

**Citizens' Labour Rights
Protection League**

**The Council of State Support to
NGOs under the President of the
Republic of Azerbaijan**

PROTECTION OF LABOUR IN THE REPUBLIC OF AZERBAIJAN

LEGISLATION AND PRACTICE

REPORT ON OUTCOMES OF THE MONITORING

BAKU-2008

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Published with financial assistance of the Council of State Support to NGOs
under the President of the Republic of Azerbaijan

Prepared and published within the Project of the Citizens' Labour Rights
Protection League on **“Provision of safe working conditions as the most
important task in formation of social support”**

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ISBN- 978-9952-25-112-8

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SUMMARY

The main purpose of the conducted monitoring was to study the real situation of the labour protection norms and regulations, as well as application practice of these norms and regulations in the labour sphere of the country, and to prepare and submit recommendations on elimination of gaps in the legislation and practice to the appropriate state bodies as a result of the monitoring. From this point of view, first of all, existing main norms related to the labour protection in the country have been analyzed, the conformance of these norms with state Constitution and appropriate international norms to which our country is party have been determined.

In the recent years, according to the official statistics most of the accidents on the workplace happen in the construction sector. The construction sector has also high indicators of fatal accidents among other spheres. Majority of accident in the construction sector happen during construction, repair and reconstruction of residential and

non-residential spaces. Taking this situation into account, this sphere (construction, repair and reconstruction of residential and non-residential spaces) was specially focused during the monitoring process. The monitoring has been conducted mainly at multi-storey residential and non-residential buildings. About 30 construction units have been attracted to the monitoring. As a result of the monitoring, the situation with protection of labour and technical safety at these units has been observed by means of appropriate tools and the final opinion has been prepared based on the results obtained. This direction is separately covered in the report and causes of accidents and disablement of employee for the long period or forever as a result of accidents or fatal accidents in the construction sector have been provided. The recommendations have been brought forward for elimination of inconsistencies.

Also statistics on persons who suffered from accidents at the workplace and occupational diseases has been analyzed. The analysis

covers only official statistics. The analysis of statistics showed that these indicators do not reflect the real situation. Majority of accidents at the workplace are hidden and as a result these accidents are not reflected in the statistics. At the same time, official statistics show that the range of measures related to the labour protection in the labour sphere of the country, as well as improvement of legislation, increase of administrative and financial responsibility did not have serious effect.

Reasons for violation of labour protection norms and regulations have also been investigated via application of another monitoring tool.

Unstructured interviews have been conducted with experienced experts in the sphere of labour, particularly in the field related to the protection of labour. Interviews conducted with experts confirmed outcomes obtained by means of previous monitoring tools.

The final opinion and recommendations have been presented at the end of the report. The recommendations are related both to the improvement of legislation and the practice. These recommendations are addressed to the legislative bodies, trade unions and civil society structures.

LEGISLATIVE BASIS OF THE LABOUR PROTECTION IN THE REPUBLIC OF AZERBAIJAN

According to the article 35.6 of the Constitution of the Republic of Azerbaijan “Everyone has the right to work in safe and healthy conditions”

Labour protection norms and regulations are determined by the Labour Code of the Republic of Azerbaijan, other legislative acts, normative legal acts adopted by the appropriate executive bodies within their jurisdiction, as well as international treaties to which the Republic of Azerbaijan is party.

A range of interstate documents determining the international labour protection standards in either form have been ratified by the Republic of Azerbaijan. **International Covenant on Economic, Social and Cultural Rights** may be emphasized among these documents. Besides the Republic of Azerbaijan has ratified and became party to the range of conventions and recommendations of the International Labour Organization on Labour protection. There are “Labour Inspection (Industry and trade) Convention”, “Labour Inspection (Agriculture) Convention”, “White Lead

(Painting) Convention”, “Working Environment (Air Pollution, Noise and Vibration) Convention”, “Hygiene (Commerce and Offices) Convention”, “Recommendations on Hygiene (Commerce and Offices)”, “Protection against Accidents (Dockers) Convention”, “Prevention of Accidents (Seafarers) Convention”, “Recommendations on Prevention of Accidents (Seafarers)”, “Recommendations on Protection against Accidents (Dockers)” and etc. among these document.

According to the article 7 of the International Covenant on Economic, Social and Cultural Rights to which the Republic of Azerbaijan is party:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal

value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Labour protection norms and regulations of the Labour Code and other legislative acts of the Republic of Azerbaijan

The Labour Code of the Republic of Azerbaijan which entered into force on July 1, 1999 based on the Decision 618-1Q of the President of the Republic of Azerbaijan on February 1, 1999 shall apply to all enterprises, establishments, organizations, as well as workplaces where an employment agreement exists without the establishment of an entity, to all embassies and

consulates of the Republic of Azerbaijan operating outside the territory of the Republic of Azerbaijan, to all ships sailing in international waters under the banner of the Republic of Azerbaijan and to all offshore installations and other workplaces, regardless of their property, organizational and legal form, and to relevant government bodies, individuals and entities of the Republic of Azerbaijan, pursuant to the rules specified in this Code, and also apply to employees performing jobs in their homes using their employer's goods (materials).

Appropriate authorities, duties and instructions for realization of the "*right of everyone to work in safe and healthy conditions*" which is stated in the Constitution of the Republic of Azerbaijan and is one of the main obligations of Azerbaijani Government and implementation of activities in this direction are provided in the "Labour Protection" Section (IX) of the Labour Code of the Republic of Azerbaijan

"Labour Protection" Section consists of 4 chapters:

Norms, regulations and principles of labour protection

As it is seen from the title in this chapter we will talk about norms, regulation and principles of labour protection and the role of public unions in resolving the issues related to labour protection.

By saying *labour protection norms and regulations* we mean normative legal acts adopted and approved by the Cabinet of Ministers of the Republic of Azerbaijan, Ministry of Labour and Social Protection of Population and other competent organs within their authority provided by the Labour code of the Republic of Azerbaijan, also norms and standards provided in the international treaties to which the Republic of Azerbaijan is party.

On November 22, 1998 Procedures for acceptance and application of International (regional) and interstate standards, norms, regulations and recommendations on the territory of the Republic of Azerbaijan has been approved by the Presidential Decree of the Republic of Azerbaijan.

On December 30, 1999 the Presidential Decree on Approval of the Law of the Republic of Azerbaijan on "Normative Legal Acts" has been signed.

It is provided in the article 8 of the Law of the Republic of Azerbaijan on "Normative Legal Acts" that, *Acts which have been in force before declaration of the state*

independence of the Republic of Azerbaijan and have been repealed and which do not contradict the Constitution of the Republic of Azerbaijan retain their legal force.

According to the article 207.3 of thirty third chapter of the Labour Protection Section: «Compliance with occupational safety standards and regulations shall be mandatory for parties to labour relations and other persons and entities».

When talking about labour protection we frequently face such terms as – enterprise, employer and employee.

Enterprise – is an independent economic unit which is legal entity established by the owner regardless of the legal form, name or activity of the organization in accordance with legislation of the Republic of Azerbaijan, where employees implement job (services) provided by the employment agreement in accordance with their occupation, profession and qualification, the main purpose of which is production of goods (or services) and obtain revenues.

Employer: *the owner or manager of a designated establishment or authorized body regardless of the legal form, name or activity of the organization, as well as any individual conducting business without having established an entity who is fully entitled to enter into agreements with employees and to terminate or amend them.*

Employee: an individual who has entered into an employment

agreement (contract) in accordance with their occupation, profession and qualification, with an employer regardless of the legal form, name or activity of the organization and who works in an appropriate workplace for pay.

Taking into account all requirements related to the labour protection provided in the legislation, relevant state authorities, owners, employers and employees shall ensure occupational safety pursuant to the following principles provided in the article 209 of the 33rd Chapter of the “Protection of Labour” section:

- *joint activity to improve working conditions and safety by authorities, owners, employers and employees; the prevention of industrial accidents, injuries and occupational illness;*

- *priority of employee life and health over results of production by enterprises;*

- *coordination of occupational safety with other economic and social policies, as well as with environmental protection;*

- *determination of unified occupational safety requirements for all enterprises, regardless of their ownership or legal form of organization;*

- *implementation of independent and efficient controls for compliance with occupational safety requirements by all enterprises;*

- *employer incentives taking advantage of world-class scientific and technical achievements and*

advanced work methods with respect to occupational safety; the development and use of efficient occupational safety methods, techniques and technologies;

- *implementation of a tax policy focused on a high level of occupational safety at enterprises;*

- *government funding of occupational safety measures;*

- *regular improvement in occupational safety standards;*

- *providing employees with protective outer garments and boots, other individual protection devices, therapeutic food, etc., at no cost;*

- *training of experts at educational institutions in occupational safety;*

- *compulsory investigation, registration and analysis of any industrial accident or occupational illness and reporting to the public the rate of industrial injuries and occupational illnesses based on these investigations;*

- *social, material and spiritual protection of the interests of employees injured or suffering from occupational illness as a result of industrial accidents;*

- *multilateral assistance to trade unions and other employee representative bodies to ensure occupational safety at enterprises by individuals and entities;*

- *the expansion of international cooperation on occupational safety.*

As it is provided in the abovementioned principles regular perfection of the labour protection

norms would bring to the provision of safety in all spheres of economy in the Republic and to the development in this field. Thus, problems appear as a result of lack in regular update of existing field labour protection regulations in force and the same time non-improvement of the range of normative legal documents.

