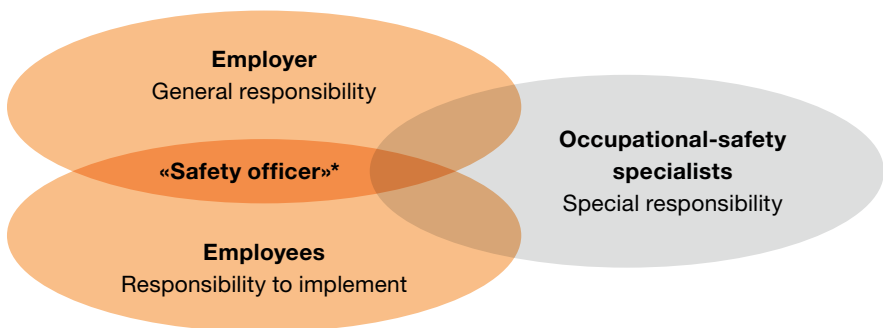


What are your duties in the field of occupational safety and health protection?

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1 Introduction

This brochure is intended for use by all company personnel with responsibility for occupational safety and health protection. It specifically addresses employers, «safety officers» (SO) and occupational-safety specialists. Employees at every level also carry a certain degree of responsibility, as illustrated below.



1 The joint responsibility of employers, employees, «safety officers» and occupational-safety specialists in a company

It makes sense that the main responsibility lies with the employer. Occupational safety and health protection are, to a great extent, a management task. An employer has an overview of activities in a company and is aware of the health risks. Employers are the only people who can ensure the safety of the company system as a whole and issue binding instructions to their members of staff. Furthermore, absences owing to accidents or illness represent a significant business factor for many companies and must be considered for profitability reasons alone.

* The function of «safety officer (SO)» or «contact person for occupational safety (CPOS)» is to be filled by individuals who have the appropriate training and qualifications. Examples include specialists in occupational safety, safety assistants and persons who have completed recognized work safety courses. The scope of their specialist responsibility varies depending upon their training, position in the company (organization chart) and job description.

This publication limits itself to the legal aspects. Based on the relevant legislation, it provides an overview of employers' and employees' duties. The following will be considered in particular:

- Regulation governing the prevention of accidents and occupational diseases (VUV)¹
- Regulation 3 of the Labour Act (Healthcare, ArGV 3)².

Possible penalties for non-compliance with the laws are also defined.

Abbreviations used

| | |
|--------|--|
| ArG | Federal Labour Act |
| ArGV 1 | Regulation 1 to the Federal Labour Act |
| ArGV 3 | Regulation 3 to the Federal Labour Act, Health Protection |
| ArGV 5 | Regulation 5 to the Federal Labour Act, Youth Employment Protection |
| ASA | Occupational physicians and other occupational safety specialists |
| ATSG | Federal Law on the General Part of the Social Security Law |
| ATSV | Regulation on the General Part of the Social Security Law |
| OR | Swiss Code of Obligations |
| STEG | Act Governing the Safety of Technical Equipment and Devices |
| StGB | Swiss Penal Code |
| UVG | Accident Insurance Law |
| VUV | Regulation Governing the Prevention of Accidents and Occupational Diseases |
| VwVG | Federal Administrative Procedure Act |

