

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

SINDH OSH ACT 2017

CHALLENGES & OPPORTUNITIES



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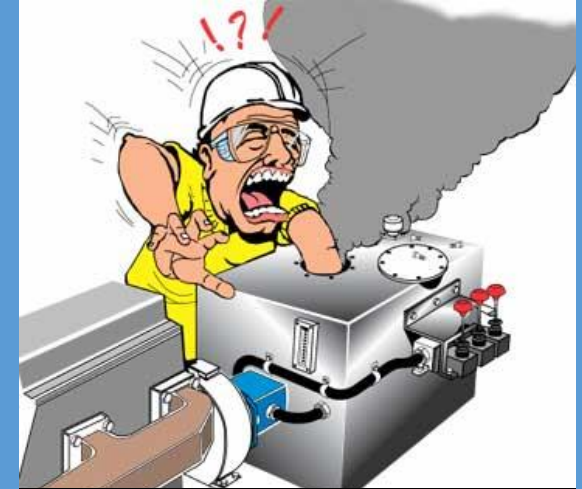


ANATOMY OF OSH LAW

WHY NEW OSH LAW?

INDUSTRIAL SAFETY

- The ever increasing mechanization, electrification, chemicalisation and sophistication have made industrial jobs more and more complex and intricate.
- Thus increased dangers to human life in industries through accidents and injuries.
- These dangers underlines the need for and importance of industrial safety.



WORST INDUSTRIAL ACCIDENT IN PAKISTAN

- On 11th September 2012, about 259 workers including female workers lost their lives in worst ever fire incident of M/s. Ali Enterprises (Pvt.) Ltd Baldia Town Karachi.
- It is said that tragedy occurred due to human mistake as emergency exit points were locked.



JOINT ACTION PLAN

- Soon after Baldiya fire tragedy the Department of Labour, Government of Sindh moved forward in collaboration with ILO, Employers Federation of Pakistan (EFP), and Pakistan Workers Federation (PWF), to implement short to medium term actions.



MAJOR ACTION TO BE TAKEN UNDER JOINT ACTION PLAN INCLUDED

- **DEVELOP PROVINCIAL POLICY ON OSH**
- **UPDATE OSH LAWS, ESTABLISH OSH COUNCIL**
- **CODE OF CONDUCT FOR EMPLOYERS**

SUPREME COURT ORDERS

Honourable Supreme Court of Pakistan in HR Case No 16143-P/2014 (SILICOSIS) order dated 14.07.2015 & 9th April 2018 directed that provinces should enact separate OSH law

OSH RELATED LEGISLATION IN SINDH.

- There is no standalone law on OSH in Sindh, and OSH situation is regulated through following laws:
 - ❖ Chapter-III of Sindh Factories Act 2015.
 - ❖ Sindh Factories Rules 1975.
 - ❖ West Pakistan Hazardous Occupation Rules 1969 for defined processes and misc. that covers a wide range of Chemicals and Processes
 - ❖ Sindh Shops and Establishment Act 2015
 - ❖ Sindh Workers Compensation Act 2015

ILO CONVENTIONS RELATING TO HEALTH AND SAFETY

ILO ESTIMATES THAT:-

- Every day workers all over the world are faced with a variety of safety and health hazards, which include exposure to dusts, gases, toxic substances, noise, vibration and extreme temperatures.
- Over 313 million workers suffer non-fatal occupational injuries each year, which represents an average of 860,000 people being injured on the job on a daily basis.
- Every single day, 6,400 people die from an occupational accident or disease, amounting to 2.3 million deaths each year.



International
Labour
Organization

ILO CONVENTIONS RELATING TO HEALTH AND SAFETY

ILO CONVENTIONS:

- The ILO Constitution lays down the principle that workers should be protected from sickness, disease and injury arising from their employment.
- With a view to protecting workers from all work related injuries and diseases, the ILO has adopted more than 40 standards specifically dealing with occupational safety and health (OSH), as well as over 40 Codes of Practice.
- Nearly half of ILO instruments deal directly or indirectly with occupational safety and health issues.

ILO CONVENTIONS:

Occupational Safety and Health Convention, 1981 (No. 155)

The convention provides for the adoption of a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions.

Occupational Health Services Convention, 1985 (No. 161)

This convention provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventive functions and are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment.

