



PRC Labor and Employment Law Newsflash

March, 2012

PRC Law on Prevention and Treatment of Occupational Diseases Revised

On December 31th, 2011, Decision of the Standing Committee of the National People's Congress on Amending *PRC Law on Prevention and Treatment of Occupational Diseases* (hereinafter referred as "*Law on Prevention and Treatment of Occupational Diseases*") came out and the revised law came into force on the same day. Our team has summarized the new and revised articles and analyzed the influences imposed by them on the operation and management of corporations. Please see the followings for your reference.

- New articles on increasing the obligations of the enterprises: enterprises should strictly follow close to the standards of occupational health and put measures of occupational disease prevention and treatment into practice; enterprises shall guarantee the funding of occupational disease prevention and treatment; enterprises using the service of labor dispatching shall undertake the obligation of occupational disease prevention and control; the main responsible persons of an employer shall be fully responsible for the prevention and treatment of occupational diseases of the entity (Article 6, 14, 22 and 88 of *Law on Prevention and Treatment of Occupational Diseases*)
- New articles concerning the diagnosis and appraisal of occupational diseases: if the enterprise refuse to provide materials, the diagnosis and appraisal institutions of occupational disease can directly make the conclusion of the diagnosis or appraisal of occupational disease; the diagnosis and appraisal institutions of occupational disease can conduct on-site investigation; in arbitration cases involving the confirming of occupational history or occupational-disease-inductive exposure history of employees, if the enterprise holds the evidence but refuses to provide, the enterprise will bear the adverse consequences; if the enterprise does not truthfully provide or refuses to provide materials needed in the occupational disease diagnosis or appraisal, it will be imposed with an administrative penalty. The articles above favor the diagnosis and appraisal of occupational disease in order to protect the employees' rights and the purpose of them is to urge the enterprise to perfect the daily management regarding occupational disease prevention and treatment (Article 48, 49, 50 and 73 of *Law on Prevention and Treatment of Occupational Diseases*)
- New articles of the rights of the labor union: where an employer formulates or revises the rules relating to the prevention and treatment of occupational diseases, it shall listen to the opinions of the labor union; the labor union has the right to sign special collective contracts on occupational safety and health on behalf of the employees. The aforementioned articles increase the

supervising right of the labor union in the work of occupational disease prevention and treatment of the enterprises. (Article 4, and 41 of *Law on Prevention and Treatment of Occupational Diseases*)

■ Supervision authority of the occupational health has been adjusted:

| Before | | Revised | |
|-----------|---|-----------|---|
| Article 8 | the administrative department of health | Article 9 | the administrative department of health |
| | | | the department of work safety supervision |
| | | | the department of labor and social security |

Before the amendment, the report of projects of the harm of occupational diseases, the evaluation of the construction projects, investigating and dealing with occupational-disease-inductive accidents and illegal behaviors are conducted by the administrative department of health, while the revision transferred the responsibility to the department of work safety supervision and administration which shows the control of the department of work safety supervision and administration in the workplace of enterprises. (Article 9, 16, 17, 18, 64, 65 and Chapter 6 of *Law on Prevention and Treatment of Occupational Diseases*)

■ Sum of the administrative penalty against an employer has been changed:

| Before | | Revised | |
|---------|--|---------|---|
| Article | Penalty | Article | Penalty |
| 63 | A fine less than 20,000 Yuan | 71 | A fine less than 100,000 Yuan |
| 64 | A fine of more than 20,000 but less than 50,000 Yuan | 72 | A fine of more than 50,000 but less than 100,000 Yuan |
| 70 | A fine less than 300,000 Yuan | 78 | A fine less than 500,000 Yuan |

The revised articles improve the amount of administrative penalty, thus raising the costs of illegal business.

Case Study: Employees from Company A Poisoned by Normal Hexane

Company A, mainly producing cellphone screens, is a supplier of a famous cellphone company. In August, 2008, Company A decided to use normal hexane, a chemical solvent, as the phone screen cleaner. In the second half of 2009, many employees in Company A had limb numbness, stabbing pain, fainting of poisoning symptoms. The local government set up a joint investigation team consisted of department of health and department of work safety supervision. Through the investigation of the ventilation establishments, sample survey of site air condition and inquiries against the main responsible person, it was concluded as an occupational-disease-inductive incident caused by illegal use of toxic chemical solvent, ignoring the protection against occupational hazards and employee's protection. After finding out the cause of the incident, the authority ordered the company to stop operations and to seal the remaining normal hexane. The authority also imposed an administrative penalty of RMB 80,000. Company A dismissed and replaced the main responsible person and paid compensation to poisoned employees in accordance with regulations of work-related injury insurance. Due to this incident, Company A suffered huge economic loss (damages paid to employees, production halt loss and administrative penalty) with negative impact on the reputation of the enterprise.

The lesson we can learn from this typical occupational-disease-inductive incident is that an enterprise will suffer a double loss of huge economic loss and impact on reputation if the enterprise fails to comply with the requirements stipulated in the *Law on Prevention and Treatment of Occupational Diseases* that when setting up new projects, possible occupational-disease-inductive factors in the production process shall be reported, evaluated and detected; taking effective measures to prevent and treat existing occupational-disease-inductive factors; establishing and perfecting management system of Environment, Health and Safety (EHS). If the aforementioned incident happened after January 1st, 2012, based on the revised law, the main responsible person from Company A might be prosecuted for criminal liability and the enterprise would face a higher amount of administrative penalty.

