

Tightened Requirements under the New Safety Production Law



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The Standing Committee of the National People's Congress released the newly revised Safety Production Law on June 10, 2021, which became effective as of September 1, 2021 ("New Safety Production Law"). The main purpose of this New Safety Production Law is to improve the control and prevention of workplace hazards and tighten sanctions for violations of workplace safety laws.

We summarize below the main changes brought about by the New Safety Production Law with implications to all businesses engaged in production and operation activities within the Chinese territory.

1. MAIN CHANGES TO THE NEW SAFETY PRODUCTION LAW

1.1 New Establishment of "All Employee Responsibility System"

To further strengthen the sense of responsibility for workplace safety, the original "responsibility system of the principle persons in charge" (主要负责人责任制) has been replaced with "all employee responsibility system" (全员安全生产责任制). Responsible persons under the "all employee responsibility system" include: (i) the principal person(s) in charge, (ii) other responsible person(s) in charge, (iii) the work safety manager, and (iv) the ordinary employees and workers.

(i) Principal Person(s) In Charge

The principal person in charge refers to the person responsible for organizing, deciding and directing the production and business activities of the enterprise, which can be the legal representative, chairman of the board, general manager, actual controller, and so on. The principal persons in charge of an entity shall take first and full responsibility for the work safety in the entity¹; otherwise, he/she shall bear the corresponding legal responsibility².

(ii) Other Responsible Person In Charge

Other responsible persons, e.g. production and operation manager, sales manager, finance manager shall also be responsible for the work safety within the scope of their duties³. Otherwise, he/she shall assume corresponding responsibilities⁴.

(iii) Work Safety Manager

The New Safety Production Law requires companies with over 100 employees of a producer or business operator to set up an organization or have full-time persons for the control of work safety production; companies with less than 100 employees shall have at least 1 full time or part time work safety manager. The work safety manager shall assist the principle person in charge to perform the work safety management. Otherwise, he/she shall assume corresponding responsibilities⁵.

1. Article 21 of the New Safety Production Law
2. Articles 94 and 95 of the New Safety Production Law
3. Article 5 of the New Safety Production Law
4. Article 96 of the New Safety Production Law
5. Article 96 of the New Safety Production Law

(iv) *Ordinary Employees And Workers*

The “ordinary employees and workers” are not limited to workers who have entered into labor contracts with the enterprise and engage in various work (including technicians, operators etc.) but also include temporary employees and dispatched workers. The ordinary employees and workers shall comply with the work safety rules, subject themselves to management, and correctly wear and use the labor protection articles⁶. Otherwise, he/she shall bear the corresponding legal responsibility⁷.

1.2 New Establishment of “Dual Prevention System”

For the first time, companies engaged in production and operation activities are required to implement a so-called «dual prevention system», which include (i) the graded management and control of work safety risks and (ii) the detection and treatment of hidden risks.

Regarding the “graded management and control of safety risks”, companies shall identify all possible safety risks which may exist in production process, equipment and facilities, operating environment, personnel behavior, management system, and then divide the identified safety risks into four risk exposure levels: very high, high, medium, and lower risk⁸.

Regarding the “detection and treatment of hidden risks”, enterprises shall:

- Work out a list of hidden danger identification and treatment, which shall specify the items, contents and frequency of hidden danger identification;
- Formulate and implement the treatment plans on major hidden dangers.
- Inform the employees through the staff meeting, information bulletin board, etc.

1.3 New Regulations on Humanistic Care for Employees

The New Safety Production Law requires companies to pay attention to the physical, psychological conditions and behavioral habits of employees, provide psychological counseling and spiritual comfort for employees, and prevent accidents caused by abnormal behavior of employees.

1.4 Harsher Punishments

The most noticeable changes can be found in the section of legal responsibility in case of violations of the New Safety Production Law. Overall, the scope of possible penalties has been lifted strikingly upward. For example:

- The New Safety Production Law has generally increased the amount of fines for violations. The maximum fines for serious accidents have increased from 20 million RMB to 100 million RMB.
- The principal person in charge can also be hit just as hard. In the event of a violation of relevant protection obligations under particularly serious circumstances, he/she may be imposed on a fine up to 100% of his/her previous year annual income.

⁶ Article 57 of the New Safety Production Law

⁷ Article 107 of the New Safety Production Law

⁸ <Opinions of the Office of the Work Safety Committee of the State Council on Implementing the Work Guidelines for Curbing Major and Extraordinarily Serious Accidents and Building a Dual Prevention Mechanism> (Work Safety Committee Office [2016] No.11)

- The local Emergency Management Bureau can now choose to impose continuous penalties on a daily basis pursuant to the original amount of penalty from the next day of the day on which the company is ordered to rectify.
- More disciplinary measures will be taken such as increasing the frequency of law enforcement, suspending project approval, banning access to industries, and making the punishment known to the public.

2. IMPLICATIONS ON COMPANIES

With the promulgation of the New Safety Production Law, companies are recommended to take the below approaches in order to mitigate work-related accidents and related injuries to employees:

2.1 Internal Organization

Companies shall allocate responsibility and accountability for the work safety management system among the principal person(s) in charge, other responsible person(s) in charge, work safety manager and ordinary employees. When evaluating an employee's performance, companies shall take the safety compliance status of such employee as an indicator for bonus, salary increase or promotion.

2.2 Risks Management

Companies shall accurately identify, assess and control/eliminate the risks, record and report the findings and review the risks assessment on an ongoing basis.

2.3 Employee Training

Companies shall provide clear instructions, information and regular work safety training for employees, and shall truthfully record the time, content, participants and assessment results of work safety and training.

2.4 Emergency

Companies shall formulate an emergency rescue plan (in Chinese: 应急预案) for work safety accidents. Emergency drills are required to be carried out as well.

2.5 Funds

Companies shall purchase the work-related injury insurance for all its employees according to the law.

3. DSCOMMENTS

With the harsh punishments incorporated under the New Safety Production Law, companies need to be more careful with its internal compliance system.



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PROPOSED BY DS AVOCATS

DS Avocats has been closely following up on the New Safety Production Law, and has been focusing on legal and compliance needs of foreign companies in China for over thirty years. We can assist companies in China to carry out a quick EHS audit so as to comply with the new requirements.



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