¹ SR 832.30

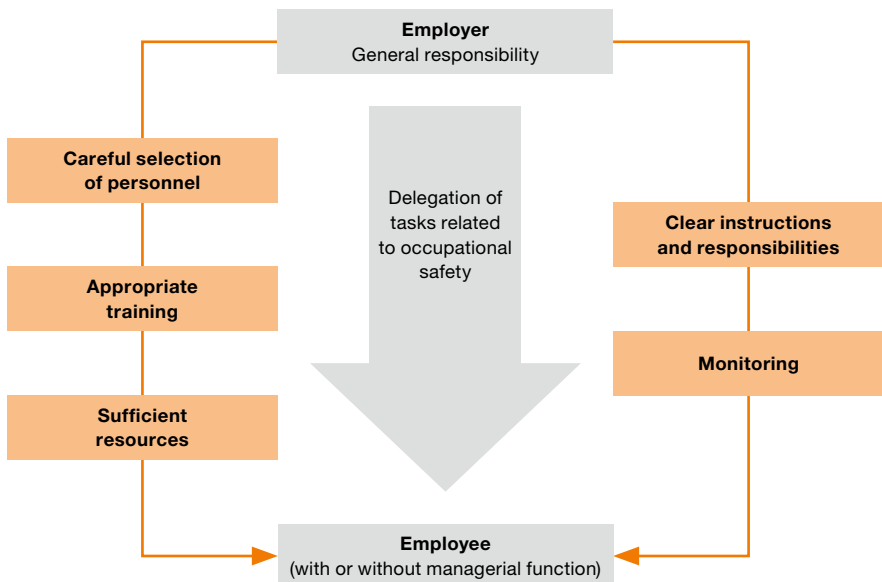
² SR 822.113

2 Employers' duties

2.1 Definition of an «employer»

An «employer» is defined as any natural or legal person who employs other individuals in return for a salary or for training/educational purposes – for example, the owner of a company or the management of a public limited company.

An employer is generally responsible for occupational safety and health protection. Normally, an employer will delegate certain tasks to employees. These employees may be designated «security officers (SO)» or have managerial positions. The employer must ensure that such persons receive the appropriate training and that clear instructions and responsibilities are delegated to them (see Art. 7, §1, VUV). The duties of the employer are then equally binding for the employees in question (team, safety officer).



2 Correct delegation of employer duties to employees

The delegation of tasks does not release the employer from his or her obligation to ensure occupational safety and health protection (Art. 7, §2, VUV and Art. 7, §2bis, ArGV 3). This also includes financing the measures to be taken by him/her to ensure occupational safety (Art. 90 VUV). In terms of civil liability or criminal penalties, however, employers may well be able to limit their liability or even acquit themselves from the accusation of breach of duty if they can prove that the employee selected was carefully chosen, appropriately trained and instructed, and monitored in a reasonable manner and has been provided with sufficient personnel and material resources.

2.2 Legal provisions

An employer's duties with regard to occupational safety and health protection are derived from the following legal provisions:

Art. 328 §2 OR³

«To protect the life, health and personal integrity of employees, [the employer] must take measures that are deemed necessary based on experience, applicable based on the latest technology, appropriate for the circumstances of the company or budget, and which may be reasonably expected with regard to the nature of the work performed.»

Art. 82 §1 and 2 UVG⁴

«¹ An employer is obliged to take all measures that are deemed necessary based on experience, applicable based on the latest technology and appropriate for the circumstances.

² An employer must involve employees in the prevention of occupational accidents and diseases.»

³ Swiss Code of Obligations (SR 220)

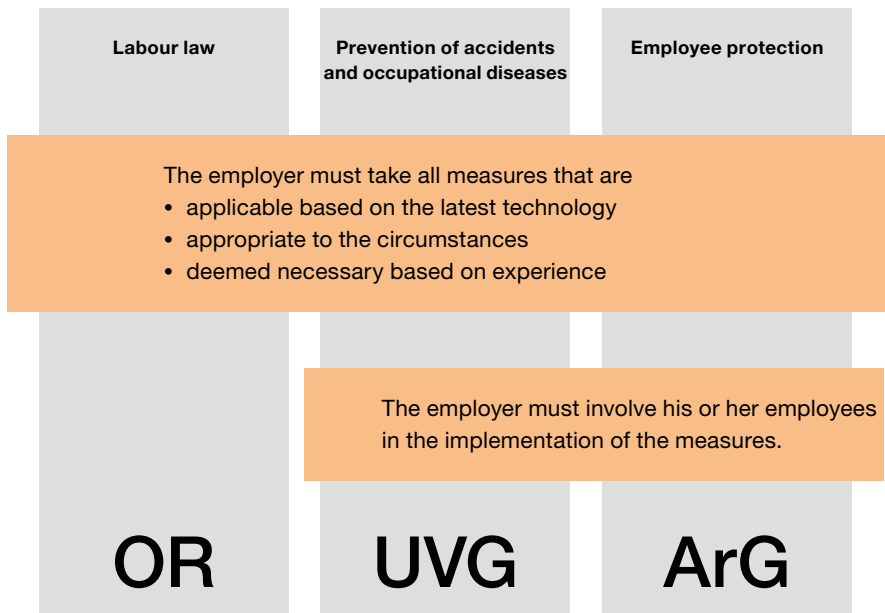
⁴ Federal Accident Insurance Law (SR 832.20)

Art. 6 §1 and 3 ArG⁵

«¹ To protect the health of his or her employees, the employer is obliged to take all measures that are necessary based on experience, applicable based on the latest technology and appropriate for the circumstances of the company. Furthermore, the employer must take the required measures for protection of the personal integrity of his or her employees.