Although acts which have been in force before declaration of the state independence of the Republic of Azerbaijan and have been repealed and which do not contradict the Constitution of the Republic of Azerbaijan retain their legal force, there is a need for development of these documents in the state language by the appropriate authorities, determination of the unique requirements on labour protection for all for enterprises regardless of the legal form, name or activity of the organization and conduction of control in accordance with these documents.

Also, **preparation of professionals in educational institutions** does not meet the demands of the times.

At the same time, the article 210 of this chapter states that, for more reliable, multilateral and objective resolution of labour protection issues state authorities and employers shall provide multilateral assistance to public organizations and shall consider their proposals and recommendations when adopting occupational safety regulations.

Established public organizations shall act in accordance with legislation on public unions. Employers, employees and various physical persons may join and establish public organizations operating pursuant to the law or public organizations in order to settle occupational safety issues.

Legal, technical-organizational and financial maintenance of labour protection

Norms and regulations provided in the Labour Code mainly are general.

As it is provided in the article 211 34th Chapter of the “Protection of Labour” section of the Labour Code, a unified government occupational safety policy shall be prepared and implemented by the relevant authorities in order to provide their equal fulfilment and to ensure the application of the right of additional leave and other standards by taking into account the peculiarities of work conditions, in cases determined in the Labour Code. Cabinet of Ministers of the Republic of Azerbaijan which is the relevant authority shall prepare unified and detailed list and regulations for implementation.

The list of «underground works, mines, tunnels, constructions and other workplaces where work is implemented underground» has been approved by the Decree No 30 of the Cabinet of Ministers of the Republic of Azerbaijan on February 20, 2002. This List

contains underground mountain mining works, underground mining of quicksilver ore, underground mountain mining works in the chemical industry, mining of arsenic ore, salt solutions mining, construction of mountain mines, construction and reconstruction of subways, tunnels and other underground buildings, and appropriate lists of housing and communal services, railway transportation and subway works, repair and services.

The List of «*Occupations (positions) where medical certificate is required for concluding employment agreement at the workplaces where hard, harmful and dangerous working conditions with factors negatively influencing employee's health, also at the workplaces in the field of food industry, public catering, medicine, trade and other such spheres with the purpose of public health protection*» has been approved by the Decree No 1 of the Cabinet of Ministers of the Republic of Azerbaijan on January 3, 2000.

Lists of industrial spheres and workplaces where use of **women labour and labour of persons under 18** is prohibited have been prepared and approved. Thus, «*the list of productions, occupations (positions) as well as underground works with difficult and hazardous working conditions where use of woman labour is prohibited*» has been approved by the Decree No 170 of the Cabinet of Ministers of

the Republic of Azerbaijan on October 20, 1999. At the same time the List of «*the list of productions, occupations (positions) as well as underground works with difficult and hazardous working conditions where use of labour of persons under 18 is prohibited*» has been approved by the Decree No 58 of the Cabinet of Ministers of the Republic of Azerbaijan.

Meteorological conditions, atmosphere pressure, noise, vibration, dust, irritative chemicals, electromagnetic and electric fields, useless lighting, uncomfortable position of body and etc is considered as **industrial harm**.

Influence of industrial harm above the line causes occupational diseases.

Occupational dust appear in earthen and rock works, subsurface drilling, electricity welding and hydro isolation, in works related with cement and concrete and this causes such diseases like **black-lung disease, silicosis and asbestosis**.

During preparation of reinforced concrete constructions and concrete mixes at vibrators employees working on concrete mixers obtain shaking diseases.

When controlling welding quality by using gamma-defectoscopy, in works related to ionisation sources person may gain **radiation sickness**, etc.

Occupational disease typical for one sort of work may not be considered as occupational disease for another.

The list of “Workplaces with high probability for employees to gain occupational disease” has been approved by the Decree No7 of the Cabinet of Ministers of the Republic of Azerbaijan in January 14, 2002.

It shall also be mentioned that, for timely prevention of occupational diseases which appear or may appear, the initial and periodic **medical examination** of employees shall be conducted, and this shall be done with high quality.

In this connection, the Order No 13 on *“Improvement of preventive medical examinations”* has been issued by the Ministry of Health of the Republic of Azerbaijan on January 23, 1998. In this Order *“List of medical contraindications for inadmittance to the work related to existing harmful matters and unfavourable factors at works where initial and periodic medical examination of employees with the purpose to prevent occupational diseases is compulsory examined by the qualified physicians by means of appropriate laboratory and functional diagnostic methods in accordance with certain etiological factors”*, *“List of medical contraindications for inadmittance to the work at works where initial and periodic medical examination of employees with the purpose to prevent occupational diseases, accidents, provision of labour safety and public health, prevention of infectious and parasitic diseases is compulsory, examined by the*

qualified physicians by means of appropriate laboratory and functional diagnostic methods in accordance with the type of work” has been provided together with the range of instructions.

The list of occupational diseases is the main document used in diagnostics of occupational diseases, in connection of these diseases with implemented work or workplace, expertise of ability to work, in solving issues on medical and labour rehabilitation, also in issues related to payment of compensations for injuries and diseases gained by servants and workers by the enterprises and organizations.

The right to determine the disability level and the percentage of losing the ability o work is assigned to the *Social Medical Expert Commission (SMEC)*.

Control over determination of occupational diseases, preparation of the list of occupational diseases and correct application of instructions is assigned to the Ministry of Health and the Central Expert Commission established near the National SR Medical Prophylactic Institute after V.Y.Axundov. *With the purpose to execute the Decree No353 of the President of the Republic of Azerbaijan on implementation of the Law on “Immunoprophylaxis of infectious diseases” on June 17, 2000, the List of “Works where preventive inoculation is compulsory”* has been approved by the Decree No 110 of the Cabinet

of Ministers of the Republic of Azerbaijan on June 2, 2001.

The abovementioned lists shall be published in general circulation and distributed for use by employers and trade unions in all spheres of economy. Employers shall use all their capacity and acceptable means to let employees acquaint with these lists and use them at any time.

According to the article 212 of the Labour Code, Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan shall develop and implement a ***unified state policy on occupational safety***, determine the duties of the respective executive authorities and employers to improve work conditions and to ensure occupational safety, coordinate their activity for providing for healthy and safe working conditions and exercise control over it.

Labour Code, Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan shall approve the programs on the improvement of working conditions and occupational safety in consultation with trade unions and employers' representative agencies; organize and ensure the fulfilment of said programs.

Ministries, state committees of the Republic of Azerbaijan, including state concerns, companies, associations and corporations shall determine the ***focal point*** for implementation of

state occupational safety policy at the relevant workplaces with the participation of trade unions and other representative bodies of employers and take actions foreseen with respect to this issue (*LC, article 213*).

Appropriate executive bodies shall develop site standards, norms and procedures and regulations on occupational safety and ensure their approval in the established manner, organize the training of occupational safety managers and enterprise experts and examine their knowledge and monitor compliance with occupational safety standards and procedures at the enterprises subordinate to them.

According to the article 214 34th Chapter of the "Protection of Labour" section, Municipal authorities within their authority may ensure the implementation of state policy on occupational safety within the territories under their jurisdiction. Municipal authorities shall develop interbranch programs on occupational safety that are of local importance and ensure their fulfilment;

establish occupational safety funds based on shares and other owner assets to assist them in resolving regional occupational safety problems and ensure that these funds are spent pursuant to the purposes determined.

The owner and employer of the establishment shall be directly responsible for the ***occupational safety of employees in the workplace*** and for the application

of regulations. Thus, they also shall be obliged to obey all occupational safety standards, norms and regulations.