ILO CONVENTIONS:

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

This Convention aims at promoting a preventative safety and health culture and progressively achieving a safe and healthy working environment. It requires countries to develop, in consultation with the most representative organizations of employers and workers, a national policy, national system, and national program on occupational safety and health.



ILO CONVENTIONS:

C167 - Safety and Health in Construction Convention, 1988 (No. 167)

applies to all construction activities, namely building, civil engineering, and erection and dismantling work, including any process, operation or transport on a construction site, from the preparation of the site to the completion of the project.

ILO CONVENTIONS AND PAKISTAN

- Pakistan has ratified 36 ILO Conventions, including all eight core Conventions, 33 of these are in force whilst three Conventions have been denounced .
- The core Labour Standards relate to fundamental human rights to be observed at the work place and cover various socio-economic aspects of employment.
- Pakistan has so far not ratified any of the fundamental conventions related to OSH. However, many OSH related concerns are addressed in the existing labour laws and regulations in force in the country.

The ILO's fundamental Conventions

These cover subjects considered to be fundamental principles and rights at work:

- **Freedom of Association and Protection of the Right to Organise** Convention, 1948
- **Right to Organise and Collective Bargaining** Convention, 1949
- **Forced Labour** Convention, 1930
- **Abolition of Forced Labour** Convention, 1957
- **Minimum Age** Convention, 1973
- **Worst Forms of Child Labour** Convention, 1999
- **Equal Remuneration** Convention, 1951
- **Discrimination (Employment and Occupation)** Convention, 1958

ILO Core Conventions

- These 8 conventions (4 standards) are:
 - freedom of association (Conv. No. 87) and the effective recognition of the right to collective bargaining (Conv. No. 98);
 - the elimination of all forms of forced or compulsory labour (Conv No. 29 and 105);
 - the effective abolition of child labour (Conv. No 138, 182); and
 - The elimination of discrimination in respect of employment and occupation (Conv. No. 100, 111).

SINDH OCCUPATIONAL SAFETY AND HEALTH ACT 2017

WHAT IS NEW

CHAPTER-I

PRELIMINARY

2.

APPLICABILITY OF THE ACT.

2.(1) It shall be applicable to whole of the Province of Sindh and at all places of work, but does not include mines:

Government may exempt specified workplaces

(2) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law relating to occupational safety and health in Sindh.

(3) In the event of any conflict or inconsistency between the provisions of this Act and any other law, for the time being in force, pertaining to occupational safety and health, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other law shall, to the extent of the conflict or inconsistency, be construed as superseded.

DEFINITIONS.

ACCIDENT	means an event that causes loss of life; causes any person to be harmed; or in different circumstances, might have caused any person to be harmed;
BODILY INJURY	includes physical or mental injury to a person at workplace;
CHILD	means a person who has not completed the age of fourteenth year.
CODE OF PRACTICE	means a set of rules relating to the methods to be applied or the procedure to be adopted in connection with the construction, installation, testing, operating, or use of any article, apparatus, instrument, device or process at workplace;
COMPETENT PERSON	means a person who by virtue of education, training and experience has the ability and skills to undertake the job;
CONTRACTOR	means any person or a body, whether incorporated or not, who contracts to carry out the whole or any part of any work undertaken in the course of or for the purpose of trade or business, and includes sub-contractor;

DEFINITIONS.

DUTY HOLDER	means a person with duty in relation to health and safety as provided under this Act;
EMPLOYER	means the owner of an establishment
ESTABLISHMENT	means any industrial or commercial establishment, business, trade, profession, service, office, firm, factory, society, undertaking, company, educational institution, hospital, shop, premises, enterprise or organization of whatsoever nature through a contractor for the purpose of carrying out any business, industry or excavation and includes all its departments and branches, whether situated at the same place or at different places;
HARM	means –illness, injury, or both; and includes physical or mental harm caused by work- related stress;

DEFINITIONS.

PREMISES	means any place, and in particular, includes any land, building or part thereof; any vehicle or watercraft; any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation; and any tent or moveable structure;
RISK	means the probability of occurrence of injury or damage;
SAFE AND SAFETY	means the environment or conditions of a workplace free from any hazard;
SELF - EMPLOYED PERSON	means an individual who works for gain or reward otherwise than under a contract of employment, whether or not that person employs others;
SUPPLIER	means a person who manufactures, supplies, sells, leases, distributes, erects or installs any tool, equipment, machine, device or any biological, chemical or physical agent to be used by a worker or at a work place;

DEFINITIONS.