[...]

³ The employer must take steps to involve his or her employees in health protection measures. [...]»



3 The three legal pillars on which occupational safety and health protection are based.

⁵ Federal Labour Act (SR 822.11)

2.3 Further definition of legal provisions

Necessary based on experience

This does not refer to the subjective perception of a single individual but to the general experience of identical or similar risks as expressed, for example, in accident statistics. The word «necessary» refers to measures generally considered to be such in practice.

If the need for in a measure cannot be ascertained, then information must be gathered on this. This may include the involvement of a specialist occupational safety (ASA) or the study of corresponding documents (regulations, guidelines, information sheets, publications).

Applicable based on the latest technology

The term «latest technology» is to be understood in the broadest sense. Protective measures must be fundamentally adapted to the progress of technology and working methods. Over time, a certain measure may prove to be no longer sufficient.

Any lack of knowledge of the «latest technology» must be obtained. An occupational safety specialist (ASA) can provide support, as can the corresponding documents (regulations, guidelines, information sheets, publications).

Appropriate for the circumstances

This is intended to mean the general, administrative principle of proportionality in the sense that a required measure may not extend beyond what is deemed necessary for the achievement of the purpose. Assessment plays a significant role in the question of whether proportionality is given in a certain situation. Here again, the decision may not be based on the subjective opinion of one individual. The decision must be based on objective criteria that give due consideration to the particularities of the company in the human and technological context.

It is a case of weighing the extent of health risks against the health-protection measures required. The higher the health risk, the more stringent the protective measures must be.

Involvement of employees

The employer's obligation to involve employees is firstly to ensure that an employer maintains dialogue with staff regarding occupational safety and health protection, thus allowing the employer to consider staff's experiences and wishes. Additionally, the provision is intended to motivate employees by actively involving them in occupational safety and health protection. Workers' rights to participation are specified in the Participation Act⁶, or Art. 6a, VUV and Art. 48, ArG.

2.4 Employers' specific duties

The legal provisions referred to are set out in a number of regulations, subsequent laws and guidelines, etc. The Regulation Governing the Prevention of Accidents and Occupational Diseases (VUV) and Regulation 3 to the Federal Labour Act on Health Protection (ArGV 3) are, in particular, the most important regulations.

An employer's duties with regard to occupational safety and health protection involve «organization», «communication and training» and the «working environment». These three task areas (Fig. 4) will be discussed in the following, based on a list of the most important regulations. This list is selective and not comprehensive.

Organization

As an **overriding organizational duty**, the employer must:

- take all protective measures via corresponding orders or instructions that serve to ensure and optimize occupational safety as provided for in the pertinent regulations⁷ and recognized rules⁸ (Art. 3, §1, VUV)

⁶ Federal Act of Participation (SR 822.14)

⁷ The most important regulations are to be found in the VUV or ArGV 3. However, equal consideration must be given to enactments such as the Construction Work Ordinance (BauAV), the Act Governing the Safety of Technical Equipment (STEG), the Electricity Act (EleG), the Crane Regulation, regulations regarding micro-organisms, radiation protection, maternity protection, etc.

⁸ The most significant regulations associated with safety and occupational medicine are: EKAS guidelines, MAC values, information documents by Suva and SECO.

- take all measures required to maintain and optimize the protection of employees' physical and mental health (Art. 2, §1, Sentence 1, ArGV 3)
- ensure that formal instructions are carried out and protective measures observed (Art. 6, §3 VUV). Only then can the protection of life, health and personal integrity – as provided for in Art. 328 OR – be guaranteed.