As it is stated in the article 215 of the thirty fourth chapter of the Labour Protection Section, owner and employer is responsible to take measures provide healthy conditions in the workplace and use current public health standards, provide the necessary tools for hygiene and cleanliness and provide treatment and prevention services, provide employees who work in a harmful or adverse environment with free therapeutic food, milk or other foodstuff equivalents. That is why, as it is state in the article 64.2 of ninth chapter of the Labour Protection Section of the Labour Code: *«In order to provide the protection of labour at proper working places or to determine and improve the status of production sanitary and hygiene, as well as during the application of the latest advanced methods including new techniques and technologies for the increase of labour productivity and work efficiency, the Employer must carry out workplace certification.»* At the same time, it is stated in the article 222.5 of the thirty fourth chapter of the Labour Protection Section of the Labour Code, the owner and employer is responsible for ***certification of compliance with occupational safety standards and regulations.***

Certification of the workplaces shall be conducted with

participation of trade unions and the staff shall be informed about the outcomes.

« Procedure for attestation of workplaces » has been approved by the decree No38 of the Cabinet of Ministers of the Republic of Azerbaijan on March 6, 2000.

Procedure for attestation of workplaces shall serve as the basis for attestation of ***all enterprises and organizations*** (hereinafter referred to as the Enterprise) located on the territory of the Azerbaijan Republic regardless of their form of ownership and organization and legal status. ***All workplaces of an organization*** shall be subject to attestation. The duration for conducting attestation shall be established by the organization on the basis of changes in the working conditions and nature, but at least once every five years.

Workplaces which have been subjected to change of production equipment, technological process and collective protection equipment shall be subject to mandatory re-attestation. Mandatory re-attestation shall also be conducted to eliminate offences discovered during the attestation of workplaces by the State Labour Inspectorate.

The certification of the workplaces may be implemented only by laboratories possessing appropriate technical means and normative-survey bases.

Such laboratories may be within the enterprises or other

laboratories which have right to estimate parameters of dangerous and harmful production factors, conduct estimation of hardness and tenseness of works, may be involved.

Certification of the workplaces is conducted by the **attestation commission** established by the order of the head of enterprise.

The attestation commission of the enterprise shall consist of representatives of trade union, professionals qualified in the field of labour protection services and organization of labour.

Chairman of commission and person responsible for documentation of the attestation process is assigned by the Order.

All dangerous and harmful production factors, hardness and tenseness of works shall be estimated during certification of the workplaces in accordance with labour conditions.

Estimation means and methods approbated by the government in accordance with time tables, meteorologically tested and provided in the appropriate documents shall be used in the estimation process.

A map reflecting the attestation of a workplace regarding working conditions shall be compiled for every workplace (or group of jobs of similar nature and with similar working conditions).

The results of work of the attestation commission of an organization shall be recorded in a protocol of attestation of

workplaces regarding working conditions. Cards of attestation of workplaces regarding working conditions, lists of workplaces and results of their attestation regarding working conditions in subdivisions, comparative list of workplaces and results of their attestation regarding working conditions in the organization, plan of actions towards improving and upgrading working conditions in an organization shall be attached to the protocol.

The documents pertaining to the attestation of workplaces regarding working conditions shall be considered to be high-security forms and shall be subject to storage for 45 years.

The Regulations on "*Provision of free therapeutic food, milk or other foodstuff equivalents for employees who work in a harmful or adverse environment*" has been prepared and implementation of the Regulations is compulsory for all enterprises working on the territory of the Republic of Azerbaijan regardless of their property, organizational and legal form. This Regulations also contains List of Chemical Matters. This list is used when the pollution of air in the working zone is higher than provided in the Sanitation norms approved by the Ministry of Health of the Republic of Azerbaijan.

Provision of employees with free work clothes, shoes and other necessary protective gear in the required condition and with normal, regular frequency in accordance

with article 215 of thirty fourth chapter of the Labour Protection Section and in accordance with article 222 if a production site is harmful and dangerous or if the work requires a special temperature or the employees work in a dirty environment, provision of employees with special clothing, shoes, and other personal necessities including washing materials as required in the relevant regulations is charged to the employer.

In connection with it, the *Instruction on "Regulations on provision of employees with special clothing, shoes, and other personal necessities"* has been approved by the Decree No 167 of the Ministry of Labour and Social protection of Population on December 29, 1999. Provision of employees with personal necessities is the **benchmark** for all enterprises working on the territory of the Republic of Azerbaijan regardless of their property, organizational and legal form.

The Instruction on "Regulations on provision of employees with special clothing, shoes, and other personal necessities" provides instructions on registration of orders, acceptance and storage, distribution, acceptance and other regulations on usage of the personal necessities.

Education, instruction, and testing the knowledge of employees on occupational safety standards and regulations and their

encouragement in occupational safety is one of the main obligations of the **head of enterprise**. Thus, with the purpose of implementation of the articles 215-219 of the Labour Code of the Republic of Azerbaijan, the Exemplary Regulations on "*Education, instruction, and testing the knowledge of employees on occupational safety*" has been approved by the Collegial Decision No 19-3 of the Ministry of Labour and Social protection of Population on August 29, 1999 and has been registered as a normative legal act at the Ministry of Justice of the Republic of Azerbaijan.

Education, instruction, and testing the knowledge of all employees on occupational safety standards and regulations shall be conducted based on the **Exemplary Program** approved by the Ministry of Labour and Social protection of Population of the Republic of Azerbaijan.

"The approximate list of questions for training and testing of knowledge on labour protection of employees at enterprises" has been approved by the Collegial Decision No 25-3 of the Ministry of Labour and Social protection of Population on December 24, 1999 and has been registered as a normative legal act at the Ministry of Justice of the Republic of Azerbaijan.

Article 216 of the Labour code show **employee's duties involving occupational safety**. These are following duties:

- to learn, familiarize themselves and apply the requirements defined by relevant regulations for safety, hygiene, and fire protection;

- to perform work without jeopardizing their own life or that of others, to stay out of places where employees are not allowed such as machinery operating rooms and explosive depots, and to refrain from working in certain other places where there may be a danger to life;

- to work in the special clothing and shoes issued, to follow and enforce safety regulations, standards and instructions and to use protective methods as stated in the individual or collective contracts;

- to inform employer representatives about job accidents, any emergencies or any violation of occupational safety regulations;

- to regularly improve their occupational safety knowledge;

- to follow the orders and advice of employers, supervisors and experts on occupational safety.

It should be also taken into account that except for cases when injury took place with the intention of the injured person, the injured person shall be compensated despite of his fault.

According to the article 227 of the Labour Code employees have **right to obtain occupational safety information**. Employees shall have the right to demand

information about occupational safety in their workplaces, about the necessary occupational safety material which they should be given based on working conditions, and about concessions and guarantees. Employers shall be obliged to satisfy these requirements. Besides, article 230 of the Labour Code provides large rights and benefits to employees. Thus, should the employer not provide a safe work environment and this failure create a danger to the health and lives of employees, an employee may refuse to perform his job and may go on an individual strike.

According to the article 238 of the Labour Code responsibility of employers on creation of conditions for protection of healthy and safe work has been provided. Thus, «The employer who fails to create conditions in workplaces for protection of healthy and safe jobs, or fails to take the measures agreed upon in collective agreements will be prosecuted for civil and criminal wrongdoing in cases and in ways defined by law».

The Appendix 2 to the Labour Code of the Republic of Azerbaijan on «*Terms for Stopping Work or Granting Breaks to Employees Working Outside or in Unheated Indoor Areas During Cold Weather*» shall be strictly observed.

Both employers and employees shall ensure proper implementation of their obligations.

The appropriate articles of the Criminal Code of the Republic of

Azerbaijan have been provided in relation to this issue.

According to the article 162.1 of the present Criminal Code of the Republic of Azerbaijan: «*Infringement of safety precautions regulations or other rules of labour safeties committed by a person, to whom these rules are assigned, and as result brought to serious or minor serious harm to health of a*

person is punished by the penalty at a rate from hundred up to five hundred of nominal financial unit, or corrective works for the term up to two years, or imprisonment for the term about six months.», also according to the article 162.2: «*The same action, which on imprudence brought to death of a person is punished by imprisonment for the term up to five years with deprivation of the right to hold the certain posts or to engage in the certain activities for the term from three up to five years or without it*».

According to the article 131.1 of the Criminal Code of the Republic of Azerbaijan: «*Causing of minor serious harm to health on imprudence shall be punished by the penalty at a rate of up to three hundred of nominal financial unit, or corrective works for the term up to one year, or imprisonment for the term about six months.*», also according to the article 131.2: «*Causing of serious harm to health on imprudence shall be punished by the penalty at a rate of up to five hundred of nominal financial unit, or corrective works for the term up to two years, or restriction of freedom for the term up*

to two years, or imprisonment for the term about six months ».