VOLUNTEER	means a person who does not receive reward for work performed
WORKER	means any person employed, whether directly or through any other person, for wages, to do any skilled or unskilled, professional, technical, clerical, manual or other work, or in connection with the affairs of an establishment under any contract of service or apprenticeship, whether written or oral, express or implied and includes such a person when laid off or terminated, retrenched, dismissed and or removed from employment, for the purpose of recovery of dues under this Act, and includes any person or class of persons which Government may specify by notification in official gazette.
WORKPLACE OR PLACE OF WORK	mean any premises where work is carried out, by one or more persons and includes premises used for the storage of tools, machinery, equipment or substance; and

WORKER	means any person employed, whether directly or through any other person, for wages, to do any skilled or unskilled, professional, technical, clerical, manual or other work, or in connection with the affairs of an establishment under any contract of service or apprenticeship, whether written or oral, express or implied and includes such a person when laid off or terminated, retrenched, dismissed and or removed from employment, for the purpose of recovery of dues under this Act, and includes any person or class of persons which Government may specify by notification in official gazette.
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VOLUNTEER	means a person who does not receive reward for work performed

4	GENERAL DUTIES OF EMPLOYER.	Employer to ensure all possible practicable measures in respect of safety and health at work of all persons in the workplace and in addition, the welfare of the workers and volunteers.
5	GENERAL DUTIES OF SELF-EMPLOYED AND EMPLOYERS TO PERSONS OTHER THAN THEIR WORKERS.	Self-employed person and employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he himself and other persons (not being his workers) are not exposed to risks to their safety and health.
6.	GENERAL DUTIES OF PERSONS CONCERNED WITH PREMISES TO PERSONS OTHER THAN THEIR WORKERS.	Every person who is not worker but uses place of work where he may use plant or substances provided for their use, shall take such measures which are safe and without risk to health.

GENERAL DUTIES

7	GENERAL DUTY OF PERSONS IN CONTROL OF CERTAIN PREMISES IN RELATION TO HARMFUL EMISSIONS INTO ATMOSPHERE.	It shall be the duty of the person having control of any premises to use the best practicable means for preventing the emission into the atmosphere from the premises of noxious or offensive substances and for rendering harmless and inoffensive such substances as may be so emitted.
8	GENERAL DUTIES OF WORKER AND VOLUNTEER.	It shall be the duty of every worker and volunteer while at workplace to ensure the safety and health of the other persons who may be affected by acts or omissions at workplace of that worker and shall not willfully do anything to endanger himself or others; etc.
9	GENERAL DUTIES OF SUPPLIER AS REGARDS ARTICLES AND SUBSTANCES FOR USE AT WORK.	It shall be the duty of supplier who designs, manufactures, imports or supplies any article for use at workplace to take specified steps sufficient

Chapter -II
PROVISIONS WITH REGARD TO
SAFETY AND HEALTH

PROVISIONS WITH REGARD TO SAFETY AND HEALTH

11	Written statement of policy.	Every employer shall declare a written statement of a general policy with respect to the safety and health of all persons at the workplace
12	Consultation.	<p>For establishment having less than 50 workers the employer shall provide for the election of occupational safety and health representatives from amongst the workers who shall represent the workers in all matters relating to the safety, health and welfare at work,</p> <p>Appoint a Safety and Health Officer at the workplace and set up an Occupational safety and Health Committee in the establishment having more than forty- nine workers.</p>

PROVISIONS WITH REGARD TO SAFETY AND HEALTH

13	Training of health and safety representative.	The employer shall, at least once in two years, allow occupational safety and health representative to attend health and safety training as approved by Government and shall bear all expenses thereof including paid leave, course fee, lodging boarding, travelling etc.
14	Non - interfere or misuse of certain provisions.	No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.



