persons

Summary / Citation

Any person who with no intention causes death is punished by a imprisonment which may be accompanied with labour obligations from 3 months to 2 years and by a fine from 50.000 to 500.000 Burundian francs (approximately 32,01 to 320,10 USD).

(Criminal Code, Art. 226)

If the result of the lack of caution only injuries and physically damages the worker without resulting in death, the offender is punished by imprisonment which may be accompanied with labour obligations from one month to one year and by a fine from 10.000 to 50.000 Burundian francs (6,42 to 32,01 USD) or by only one of this sentence.

(Criminal Code, Art. 227)

The person who, with no intention, caused a disease or a disability to work by administrating substances which cause death of affect seriously the health of the workers shall punished by the sentences provided by the article 226 of the Criminal Code.

(Criminal Code, Art. 228)

Restrictions / obligations

In all cases when the judge pronounce a sentence of imprisonment which may be accompanied with labour obligations less than or equal to two years, this punishment is substituted with a community-work measure whose duration does not exceed four hundred eighty hours.

One month of imprisonment which may be accompanied with labour obligations shall be equivalent to twenty hours of community-work measure.

The community-work measure and fine or imprisonment which may be accompanied with labour obligations shall not be sentenced cumulatively.

(Art. 2, Loi n°1/20 du 8 septembre 2012 portant modification de certains articles de la loi n° 1/05 du 22 avril 2009 portant revision du Code Penal)

Remarks / comments

References

Loi n°1/ 20 du 8 septembre 2012 portant modification de certains articles de la loi n° 1/05 du 22 avril 2009 portant révision du C

Loi n° 1/05 du 22 avril 2009 portant révision du Code pénal. (Art. 226, Art. 227 and Art. 228)