According to the article 114.1 of the Criminal Code of the Republic of Azerbaijan: «*The negligence, that is default or inadequate performance by official of the duties owing to unfair or negligent attitude(relation) to the service, entailed essential harm to rights and legitimate interests of citizens or organizations or to interests protected by law of state or a society is punished by the penalty at a rate from five hundred up to one thousand of nominal financial unit, or public works for the term up to two hundred thirty hours, or corrective works for the term up to two years, or imprisonment for the term about six months.*», also according to the article 314.2: «*The same act committed on imprudence and entailed death of the victim or other heavy consequences is punished by imprisonment up to five years* ».

The accident which happened during implementation of the duties on the territory of enterprise or out of it, or during implementation of order of the management is called **job-related injury**. Diseases which appear at the hard and harmful working conditions are called **occupational diseases**.

Violation of safety measures, fire safety, and industrial sanitation instructions, norms and regulations cause injuries, poisoning and occupational diseases. Because it is impossible to clearly reveal the

general causes of injuries at various industrial processes with various working conditions, **reasons of injuries and occupational diseases are divided into three main groups** according to their common aspects:

Technical reasons:

a) imperfect state of the technological process (inaccuracy of the project, incorrect installation of equipment, setting and mechanisms, incorrect implementation of the process and etc.);

b) disorder of equipment and mechanisms;

c) disorder of tools and settings used for exploitation or repair of the equipment;

ç) absence of barriers and protective means;

d) keeping settings and equipment in small premises and etc.

Organizational reasons:

a) incorrect labour organization (ineffective working mode, strained work and etc.);

b) untidiness of workplaces, passages and ways;

c) technological process is poorly mastered by the workers and servants, poor instruction on safety measures, fire safety and labour hygiene;

ç) *violation of technological process, bad control over the process;*

d) application of tools and settings unsuited for the work;

e) non-observance of the safety regulations;

ə) application of dangerous work methods, violation of discipline;

f) lack of use of individual safety means;

g) systematic use of workers for hard works and overtime and etc.

Hygiene Sanitary reasons:

a) abnormal meteorological conditions (unfavourable air temperature, humidity, pressure), infrared irradiation;

b) harmful air conditions (harmful exhalation, gas and dust);

c) useless lighting;

ç) harmful irradiation (radioactive, roentgen, ultraviolet irradiation, electric, magnetic fields ant etc);

d) noise and vibration;

e) violation of hygiene and sanitary norms and etc.

The “*Rules of Investigation and Registration of Accidents at the Place of Work*” provided for in the article 217 of the Labour Code of the Republic of Azerbaijan and determining the unified Rules of Investigation and Registration of Accidents at the Place of Work on the territory of the Republic of Azerbaijan have been prepared and approved by the Decree of the Cabinet of Ministers of the Republic of Azerbaijan on February 28, 2000. sphere of influence of these Rules is very broad and they cover all spheres in

the Republic. Thus, *these Rules shall apply, in accordance with the procedures established by the legislation, to all enterprises, entities and organizations within the territory of the Azerbaijan Republic, irrespective of their legal organizational form and category of ownership (hereinafter referred to as the "enterprises") established by the relevant state organs of the Azerbaijan Republic, legal entities and physical persons, as well as on places of work where an employment agreement is made with employees without creation of the enterprise, as well as in embassies and consular offices of the Azerbaijan Republic operating outside its territory, vessels sailing under the flag of the Azerbaijan Republic in international water, shelf installations, and other places of work, and shall equally apply upon employees performing job duties at home with use of raw materials (materials) and production resources of the employer.*

These Rules shall unconditionally apply upon places of work established in the Azerbaijan Republic by physical persons and legal entities of relevant foreign states, international organizations, as well as persons without citizenship, which places of work have gone through the state registration and operate in accordance with the procedures established by the legislation, unless international agreements of the Azerbaijan

Republic with foreign states, international agreements do not provide otherwise.

These Rules shall apply upon public servants, as well as employees of the prosecutor's office, police and other law enforcement authorities, subject to specific provisions established by normative legal acts, regulating their legal status (where such normative legal acts do not fully cover employment, social and economic rights of such employees), students and school children undergoing production training at the enterprises, convicted persons working in places of implementation of court sentences, persons engaged to liquidation of consequences of extraordinary situations, as well as to performance of works in cases of military and extraordinary situations.

*Accidents may be **related to the industry or not related.***

Industrial accidents are investigated in the following cases:

▪ In course of performance of job duties, including in course of business trips, as well as in course of any activities in the interests of the enterprise without instructions from the management;

▪ When travelling to place of work or returning from place of work at a mean of transportation owned by the enterprise and submitted by a third party upon agreement with (order of) the enterprise;

▪ *Within the territory of the enterprise or at some other place of work until the employee commences the work, or within the period of time when employee, following completion of the work, leaves the enterprise, including official break times during the working day;*

▪ *During the period of performance by the enterprise of subbotnik irrespective of its place;*

▪ *During the period when employees engaged to performance of state and public duties in cases and in accordance with the procedures established by the legislation;*

▪ *In cases of accidents on production equipment and production facilities;*

▪ *During the period of presence of employees working in shifts (guides, employee of refrigerator group, shift driver, crew members of sea, marine and air vessels, persons working with shift-expedition method, etc.), within the territory of the shift settlement;*

▪ *During performance by employees of activities associated with movement between service facilities (when moving on public transport or when walking, as well as in course of implementation of instructions of the employer (its official) during the working time);*

▪ *During the period of performance of professional duties on personal vehicle under written instructions of the employer;*

▪ *When bodily injuries are caused to employee or he is killed*

by another person in course of performance of professional duties;

▪ *When missing, injuries, professional diseases and poisoning, heat impacts, burnings, freezing, drowning, lightning impact, injuries following contact with animals and insects, as well as natural disasters (earthquakes, slides, floods, hurricanes, etc.)*

Guarantees for exercising right to labour safety by the employee.

The employee who has suffered health problems as a result of production accidents or occupational diseases that were employer's fault, or family members and other dependents of an employee who has died because of the same reasons are to be paid compensation by employer who is responsible for unfortunate incidents or work related illness

One of the main appropriate basis for payment of compensation for harm to the person who suffered or to those who have right to this compensation is existence of employment relations with the organization. Thus, an employment contract shall state the employer's commitment to provide a healthy and safe working environment for the employee and guarantees provided in the section III of the Labour code shall be clearly stated. (LC, article 224).

But, presently, there are many enterprises in our country which work without concluding

employment agreements, and there are many objective and subjective reasons for that. The issue of material responsibility before the person who suffered in cases when employee works without employment agreement is resolved in accordance with *civil legislation* of the Republic of Azerbaijan.

When hiring employees indicated in the Article 211 of the Labour Code for a job with a *high risk of job-related illness*, the employer shall submit information to the employee about the possible time frame of said illness. The employment contract shall therefore cover only that period, and at the end of that period the employee shall be given a different job with same salary.

Social Insurance against Industrial Accidents and Occupational Illness provided in the Article 225 of the Labour Code of the Republic of Azerbaijan is the form of *mandatory social insurance*. Thus, Employers must provide employees working at high-risk jobs, on machinery, mechanisms, equipment, electrical equipment, in jobs with the risk of explosion and fire, or other similar jobs, with mandatory personal insurance against industrial accidents. That is why employees when employed and concluding employment agreement for work at high-risk jobs shall require mandatory social insurance which correspond with their social position and in not against the law.

In addition A list of employees requiring personal insurance and the amount of the insurance coverage shall be stated in the collective agreements. After that in accordance with the will of parties any other type of insurance coverage may be bought with agreements signed with insurance agencies.

In addition to the abovementioned cases the aforesaid mandatory insurance shall be issued on the basis of the list of production or non-production sites considered extremely dangerous to human life, as stipulated in Article 211. At the same time an employer entering into an employment contract with employees must provide a clause for an initial medical check-up and for regular, free, compulsory medical tests pursuant to the regulations established by medical authorities for the period of their employment (Labour Code – Article 226). If an employee refuses to have a medical check-up or if he does not follow the advice of the doctor or medical commission after medical tests, the employer may dismiss him or impose relevant disciplinary action pursuant to Article 62 of the Labour Code.

List of the abovementioned workplaces and employees working at such places shall be conducted and opened in accordance with the appropriate decision of the Cabinet of Ministers of the Republic of Azerbaijan. That is why, with the purpose to implement the Decree

No 122 of the President of the Republic of Azerbaijan on April 15, 1999 on application of the Law of the Republic of Azerbaijan on “Approval, entering into force of the Labour Code of the Republic of Azerbaijan, and legal regulations related to it”, the Cabinet of Ministers of the Republic of Azerbaijan approved the lists provided below.