Specifically, an employer must:

- regulate the delegation of **responsibilities** for occupational safety and health protection and, if necessary, delegate special tasks to well-suited employees (Art. 7, §1, ArGV 3)
- regulate the implementation of **work involving particular danger** (Art. 8, VUV)
- **involve specialists in occupational safety** when necessary for the health protection and safety of employees (Art. 11a VUV, Art. 7, §3 ArGV 3, EKAS guideline 6508). This may be case, for example, when a danger assessment or risk analysis is to be made in the company and an employer lacks the corresponding knowledge
- make corresponding arrangements that will guarantee occupational safety and health protection in the case of **joint projects involving several companies** and the contracting of projects to third parties (Art. 9, VUV, Art. 8, ArGV 3)
- also ensure the occupational safety and health protection of **temporary workers** (Art. 10, VUV, Art. 9, ArGV 3)
- observe the regulations governing **work organization** (Art. 38–46, VUV)
- **discontinue work** if safety can no longer be guaranteed (Art. 4, VUV)
- develop an **emergency plan** and organize first aid (Art. 36, ArGV 3)
- ensure the protection of the health and safety of **young people** in accordance with the regulations of the Youth Employment Protection Ordinance (ArGV 5)

Some of these duties require:

- that a **danger assessment** be carried out. Only when a danger assessment has been carried out is it possible to decide whether and for what purpose occupational safety specialists should be consulted (by employment or by contract). (Art. 11a, §2 lit. a, VUV).

Communication and training

- Employers must **inform** their employees of occurring dangers and provide **instructions** as to the measures to be taken for their prevention (Art. 6, §1, VUV, Art. 5, §1, ArGV 3). This employer's duty also applies in respect of employees from another company and temporary personnel (Art. 10, VUV, Art. 9, ArGV 3).
- Should an employer wish to entrust an employee with certain tasks related to occupational safety and health protection, then this employee must be provided with the appropriate **training** and given **clear instructions and responsibilities** (Art. 7, §1, VUV, Art. 7, §2, ArGV 3).
- Employees are to be informed of the tasks and function of **occupational safety specialists** at the company (Art. 6, §2, VUV).

Work environment

- A company may only employ materials that do not endanger its employees' safety and health (Art. 24, §1, VUV). This is specifically regulated in Art. 24–32c, VUV, as well as in EKAS Guideline 6512 «Materials».
- An employer must provide the necessary **personal protection equipment (PPE)** and ensure its (correct) use (Art. 5, VUV, Art. 27 and 28, ArGV 3).
- An employer must take the necessary protective measures with regard to the handling of **hazardous materials and radiation** (Art. 44–46, VUV).

Employers must also observe regulations pertaining to the working environment in the company with regard to:

- **Buildings** and other structures, e.g. with regard to capacity, stairs or transportation (Art. 12–23, VUV)
- **Work environment**, e.g. with regard to noise and vibration, lighting, danger of fire or explosions (Art. 33–37, VUV)
- **Ergonomics and hygiene**, disruptive or damaging influences, excessively strenuous or physically one-sided work (Art. 2, §1, ArGV 3, Art. 32a, §2, VUV)
- **Further provisions on health protection as per 11–37 ArGV 3**, e.g. regarding air quality, non-smoker protection, noise, the handling of loads, locker rooms, protection for pregnant- and breastfeeding women, maintenance and cleaning.



4 Employers' duties

Organization

- Observe regulations and recognized rules
- Implement safety measures and health protection
- Regulate responsibilities
- Assess dangers
- Involve specialists
- Regulate particularly dangerous work
- Regulate joint work between several companies
- If necessary, stop work
- Create an emergency plan
- Ensure the protection of young people

Communication and training

- Inform and instruct employees (including temporary workers)
- Give clear instructions and responsibilities
- Train and educate
- Ensure participation

Work environment

- Safe working materials
- Personal protective equipment
- A healthy work environment
- Safe buildings
- Ergonomics
- Particular health-protection provisions (ArGV 3)

System-approach and documentation

Fulfilling all duties, planning and implementing the measures required and then monitoring their observance is a challenging organizational and management task. This task can be effectively and sustainably achieved⁹ by integrating occupational safety and health protection into the company management system.

Employers are sometimes asked to provide evidence of their activities in the area of work safety and health protection (e.g. Art. 32b, VUV, EKAS guidelines 6508 and 6512). For this reason, a system-oriented approach with the corresponding documentation is recommended. Documentation proves to be beneficial, at the latest, when there is a liability claim against the employer or when criminal penalties are being discussed.