This newsflash is prepared by the Labor Law Team of Dacheng Law Offices, including Anderson Zhang, Elle Gao, Maggie Kong, Susan Shan, Novel Sun, Kent Xu and John Zhou. If you have any inquiries regarding the PRC employment law matters, please contact us at laborlaw@dachenglaw.com.

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中国劳动法资讯速递 二零一二年三月刊

《中华人民共和国职业病防治法》修改

2011 年 12 月 31 日全国人民代表大会常务委员会作出了关于修改《中华人民共和国职业病防治法》(以下简称“《职业病防治法》”)的决定,并于当日公布施行。我们对《职业病防治法》新增、修改条款进行了归纳,并分析了这些变化对企业经营管理产生的主要影响,具体内容如下,以备参考。

- **新增企业义务条款:**企业要严格遵守职业卫生标准,落实职业病防治措施;企业要保障职业病防治资金投入;劳务派遣用工企业承担职业病防治义务;企业主要负责人全面负责职业病防治工作。上述条款强化了企业、主要负责人在职业病预防中的义务(《职业病防治法》第六条、第十四条、第二十二条、第八十八条)
- **新增职业病诊断、鉴定条款:**企业不提供资料的,职业病诊断、鉴定机构可直接作出职业病诊断、鉴定结论;职业病诊断、鉴定机构可进行现场调查;在确认员工职业史、职业病危害接触史的劳动仲裁案件中,企业掌握证据但拒不提供的,承担不利后果;企业不如实提供或拒不提供职业病诊断、鉴定所需资料的,将受到行政处罚。以上条款对员工职业病诊断、鉴定维权方面有利,以上条款设立的目的是督促企业完善职业病防治日常管理工作(《职业病防治法》第四十八条、第四十九条、第五十条、第七十三条)
- **新增工会组织的权利条款:**企业制定或者修改有关职业病防治的规章制度,应当听取工会组织的意见;工会组织有权代表员工与企业签订劳动安全卫生专项集体合同。上述条款加强了工会组织监督企业职业病防治工作中的权利(《职业病防治法》第四条、第四十一条)

■ 调整职业卫生监督部门:

| 修改前 | | 修改后 | |
|-----|--------|-----|----------|
| 第八条 | 卫生行政部门 | 第九条 | 卫生行政部门 |
| | | | 安全生产监督部门 |
| | | | 劳动保障行政部门 |

修改前,危害项目申报的受理、建设项目的审核、职业病危害事故和违法违规行为的查处等均由卫生行政部门实施。修改后企业工作现场的监察主要由安全生产监督部门负责。这次对职业卫生监督部门的调整突出了安全生产监督部门对企业工作现场的监察力度。(《职业病防治法》第九条、第十六条、第十七条、第十八条、第六十四条、第六十五条、第六章)

■ 修改行政罚款金额:

| 修改前 | | 修改后 | |
|-------|------------|-------|------------|
| 条款 | 罚款金额 | 条款 | 罚款金额 |
| 第六十三条 | 二万元以下 | 第七十一条 | 十万元以下 |
| 第六十四条 | 二万元以上五万元以下 | 第七十二条 | 五万元以上十万元以下 |
| 第七十条 | 三十万元以下 | 第七十八条 | 五十万以下 |

修改后的条款,提高了行政罚款的数额,加大了企业的违法成本。

案例分析：A 公司员工“正己烷”中毒事件

A 公司是一家生产手机屏幕的企业，是世界著名手机生产商的供应商。2008 年 8 月，A 公司决定用正己烷这种化学溶剂作为手机屏幕的清洁剂。2009 年下半年，A 公司许多员工出现四肢麻木、刺痛、晕倒等中毒症状。当地政府以卫生行政部门、安全生产监管部门为主组成联合调查组对事故进行了调查。联合调查组对 A 公司车间通风设施进行检查，对生产现场空气进行抽样检测，对 A 公司主要负责人进行询问，最后得出结论这是一起职业危害中毒事故，企业违法使用有毒化学溶剂，对现场职业危害防护与员工的防护忽视，造成了该起事故的发生。查明事故原因后，政府联合调查组依据《职业病防治法》的相关规定责令 A 公司停产整顿，停用、封存剩余的正己烷，并处以 8 万元行政罚款。A 公司撤换了主要负责人，并按照工伤保险相关规定向中毒员工支付了赔偿款项。A 公司因这起事故，经济损失数额巨大（包括支付给员工的赔偿款、停产损失和行政罚款），企业声誉也受损。

通过这起典型职业病中毒事件，我们知道，如果企业不遵守《职业病防治法》的规定，企业在项目立项时不对生产流程中可能存在的职业病危害因素进行申报、评估、检测，不对存在的职业病危害因素进行有效防护，不建立和完善环境、健康和安全管理体系统（EHS），一旦发生事故，企业经济上损失惨重，企业美誉度也大打折扣。如果这起事故发生在 2012 年 1 月 1 日以后，根据修改后的《职业病防治法》的规定，A 公司的主要负责人可能会被追究刑事责任，企业也将面临更高数额的行政罚款。

本资讯速递系大成劳动法团队撰拟，本期责任编辑：张根旺、高海燕、孔琪、单训平、孙颖、徐智强和周军。期待我们的资讯速递能对您有所裨益。若您有任何问题，请通过电邮 laborlaw@dachenglaw.com 联系我们团队。

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