Control over observation of the labour protection norms and regulations and responsibility of employer

Based on the Decree of the President of the Republic of Azerbaijan on “*Establishment of State Labour Inspection Office near the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan (January 27, 1997, No544)*” such body has been established with the purpose to provide protection of labour rights guaranteed by the Constitution of the Republic of Azerbaijan and conduct state control over observation of the labour legislation and its *Regulations has been approved by the Decree of the Cabinet of Ministers of the Republic of Azerbaijan (April 31, 1997)*.

As it is mentioned in the article 235 of the Labour Code of the Republic of Azerbaijan supervision of rules and regulations for protection of labour quotas and also requirements of Normative Legal

Acts on protection of labour are done by the **State Labour Inspection** Office carrying out state control over the observance of labour legislation. The decisions of government supervision organizations carrying out state control over the observance of labour legislation and their authorized persons taken within their authority must unconditionally be implemented. Such decisions may be appealed administratively and/or in the court in accordance with legislation.

At the same time together with the state control over observance of labour legislation and rules and regulations for protection of labour quotas and also requirements of Normative Legal Acts on protection of labour, public supervision of enforcing of laws on job protection is done by persons authorized by labour collectives and the representatives of trade union organizations (Labour Code, article 236). *Representatives on job protection have the right to monitor the situation in the workplace in regard to job protection, to demand from the authorities the correction of shortcomings discovered, and if necessary to raise issues with the employer regarding taking legal action against the people in fault. Employer should give this person at least two hours per week of time during the work day which are paid in average wages*

As it is stated in the article 237 of the Labour Code of the Republic of Azerbaijan, Trade Unions are to

participate in preparing applicable regulatory legal acts on job protection and ways of enforcing them by mutual agreement, they have the right to protest to related state bodies enforcing of those acts which have not been prepared by mutual agreement. In the range of other obligations representatives of trade unions can participate in work of state commissions on testing of production equipment and machinery and initiating of their use in production, investigation of unfortunate incidents in production, monitoring of enforcing of job protection laws, and inspection of creating of conditions for their improvement. As we already mentioned the **Investigation Commission** which is established in all 3 cases shall also contain **representatives of trade unions**. If we take into account that final document (act) of the Investigation Commission shall be signed by all members of the Commission. When making an act, each member of the Commission shall provide his written opinion to the chairman of the Commission. Then it will be obvious that the fate of the person who suffered depends on the economic and legal education, initiative, fidelity to principle and positive features of the representatives of trade unions

Besides, when the labour protection requirements are violated by the officials, if the accidents at the workplaces are hidden, then representatives of trade unions may raise this issue

before state bodies to call these persons to account. At the same time, according to the article 237 of the Labour Code: « *When dangers for health and life of workers are created the trade unions have the right to raise before the authority carrying out state control over the observance of labour legislation the issue of stopping the use of any machinery which has faulty components and mechanisms which are dangerous for job safety; the production of other kinds of products, use of materials, equipment, and technology which are hazardous to human health; and also activities and decisions made by the employer which are in violation of laws on job safety.* ».

Taking into account the abovementioned, employees shall more seriously and more actively participate in elections of persons advocating trade unions and labour collectives and shall not forget that they will only win from assigning protection of their rights to the qualified person.

The normative legal documents for conduction of public control consist of **Regulations** approved by the Executive Committee of the Azerbaijan Trade Unions Confederation (ATUC).

Regulations on “*Organization and Implementation of Public Control by the Trade Unions over Observation of Labour Legislation*” have been approved as an Annex No3 to the Decision of the ATUC Executive Committee on May 23, 2001 (Protocol №23 p.8.g).

Regulations on “*Public Control Commission of the Trade Union Committee over Observation of Labour Legislation*” have been approved as an Annex No4 to the Decision of the ATUC Executive Committee on May 23, 2001 (Protocol №23 p.8.g).

Regulations on “*Labour Protection Commission of the Trade Union Committee*” have been approved as an Annex No6 to the Decision of the ATUC Executive Committee on May 23, 2001 (Protocol №23 p.8.g).

Regulations on “*Public Advocate of the Trade Union Committee on Labour Protection*” have been approved as an Annex No7 to the Decision of the ATUC Executive Committee on May 23, 2001 (Protocol №23 p.8.g).

According to the 239.3 of the Labour Code of the Republic of Azerbaijan the Decree No3 of the Cabinet of Ministers on “*Approval of regulations, conditions and amount of payments to the employees who have suffered health problems as a result of production accidents or occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because of the same reasons*” on January 9, 2003

Broad information about payment of compensations to the employees who have suffered health problems as a result of production accidents or

occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because of the same reasons has been provided in the abovementioned documents. Together with this, we will try to give information about some issues which may be interesting for the reader. As we know, compensation shall be paid by employer to the employees who have **suffered health problems** as a result of production accidents or occupational diseases that were employer’s fault, or **family members and other dependents of an employee who has died** because of the same reasons

In general, we shall not forget that one of the main appropriate basis for payment of compensation for harm to the person who suffered or to those who have right to this compensation is existence of employment relations with the organization. But, presently, there are many enterprises in our country which work without concluding employment agreements, and there are many objective and subjective reasons for that. The issue of material responsibility before the person who suffered in cases when employee works without employment agreement is resolved in accordance with **civil legislation** of the Republic of Azerbaijan.

According to Regulations: «*The compensation shall be paid at the expense of enterprise’s income, in*

*organization with budgetary financing at the expense of budget or off-budget resources». As it was mentioned before, the main document for payment of compensation is investigation act and documents enclosed to it. The employee who has suffered health problems (lost ability to work or who has died) **are to be paid monthly payments and other extra fees related to the unfortunate incident.***

Thus:

- *If the employee lost his/her ability to work the payment of compensation is determined in the amount according to the percentage of lost ability and paid from the person's salary which he/she had one day before the injury;*

- *If the employee has died the amount equal to 100% of the person's salary which he/she had one day before the injury is determined and paid to the persons who have right to it in accordance with article 1121 of the Civil Code of the Republic of Azerbaijan.*

When the amount of payment is determined, **average salary of the employee** shall be based on the average salary for the preceding 12 calendar months before the employee died or lost ability to work.

The list of included and unincluded payments in the process of determining the average monthly

salary for payment of compensation for injury is provided in the Appendix 1 to the Decree No 37 of the Cabinet of Ministers of the Republic of Azerbaijan on August 25, 1999 on «*Approval of regulations on wages coefficient and determination of included and unincluded payments in the process of determining the average monthly salary for payment of leave*».

According to the Regulations, the amount of monthly compensations paid for work injuries during mass increases of minimum salary and wages of employees in the guilty enterprise shall be corrected and paid in accordance with legislation. In this case, the average monthly salary used in determination of the monthly payments is determined from the two month actual average salary for position in the guilty enterprise where person worked before, after the mass increases and paid starting from the date the increase took place. The list of included and unincluded payments in this average monthly salary is approved by the Decree No 126 of the Cabinet of Ministers of the Republic of Azerbaijan on July 15, 2000 of approval of the «*List of included and unincluded payments in the average monthly salary*».

According to the legislation, «*the amount of payments to injured persons under 18 years old may not be less than five minimum wages*».

According to the regulations the enterprise guilty of the employee's injury shall pay additional expenses (procurement of goods, medicines, prosthetic devices, nursery, transportation expenses to the place of treatment and back, sanatorium-and-spa treatment sometimes, taking into account the accompanying person, procurement and repair of special transportation means, fuel, etc) determined by the Medical Labour Expert Commission.

In cases when the guilty enterprise is re-established, the injured person shall receive payments from successor of the enterprise. At the same time, in cases when the enterprise guilty in injury is liquidated, the compensation is paid to the injured person in accordance with legislation. The disputes between parties (injured person and enterprise) are resolved in accordance with legislation of the Republic of Azerbaijan.

In cases stipulated in the article 239 of the Labour Code, the issuance of compensations shall not apply to employees insured mandatorily by employer at insurance agencies. The violation of procedures on protection of labour, as well as the insurance fee to employees damaged for labour conditions and his family members shall be paid in the manner and amount foreseen in the proper insurance agreement.

Although there is legislative guarantees for payment of

compensation for injuries and loss of ability to work which happened as a result of accident at the workplace or occupational diseases, in practice, thousands of people may not receive compensation for certain reasons. The main reasons are liquidation of the enterprise, termination of the production process, illiquidity of the enterprise.