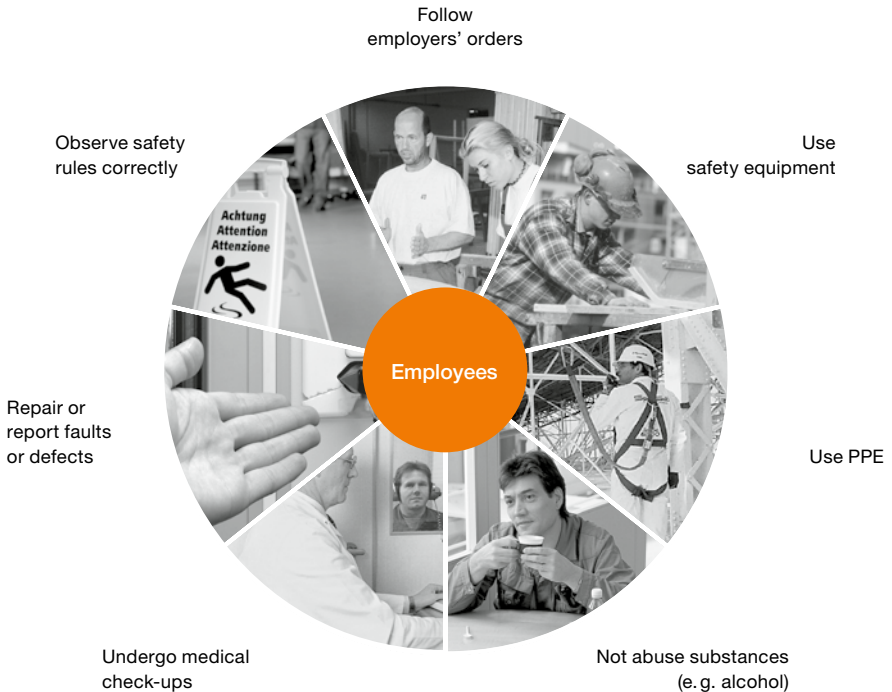
⁹ More information on this subject is given in the following Suva publications (only available in French, German and Italian):

- Die Sicherheit organisieren – eine zentrale Aufgabe für jedes Unternehmen, www.suva.ch/66101.d
- Sicherheit und Gesundheitsschutz: Wo stehen wir? Ein Selbsttest für KMU, www.suva.ch/88057.d

3 Employees' duties

Employees have the following duties in the area of occupational safety and health protection:

- Employees must **support** their **employers** in the implementation of regulations associated with accident prevention and health protection (Art. 82, §3, Sentence 1, UVG, Art. 6, §3, Sentence 2, ArG).
- They must **follow their employers' instructions** with regard to occupational safety and health protection and give equal consideration to **recognized** safety rules (Art. 11, §1, Sentence 1, VUV, Art. 10, §1, Sentence 1, ArGV 3).



- In particular, employees must use the **personal safety equipment** (Art. 82, §3, Sentence 2, UVG, Art. 11, §1, Sentence 2, VUV).
- **Faults or defects** that have been discovered and which may endanger occupational safety and health must be removed or repaired by the employee. If the employee is unable or not permitted to do so, then the fault or defect must be reported to the employer immediately (Art. 11, §2, VUV, Art. 10, §2, ArGV 3).
- Employees must use **safety equipment** correctly and may not do anything to reduce its effectiveness (Art. 82, §3, Sentence 2, UVG, Art. 11, §1, Sentence 2, VUV).
- They may not render themselves in a condition that endangers themselves or others. This specifically applies to **alcohol** and other substance abuse (Art. 11, §3, VUV).
- Employees working in a company or company division subject to **occupational-medical health examinations** must undergo these examinations (entry and control examinations) and take occupational-medical preventive health measures (suitability test/Art. 70 ff., VUV).
- In the case of ongoing or regular **night shifts**, young people and employees performing physically strenuous or dangerous tasks must undergo medical examinations and receive medical care (Art. 43–45, ArGV 1).

4 Specialists' and occupational safety specialists' duties

A list of specialists and occupational safety specialists' duties can be found in Art. 11e, VUV:

- Assessment of hazards to employees' safety and health
- Advice and orientation for employers with regard to occupational safety and health protection
- Advice for employees or their substitutes in the workplace

Specialists must also integrate the provisions on health protection into their work (Art. 7, §3, ArGV 3).