CHAPTER -III ENFORCEMENT

ENFORCEMENT

17	Registration of workplaces and approval of site, buildings and other constructions to be used as workplaces.
18	Appointment of inspectors.
19	Powers of inspector.
20	Notices
21	Appeal against improvement or prohibition notice.
22	Power to deal with cause of imminent danger.
23	Notification and investigation of accidents, dangerous occurrences and occupational illnesses.
24	No interference at accident scene.
25	Power to direct formal investigation of incidents, accidents and cases of disease.
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CHAPTER - IV

OCCUPATIONAL SAFETY AND

HEALTH COUNCIL SINDH

26 Government shall establish a Council for Occupational Safety and Health Sindh, consists of following: -

- a) Secretary Labour and Human Resources Department, Sindh, shall be the Chairperson;
- b) Five Government Representatives from different departments.
- c) Four members to represent employers
- d) Four members to represent workers
- e) Four professionals, at least one of them shall be a woman
- f) Three members from civil society at least one of them shall be a woman

27 The Council shall perform the following functions:-

- Advice Government on all matters relating to the objects of this Act which Government may refer to the Council ; and review legislation relating to occupational safety and health, and recommend to Government for amendments, expansion, clarification under the said legislation.

Council may make recommendations with regard to –

- the formulation and implementation of provincial policies and strategies relating to occupational safety and health;
- The actions to facilitate cooperation between Government, employers, workers and any other persons or organizations engaged in occupational activities; etc.
- Advice on any other matter relevant to the occupational safety and health as may be referred to the Council by Government.

- 28 Meetings and quorum of the council.
The Council shall meet at least once in every four months in a calendar year.
- (4) The Council may appoint committees or sub-committees as it deems fit, to exercise such powers and perform such duties or discharge such functions as may, subject to such conditions, if any, as the Council may impose.

**PERSUASION
VERSUS
PROSECUTION**

IMPROVEMENT NOTICE.

- 20(1) If an Inspector is of the opinion that the employer is contriving one or more of the relevant statutory provisions or has contravened one or more of those provisions in circumstances and shall continue the contravention repeatedly, he may serve on him an improvement notice stating the reasons thereof and require the employer to rectify the contravention as may be specified in the notice.

PROHIBITION NOTICE.

- 20(2) If an Inspector is of the opinion that any activity is being carried on or about to be carried on by or under the control of employer, which involve or likely to involve a risk of serious personal injury, the Inspector may serve a prohibition notice.

APPEAL AGAINST IMPROVEMENT OR PROHIBITION NOTICE.

- 21(1) The employer on whom the improvement or prohibition notice is served may, within such period from the date of its service as may be prescribed, appeal to the Labor Court and on such appeal the Labour Court may either cancel or affirm the notice and, if it affirms it may do so either in its original form or with such modification as the case may be and if it thinks fit pass such orders for appointing one or more Assessors for the purpose of enquiring into the facts of the circumstances under which notices have been issued.

INDEPENDENT ACCESSOR TO INVESTIGATE ACCIDENTS.

25. Government may appoint a competent person or persons possessing technical, legal or special knowledge to act as Assessor for holding such investigations of accidents; under section 24 who shall hold the investigation in open session in such manner and under such conditions as the Assessor may think most effectual for ascertaining the causes and circumstances of the incident, accident or case of disease, and for enabling the court to make the report;

PERSUASION VERSUS PROSECUTION

OSH COUNCIL A TRIPARTITE PLUS REPRESENTATIVE BODY

- 26(1) Government shall establish a Council for Occupational Safety and Health Sindh, with tripartite representation:

OFFENCES TO BE DEALT WITH AS PER SCHEDULE

- 32(1) All offences under this Act shall be dealt as specified in the Schedule.

PERMISSION FOR PROSECUTION

39. No prosecution shall be instituted for any offence under this Act except at the instance of the Chief Safety and Health or an Inspector authorized in this behalf by general or special order in writing by the Chief Inspector Safety and Health.

LABOUR COURT TO TAKE COGNIZANCE OF OFFENCES

40. No Court other than the Labour Court established under the Sindh Industrial Relations Act, 2013 (Act XXIX of 2013) shall take cognizance of any offence under this Act unless complaint thereof has been made -

STAY OF CRIMINAL PROCEEDINGS BY CHIEF INSPECTOR

- 41(1) If the Labour Court trying any case instituted at the instance of the Chief Inspector or of an Inspector under this Act is of opinion that the case is one which should in lieu of a prosecution, be referred to a formal investigation under section 25, it may stay the Criminal proceedings and report the matter to Government with a view to such reference being made.
- (2) On receipt of a report under sub-section(1), Government may refer the case for formal investigation under section 25, or may direct the Court to proceed with the trial.