“The Rules on regulation of the debts of governmental enterprises privatized and provided for management on monthly payments to the employees who suffered as a result of accident at the workplace or occupational diseases, or family members and other dependents of an employee who has died because of the same reasons” have been approved by the Decree of the President of the Republic of Azerbaijan on August 4, 2008 with the purpose to partially eliminate the problem.

Broader information about these issues is provided below.

The law of the Republic of Azerbaijan on Technical Safety

The law on Technical Safety has been adopted with the purpose to determine legal, economic and social potential bases for safe exploitation of potentially dangerous sites, to regulate activity of physical persons and legal entities exploiting these sites for prevention of accidents which may

happen and elimination of the outcomes of accidents which already took place. Per se, the law provides definition of potentially dangerous sites and the list of these sites is enclosed to the law. This law, also determines technical safety requirements for projection, construction and exploitation of potentially dangerous sites. One of the technical safety requirements for exploitation of potentially dangerous sites is refers to the staff. It is shown in the requirements that physical persons and legal entities exploiting such sites **“during preparation of the staff fr work at potentially dangerous objects, they shall provide technical safety, qualification, competence and medical suitability of the staff”**. But, observations made within the monitoring process and interviews with employees, show that this provision of the law is not observed. As a result, dangerous accidents are unavoidable in such sites because of threat of accidents and inexperience of employees. According to the requirements of the law persons who work at the potentially dangerous sites **“shall pass medical check-up and certification not less than once a year”**. Of course, employer is responsible for implementation of this requirement of the law. Indeed, employer shall take measures for timely certification of the employees. According to the article 53.2. of the Code on Administrative Violations employers may be fined and

charged in the amount from 700 manats to 1200 manats for not conducting certification of employees. Even though, during monitoring both at many of potentially dangerous sites and enterprises not related to this category certification of workplaces and employees is not conducted within the provided period and the procedures. There are also serious shortcomings in periodic medical check-up of the employees. Shortcomings revealed during the monitoring process are mainly as follows.

- *Employers do not send employees (mainly in the private sector) to the medical check-up on time. Even there is no any medical institution providing such services to these enterprises;*

- *There is a superficial attitude towards employers in the medical institutions. In some cases based on the agreement with employees their medical problems are not shown in the documents.*

Also provisions on internal control over observation of the technical safety regulations, technical investigation of the causes of accident, technical safety expertise at the potentially dangerous sites have been reflected in the law. In general, although the law meets international standards, there are serious problems in its application

Normative documents on payment of compensation for health hazard and compensation

to the family members of those who died as a result of accidents and occupational disease on the workplace

According to the article 239 of the Labour Code **“The employer who is fully or partially responsible for unfortunate incidents or work related illness is to pay in full both compensation for losses or poor health of the employee, and also pay the costs of social security organizations which paid the employee pension connected with medical treatment, granting a benefit, and also other additional expenses, stipulated by the Civil Code of the Azerbaijan Republic.”**

According to the article 239 of the Labour Code also **“The employee who has suffered health problems as a result of production accidents or occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because of the same reasons are to be paid the appropriate payments provided in the legislation.”**

With the purpose to implement these provisions of the Code Cabinet of Ministers determined regulations, conditions and amount of payments to the employees who have suffered health problems as a result of production accidents or occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because

of the same reasons. In the previous practice, the persons related to this category received both one-time and monthly payments.

The practice of one-time and monthly payments to the employees who have suffered health problems as a result of production accidents or occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because of the same reasons has been stopped by the Decree No 3 of the Cabinet of Ministers on January 9, 2003. In fact, payment of one-time compensation to the persons who suffered health problems because of the abovementioned reasons and fully or partially lost the ability to work, also family members and other dependents of an employee who has died because of the same reasons is more reasonable than payment of monthly allowances. Thus, durable payment of monthly compensation is not always possible. Here risk is much higher. In cases when the enterprise responsible for an accident is liquidated, or the owner of the enterprise changed, or anything else happens to the enterprise (e.g. bankruptcy) payment of compensation to the employees who have suffered health problems as a result of production accidents or occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because of the same reasons becomes

impossible, as a result persons are left without allowances. Presently, many people in the country may not fully obtain their monthly compensation, or these payments are not provided for months or years. It is not occasional that the President taking into account the scope of the existing problem approved **“The Rules on regulation of the debts of governmental enterprises privatized and provided for management on monthly payments to the employees who suffered as a result of accident at the workplace or occupational diseases, or family members and other dependents of an employee who has died because of the same reasons”** by the Decree on August 4, 2008. According to these Rules the allowances have been determined for persons who fully or partially lost ability to work as a result of production accidents or occupational diseases that were employer’s fault, or family members and other dependents of an employee who has died because of the same reasons at the expense of the state budget. But these Rules do not apply only to the debts of governmental enterprises on monthly payments to the employees who suffered as a result of accident at the workplace or occupational diseases, or family members and other dependents of an employee who has died because of the same reasons. The following enterprises are related to this category:

- Governmental enterprises about which the decision on privatization has been made before the rules entered into force, but which haven’t been finally privatized yet;

- Governmental enterprises privatized in the period from September 27, 2003 to the date when these Rules entered into force;

- Governmental enterprises provided for management before the Rules entered into force.

Although signing of the Decree and approval of these Rules is very progressive step, it just partially solved the problem. Thus, these monthly allowances do not comply with the real amounts due to those persons, they are equally determined for all.

Monthly payments determined according to the Decree:

- Ability to work lost up to 29 percent - 30 manats;

- Ability to work lost from 30 to 59 percent - 40 manats;

- Ability to work lost from 60 to 79 percent - 50 manats;

- Ability to work lost from 80 percent and more - 60 manats;

In the case of death - 70 manats.

To fully resolve the problem, monthly compensations shall be replaced by the one-time compensation system. Presently, this method is used in many countries of the world. In this case the rights of persons who suffered health problems as a result of

production accidents or occupational diseases, or family members and other dependents of an employee who has died because of the same reasons to obtain just compensation will be realized. But, replacement of monthly compensations with one-time compensation also creates certain problems. These problems primarily are as follows:

- Many enterprises, particularly medium-scale and small-scale enterprises are not able to pay large amounts of allowances (compensations). This is particularly impossible when an accident which took place causes injury and partial or total loss of ability to work of the many employees or death. If we take into account that in cases of injuries as a result of accidents that were employer's fault, the employer shall also pay for other expenses such as treatment, funeral expenses, these payments become huge and only large enterprises are able to pay such large amounts of compensation.;

- When salaries raise during payment of monthly compensations, the amount of compensations may also raise. But in payment of one-time compensations, additional amounts are not paid in cases of inflation. And this increases the risk of the person who receives compensation;

- Amount of one-time compensation is relatively large. Person who receives such

compensation may establish a business by effectively using the money. But in many cases the contrary may happen. In cases of inefficient use of money it may exhaust in a short period of time. As a result, risks of the person who receives compensation increase again.

Notwithstanding the abovementioned problems one-time payment of the compensation is more acceptable. Employer implements his duties and thus provides the right of employee to obtain just compensation. Prevention of the subsequent risks becomes the problem of effective use of the compensation.

The most progressive way to prevent inability of enterprises to pay the compensation is application of insurance system which is broadly used in many countries and is allowed by the Legislation of the Republic of Azerbaijan. According to the country legislation, employer is fully responsible for health damages as a result of accidents at the workplace and occupational diseases. Employer may pay compensation when such accidents take place or may ensure the employees. In the latter case, compensation will be paid by the insurance company. Application of this way will reduce cases of hiding the accidents at the workplaces. Application of this method will also bring to the formalization of the many informal workplaces.

PROTECTION OF LABOUR AND MAIN CAUSES OF ACCIDENTS ON THE WORKPLACE AS A RESULT OF VIOLATION OF SAFETY MEASURES IN CONSTRUCTION SECTOR

Within the framework of monitoring in the country, and mainly in Baku, monitoring has been conducted on the construction sites. Taking into account that admittance to the construction sites of unauthorised persons and also state bodies which have rights to control is difficult, monitoring was conducted mainly with such methods like *outside observation without entering the sites, unstructured interviews with workers after the working day, taking photos*. The monitoring has been conducted mainly at multi-storey residential and non-residential buildings. About 30 construction units have been attracted to the monitoring. The information in Mass Media about accidents which took place on the construction sites has also been used. But this information has been used only for confirmation of outcomes obtained by other tools and was not considered as the main source of information.

The following conclusions have been made as a result of the monitoring:

The norms and standards provided in the Constitution of the Republic of Azerbaijan, international norms to which the country is a party, Labour Code, Law on the Technical Safety and other normative legal acts on labour protection are not observed in the construction sector, mainly on sites where works are conducted on construction, repair and reconstruction of residential and non-residential spaces. As a result, right of everyone to work in safe and healthy conditions is violated. Violation of this right on its turn brings to the accidents on the workplaces and occupational diseases.