5 Penalties for conduct in breach of duty

5.1 Administrative penalties against the employer

It is the duty of the «implementing bodies» (Suva, SECO, cantonal health and safety executives) to supervise (and, if necessary, enforce) the observance of regulations pertinent to occupational safety and health protection in companies. They may issue instructions and thereby initiate official **proceedings**, which take the following basic form:

- Should the implementing body visit a company and establish that regulations pertaining to occupational safety and health protection are being violated, it will set the employer a reasonable deadline to remedy any violations. Official proceedings are initiated by means of a written confirmation in the form of a **warning** (Art. 62, VUV/Art. 51, §1, ArG).
- If there is an urgent case in which no warning is given, or should the employer not respond to a warning, then the implementing body will enforce the required measures by mandatory **injunction** and set a reasonable deadline for their implementation (Art. 64, VUV/Art. 51, §2, ArG).
- **Objections** against injunctions as per VUV can be raised against the implementing body within 30 days and in writing (Art. 52, ATSG¹⁰, Art. 10, ATSV¹¹). With injunctions as per ArG. No objections may be raised. A formal complaint may, however, be submitted to the cantonal appeals authority (Art. 56, §1, ArG). Should employers waive their right to make an objection or **complaint**, then the injunction becomes legally valid after 30 days.
- Further proceedings are regulated per Art. 56, ATSG/Art. 109, UVG or according to the Court of Administration Law¹².

Implementing bodies may employ the following methods to **enforce legally valid injunctions as per VUV**:

- Increase premiums (Art. 92, §3, UVG and Art. 66, VUV)
- Coercive measures as per Art. 41 VwVG¹³ (cf. also Art. 67, VUV):

¹⁰ Federal Law on the General Part of the Social Security Law (SR 830.1)

¹¹ Regulation on the General Part of the Social Security Law (SR 830.11)

¹² Federal Law on the Federal Court of Administration (SR 173.32)

- With a substitute implementation, the implementing body commissions a third party to implement the measure refused by the employer at the employer's expense.
- **Direct force** will be used when other penalties are inappropriate or do not achieve the purpose. Work may be stopped and materials or equipment seized. The use of facilities, rooms or machines may be forbidden. If necessary, the cantonal authority responsible must be involved in the process (Art. 67 and 68, VUV).
- In any phase of the proceedings, the implementing body may request the prosecuting authority in question to **press charges** (see Chapter 5.3).

5.2 Administrative penalties against the employee

Only in exceptional cases may the implementing bodies take coercive measures against employees whose conduct violates safety regulations. An employer, who is responsible for occupational safety and health protection at the company, can and must accept contractually-relevant consequences when necessary (warning, transfer, dismissal).

Administrative penalties against employees are provided for in the area of occupational-medical care:

- Should an employee refuse to undergo a required occupational-medical examination, then this individual may not be employed or further employed for dangerous work until the examination has been carried out and Suva has issued a statement regarding suitability (Art. 77, §1, VUV).
- Should an employee fall ill with an occupational disease associated with the examination refused, should the occupational disease worsen or should an employee suffer an occupational accident due to an inherent illness (e. g. epilepsy) then this employee's insurance benefits will be denied or reduced (Art. 77, §2, VUV).
- Insurance benefits may be denied or reduced for an employee who does not comply with a declaration of non-suitability if the employee falls ill with an occupational disease or suffers an occupational accident associated with this declaration (Art. 81, VUV).

¹³ Federal Act on Administrative Proceedings (SR 172.21)

5.3 Criminal penalties

For occupational safety and health protection, the sanctions provided for in the UVG or ArG apply. However – and particularly in the case of damages – the Swiss Penal Code (StGB) may be applicable. (Natural) persons who are responsible for work safety and health protection will be prosecuted. These can include company owners, managers, works managers, as well as safety officers (if they have failed to fulfill their duties or have fulfilled them inadequately).

The most important penal provisions are:

Art. 112 UVG

«¹ If there is no more serious criminal offence under a different law, a **fine of up to 180 daily rates**¹⁴ will be imposed on anyone who **wilfully**:

[...]

d. as an employer or employee violates regulations pertaining to the prevention of occupational accidents and diseases, thereby seriously endangering others.

² If there is no more serious criminal offence under a different law, a **fine**¹⁵ will be imposed on anyone who is **negligent** as an employer or employee and who violates regulations pertaining to the prevention of occupational accidents and diseases, **thereby** seriously endangering others.

³ A fine will be imposed on anyone who **wilfully**:

[...]

c. as an employee violates regulations pertaining to the prevention of occupational accidents and diseases, **without** having endangered others.

⁴ If the offender acts **negligently** in the cases referred to in §3, the penalty shall be a fine of up to CHF 5,000.»

Art. 59 §1 ArG

«Employers may be prosecuted if they

¹⁴ The daily rate will not exceed CHF 3,000. The amount of the fine is based on the offenders' personal and economic circumstances (Art. 34, StGB).

¹⁵ Fines may not exceed a maximum of CHF 10,000 (Art. 106 StGB).

- a. wilfully or negligently violate regulations pertaining to health protection and plan approval;
- b. wilfully violate occupational and rest-time provisions;
- c. wilfully or negligently violate the special protection measures provided for young or female employees.»

Art. 60 ArG

«¹ Employees may be prosecuted if they willingly violate regulations pertaining to health protection.

² If employees seriously endanger other persons, they may also be prosecuted for a negligent violation.»

Art. 117 StGB

Involuntary manslaughter

Whoever involuntarily causes the death of another person will be punished by up to 3 years' imprisonment¹⁶ or fined¹⁷.

Art. 125 StGB

Involuntary bodily harm

«¹ Whoever involuntarily harms the body or health of a person will be punished by up to 3 years' imprisonment¹⁶ and/or by a fine¹⁷.

² If the harm is severe, the offender will be prosecuted ex officio.»

Art. 230 StGB

The criminal offence «Removal or Non-Provision of Safety Equipment» is punishable by up to 3 years' imprisonment¹⁶ and/or by a fine¹⁷.

Art. 292 StGB

«Failure to obey a mandatory injunction issued by an authority or civil officer after being advised of provisions of the article is punishable by a fine¹⁵.»

¹⁶ The period of imprisonment usually amounts to a minimum of six months (Art. 40 StGB).

¹⁷ The fine may not exceed 360 daily rates. A daily rate may not exceed CHF 3,000. The amount of the fine is based on the offender's personal and economic circumstances (Art. 34 StGB).

5.4 Civil liability

The emphasis is placed on administrative and criminal sanctions. In the broadest sense, however, civil liability can also be understood as a penalty, be they liability questions between employer and employee or liability towards a third party who has suffered harm.

Art. 55, OR (vicarious liability), Art. 58 OR (building owner's liability) or Art. 41 OR (fault-based liability) must be considered as the basis for liability. Employers are liable towards their employees for every failure to act, e. g. the negligent non-enforcement of reasonable protection measures.

In contrast, employees or occupational safety specialists (employed or by contract) may be held liable if, for example, they have neglected their duty of care.

It would go beyond the scope of this brochure to specify detailed questions regarding civil liability and questions of redress.

6 References for further information

Laws and regulations

The current versions of the pertinent legal documents and regulations for occupational safety and health protection can be found at www.fedlex.admin.ch

The OR, UVG, ArG, VUV, StGB, etc. can be accessed directly.

Information material for employers

- EKAS-Wegleitung durch die Arbeitssicherheit, www.ekas.ch (available in French, German and Italian)
- Die strafrechtliche Verantwortung bei Arbeitsunfällen im System der Arbeitssicherheit, www.suva.ch/66136.d (only available as a PDF file in French, German and Italian)
- EKAS-Leitfaden für das Durchführungsverfahren in der Arbeitssicherheit, www.suva.ch/6030.d (CHF 20.– license fee)
- SECO guidelines on regulations 3 and 4 of the ArG
- SECO guidelines on regulation 5 of the ArG
- SECO guidelines on ArG and on regulations 1 and 2 of the ArG

Information material for employees

Information sources for employees on their rights and duties:

- www.suva.ch/arbeitnehmerinfos (available in French, German and Italian)
- Neuer Arbeitsplatz – neue Gefahren. So starten Sie sicher am neuen Arbeitsplatz, www.suva.ch/84020.d (available in French, German and Italian)
- Mitwirkung – SECO information sheet no. 104

Orders

- Suva and EKAS publications: www.suva.ch or kundendienst@suva.ch
- SECO search and order site: www.arbeitsbedingungen.ch; Orders to: BBL, Distribution Publications, 3003 Berne, www.bundespublikationen.ch

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Four basic pillars



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Titel

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