As a result of monitoring conducted on the construction sites the following conclusions are obtained:

- Majority of the construction companies (firms, limited liability companies, etc), particularly those constructing multi-storey residential buildings or repairing and reconstructing such buildings are not qualified.

Intensive construction works launched in the country turned this sphere into the sphere which brings relatively quick and high income. That is why multiple construction firms and Limited Liability Companies have been established. These enterprises do not have previous and established experience. Majority of founders of such enterprises aim to construct just one or several buildings and immediately obtain high income. There is lack of experiences human resource potential. Main criteria for selection of workers is their consent to work for low salary, not the qualification.

- Majority of enterprises provide protection barriers according to the construction norms and regulations. But these barriers in many cases do not meet the standards. Particularly on narrow streets these barriers are very close to the constructed building;

- There are no appropriate posters on collective safety measures and special signs in the administrative building where construction is managed and directly on the construction sites (size, colour, language, etc.).

- The construction site is not certified by the appropriate executive body before starting of the construction works. Thus, conformance of the workplace to the labour protection and safety regulations, physical and moral

etching of the equipment and settings is not checked;

- There are no special engineers on safety measures in such enterprises. Employees are not instructed on safety measures in accordance with provided regulations. There are no instructions on exploitation of technical equipment. Visual aids providing information on labour protection and safety regulations are not posted at the workplaces. In many cases employees are not provided with special clothes, particularly protective helmets and shoes;

- Use of personal safety means for prevention or minimisation of injuries risk in cases of accidents is very poor. Majority of employees are not provided with special clothes, particularly protective helmets and shoes;

- There are no gathering area for workers in cases of fire or other emergency situations. It was determined that, there was no plans and escape ways to be used in emergency situations as it is provided in the construction norms and regulations;

- The instruction is not conducted for safe implementation of the works as it is provided in the existing legislation;

- Initial and periodic medical examination of employees is not conducted for prevention of occupational diseases;

- There are no rest rooms for employees to warm up and rest at breaks.

The provision of the Labour Code of the Republic of Azerbaijan stating that “for employees who work outside during cold and hot seasons of the year, in closed unheated buildings or in hot mills the employer shall provide areas to warm up and to rest” is not observed on the construction sites.

- The places provided in the existing regulations for keeping employees’ clothes are useless and these clothes are not laundered (employees take their clothes home to launder. Thus, those who are not able to do it, has to use dirty clothes);

- There are no appropriate conditions for workers to have shower after the working day for provision of implementation of the hygiene and sanitary regulations.;

- In enterprises where monitoring has been conducted employees are not provided with drinking water (spring or sparkling) at the workplaces (it was observed that in many cases workers drink useless water).

- Special places are not provided for storage of gas-cylinders (propane, oxygen, carbon ...) which are source of special danger. These cylinders sometimes are disorderly stored and safety regulations are not observed during their use.

- During the monitoring process, it was revealed that there are no medications and medicine chests in the buildings and the territory of the construction site which may be needed for provision of primary health care in cases of accidents. In some construction sites as employees mentioned, they were informed that there are some medicines in the working room;

- Majority of construction sites are equipped with headlamps which are provided for lighting of the construction site at night as one of the collective safety measures. Actually, these headlamps provided not for safety measures, but to the large extent for construction works during night. But in some construction sites lighting is poor;

- In all construction sites where monitoring was conducted overtime works are admitted and employees do not receive additional payment for overtime work;

- Effective control was not provided by the appropriate executive organ. Although, in recent years, administrative and criminal responsibility for violation of labour protection and safety regulations have been increased, in practice, adequate punishment is applied very seldom.

- In such construction sites, labour relations with employees working at the construction are not formal. An majority of cases employment agreements are not concluded with employees. In other cases, there is a big difference

between formal and actual salary, because of “double bookkeeping”.

Although the overall situation with observation of labour protection and safety regulations in the construction sector of the country is dissatisfactory, it would not be right to refer it to the whole sector. Thus, indicators of accidents and occupational diseases are high only in the sphere of construction, repair and reconstruction of residential and non-residential spaces. In other construction spheres, including construction of transport communication means, tunnels and conductors, large scale oil platforms, terminals, infrastructure related to them with participation of foreign companies, indicators of accidents on workplaces are low and on those construction sites observance of labour protection regulations conform with standards.

The following are discrepancies contrary to the labour protection regulations revealed during the monitoring conducted in the sphere of construction, repair and reconstruction of residential and non-residential spaces:

- At the construction units where monitoring was conducted attestation of the workplaces hasn't been conducted by the employers;
- Employees working at the construction site did not pass initial and periodic medical examination;

- The work was not stopped at the places where artificial protection from strong wind or the sun was impossible;

- Lack of instruction activities and absence of any journals related to the provision of safety measures;

- Visual aids and posters related to safety regulations was not placed at the construction sites;

- Employees were not equipped with special clothes and personal safety means;

- Absence of medical units, medicine and means for primary health care;

- Absence of labour agreements with employees or these agreements do not meet the requirements of article 43 of the Labour Code;

- Gas-cylinders which are source of special danger are not stored in the special places;

- Regular involvement of employees in the overtime works;

- Working clothes of employees are not washed and there is no shower room for workers;

- Employees are not provided with drinking water at the workplaces and special places are not provided for lunch;

Reasons providing conditions for discrepancies

- Lack of long-term experience and qualification of the majority of the construction companies, particularly those constructing multi-storey residential buildings or repairing and reconstructing such

buildings and establishment of these construction sites for temporary purposes;

- High formal and informal expenses increase prime cost of the construction.

Entrepreneurs conducting the construction wish to obtain high income. As a result, expenses for provision of labour protection and safety measures are extremely understated;

- Inexperience and negligence of employers. Non-involvement of qualified human resources and engineers;

- Absence of effective control mechanisms which provide room for negligence;

- Lack of total implementation of administrative responsibility and criminal prosecution for accidents which happen at the workplace;

- Employees do not know their rights;

- Threat of losing the job and thus, inability to set up claims;

- Absence of trade unions

- Informal labour relations with employees, absence of employment agreements;

- Clients do not require official documents on management of control over observation of labour protection and safety regulations and poor control over these issues;

- Used equipment is physically and morally outmoded, and the ability to obtain new equipment is low;

- Nonobservance of labour protection and safety regulations.

QUANTITATIVE INDICATORS OF THOSE WHO SUFFERED FROM INDUSTRIAL INJURY AND OCCUPATIONAL DISEASE

As it was mentioned, the statistics of persons who suffered as a result of accidents at the workplace is inaccurate. State statistics bodies classify information that they receive and compile statistic information. But majority of accidents which happen at the workplace, particularly minor injuries are hidden. Employers provide some incentives to employees, or abuse the fact that they do not know their rights and make them admit that the injury happened in home accident not at the workplace. As a result, majority of injuries are registered as home accident not job-related accident. The situation with occupational diseases is much worth. Thus, statistics of occupational diseases is prepared

based on the information provided by the Ministry of Health. In many cases employees may not prove that their diseases are occupational and are obtained at the workplace. Although, such diseases are classified and approved by the appropriate executive bodies in accordance with workplaces.

Within the monitoring process, Citizens' Labour Rights Protection League applied with requests to various state bodies, including State Statistics Committee and obtained official information on persons who suffered from accidents and the workplaces and occupational diseases for the last three years. This information is as follows.

**Work injuries according to the lines of activity
(2005-2007)**

Work injuries according to the lines of activity	2005	2006	2007
Number of persons - total who suffered from accidents at place of work	189	273	330
including:			
Mining industry and quarry	37	65	6
Processing industry	36	64	58
Electricity, gas and water production and distribution	16	10	9
Construction	40	56	169
Transport, warehouse and communication	12	20	8
Other types of economic activity	48	58	80
From these cases of fatal accidents			
Number of persons – total	54	81	128
Including			
Mining industry and quarry	5	16	1
Processing industry	3	13	16
Electricity, gas and water production and distribution	10	8	8
Construction	14	17	68
Transport, warehouse and communication	5	8	2
Other types of economic activity	17	19	33
Number of persons who suffer from occupational disease	300	350	301

NONSTRUCTURED INTERVIEWS WITH EXPERTS

One of the monitoring tools among those applied within the monitoring process was conduction of nonstructured interviews with experts on labour protection issues and safety measures. The main purpose in application of this tool was to research the reasons for violation of labour protection norms and safety regulations. 15 experts have been involved in the interviews. The experts have been selected in order to cover engineers presently or in past employed in the range of leading production fields, inspectors on labour protection and safety measures presently or in past working at the trade unions, lawyers (mainly lawyers with experience in production sphere).

Mainly the following questions have been given to the interviewees during nonstructured interviews:

1. Do you think that the norms providing legal basis for implementation of regulations on labour protection are perfect?

2. Your opinion on indicators of observation of labour protection regulations in various institutions.

3. Which are the main reasons for providing conditions for labour protection regulations?

4. Is internal control effective for observation of labour protection regulations?

5. Is the special staff provided in the institutions for maintenance of labour protection and safety measures, and is this staff qualified?

6. How effective is the state control over the observation of labour protections regulations?

7. Is there public control over provision of labour protection regulations, and if there is, to what extent it is effective?

Almost all experts think that, although there is a need for improvement of normative basis on labour protection and safety measures, correct application of the present norms provide conditions for observation of labour protection and safety regulations at the workplace. The main problem is not in gaps or shortcomings in the norms, the problem is in invalid application of these norms.

Experts mentioned that governmental institutions (budget organizations and economic units under government subordination) approach labour protection and safety measures more seriously. In these organizations funds are assigned for provision of observation of labour protection and safety regulations, employees are provided with special working

clothes, visual aids are used, employees pass medical examination and are instructed when needed.

It should be mentioned that during previous monitoring of the organization the indicators of observation of labour protection and safety regulations the governmental organizations were much higher in comparison with private organizations. Thus, indicators according to each evaluation criterion on 30 lines of activity were 65- 80 %.

Experts mentioned that the indicators of observation of labour protection and safety regulations are very low in the private sector. The situation is very sad in the private sector in such institutions, particularly in construction including construction, repair and reconstruction of residential and non-residential spaces, roads and road junctions, areas of town-building, carpenter shops, shops for production of doors and windows constructions, trade, garage economy etc. There is no even engineer staff on labour protection or safety measures in the majority of such organizations, or these positions are vacant.

In the majority of private institutions employees do not pass medical examination, they are not instructed at the initial or the following stages, working mode is not observed, right of employees to rest is violated, workplaces do not meet hygiene and sanitary requirements. There is no any conditions for rest and feeding of the staff.

Experts mentioned lack of effective internal and governmental control, corruption, evasion of taxes and social payments, not spending the means assigned for implementation of labour protection and safety measures, low employee qualification, inexperience of technical engineering staff, ability of leaders to avoid the responsibility as the main reasons for such situation.

Although, one part of the experts noted the increase in effectiveness of the state control in recent years, other experts mentioned that the situation hasn't changed seriously. On the contrary, increased number of visits to the institutions with the purpose of examination put employers in worth situation. Some employers noted that regardless of observation or non-observation of labour protection and safety regulations they have to bear informal expenses and that the main purpose of these checkings is not improvement of situation, but provision of personal interests. At the same time, in the organizations with activity of trade unions situation is relatively better. Provision of conditions for activity of trade union in organizations was estimated as an important indicator. It means that employers bear responsibility before the state and the law and normally accept public control.

Generally majority of experts noted that there is a need to radically change the situation and provided advices and recommendations on this issue.

FINAL OPINION AND RECOMMENDATIONS ON THE RESULTS OF THE MONITORING

Against a background of every year increase of accidents at the workplace and as a result, loss of ability to work by employees for a long period of time or death in the labour sphere of the country, toughening of labour protection norms by the appropriate governmental bodies does not give a positive outcome. Large increase of administrative and financial responsibility also does not improve the situation. Thus, appropriate executive authority implementing control over labour protection, and in general, observance of labour norms and regulations were not able to provide effective control in the labour sphere of the country. There are both objective and subjective reasons.

The effectiveness of control is also decreased because the large part of labour market is in the informal sector.

On the other side, as a result of non-observance of labour protection regulations dynamic of occupational diseases in line with accidents is increasing. The figures referred to official statistics in this report also clearly show this situation. Even so, if we appeal to the results of monitoring

conducted by the organization before we can say that the official statistics do not reflect the real situation. Actually, accidents at the workplaces and occupational diseases are much more than in the official statistics.

By analysing causes of accidents on the workplace in 2007 and the first half of 2008 the following causes have been revealed

- Dissatisfactory organization of production;
- Violation of technological processes;
- Non-preparedness or insufficient preparedness of employees for implementation of labour protection regulations;
- Lack of ability and knowledge for exploitation of working tools;
- Non-observation of safety regulations, violation of labour discipline;
- Negligence of inexperience of executors, shop leaders, brigadiers and other persons directly supervising employees;

The following are causes of occupational disease which happened during the same period

- Absence of appropriate hygiene and sanitary conditions at the workplaces;
- Employees do not pass medical examination (where it is necessary);
- Absence of protection from wind;
- Employees are not equipped with necessary protective means;
- Employees are not equipped with special clothes for work at cold or hot weather;
- The equipment used does not meet the technical standards
- And etc.

During the monitoring process, it was determined that heads of many of the enterprises, particularly small-scale enterprises, do not take any preventive measures on labour protection, they take measures only when accident happens, and these measures do not usefully affect the situation. Mainly in the private enterprises, particularly in construction sector (it is mentioned separately) labour protection is considered as a secondary and sometimes as last duty. And this bring to the multiple violations and these violations on their turn bring to the job-related injuries and occupational diseases in such enterprises.

Inability to regulate existing situation with administrative methods for long years requires new sight and new attitude. Just enhancement of authority of

controlling organ, toughening of the legislation will not bring serious outcomes. The existing situation requires setting of management in the field of labour protection on fundamentally new bases. In formation of new system main attention shall be paid to attempts for minimization of risks by development of insurance system in line with taking complex legal, technological, social, economic, sanitation measures.

Taking into account the abovementioned, realization of the following recommendations is necessary.

- Periodic monitoring together with appropriate executive authority, Republican Committees of the Trade Unions on appropriate sphere, on fields, by means of local representations of these bodies should be conducted for the purpose of complex evaluation of the working conditions at the workplace, prevention of job related injuries and other accidents. Depending on the outcomes of monitoring action plan should be prepared and implemented;
- The existing legislative and normative basis in the sphere of labour protection should be improved. Normatives existing in the field of labour protection, including hygiene and sanitary normatives shall conform to the international standards. New normative documents should be adopted for provision of regulations

on labour protection and safety measures;

- All production and nonproduction spheres shall be certified in accordance with requirements of labour protection and safety measures. The working process at unqualified organizations shall be stopped. Attestation of working places shall be conducted regularly;

- Additional benefits and compensation should be provided for those working at harmful places, employees should be sent to the appropriate preventive treatment institutions for health recovery. Additional funds should be searched for sanatorium-and-spa treatment of employees. Imperative obligations shall be charged on employers for provision of funds for these purposes;

- The insurance system shall prevail in provision of monthly compensation to those who suffered from job-related injury and occupational disease or heirs of the person who died because of these. On the initial stage, insurance from job-related injury and occupational disease of employees who will work on the risky work spheres where it is clear that the large amounts are impossible to pay at once and shall be obligatory for employers. Later, the insurance system shall be applied to all working places;

- Appropriate measures shall be taken to replace the monthly compensation provided by the Decision No3 of the Cabinet of

Ministers on January 9, 2003 in cases when employee totally or partially loses ability to work or dies as a result of an accident at the place of work or occupational disease by the one-time compensation. Measures on improvement of insurance system are also important as well as amendments to the Decision.

- The causes of occupational diseases shall be investigated and preventive measures shall be taken.

- State control over the labour sphere shall be organized again. It is impossible to provide labour protection and safety at the workplaces only by increasing administrative responsibility. Authority of the supervisory body shall be increased and this body shall be granted a special authority for audit of organizations on meeting the labour protection requirements and certification.

- The criminal punishment has been provided in the Article 162 of the Criminal Code, but this punishment is applied only for when the accident already took place. From this view point, criminal responsibility shall be also provided for gross violation of labour protection and safety rules. The obligatory attestation of the workplaces in the existing and newly founded institutions (particularly construction areas) shall be conducted, and the activity of unqualified institutions shall be immediately stopped, and in accordance with the scope of violation administrative of criminal case shall be set up.

**Citizens' Labour Rights
Protection League**

PROTECTION OF LABOUR IN THE REPUBLIC OF AZERBAIJAN

LEGISLATION AND PRACTICE

REPORT ON OUTCOMES OF THE MONITORING

Çapa imzalanmışdır: 29.12.2008

Kağız formatı: 70x100 1/16

H/n həcmi: 2,75 ç.v.

Sifariş: 441

Sayı: 300

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