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TOPIC 3

OCCUPATION RISKS : SOCIAL PROTECTION AND EMPLOYERS' LIABILITY

ARGENTINA

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I. GENERAL QUESTIONS

1.**Please, it provides general information on his national system of indemnification of risks of the work. When was created? Which were the main modifications introduced in the system from their creation?**

The positive regime in the matter of indemnifications by professional disease and industrial accidents has its origin in the Law Nº9,688 of year 1915, normative body that, with successive modifications, remained in use until year 1991, in which was replaced by the Law Nº24,028 although that new text did not imply a conceptual rupture with the countermanded precedent.

This last one, was replaced by the Law of Risks of the Work (L.R.T.) at the moment effective, that has its normative base in the Law Nº24,557 of the year 1995, that entered use 1/6/1996.

That made historical story to great outlines, summarizes the evolution of a normative system that had the following landmarks and characteristics.

Law Nº 9,688 of year 1.915:

- system of individual responsibility of the employer without obligatory insurance.
- relative to happened accidents of the work in dangerous activities and exceptionally to professional diseases that were exclusive effect of the work, whose taxativa enunciation was in charge of the National Executive authority. The successive normative reforms and the jurisprudence, were extending the indemnizables hypotheses of accidents and diseases.
- employer could take an insurance for the indemnifications. The payment of the medical attention was to its position (medical aid and pharmaceutical, provision of prótesis and ortopedia).

- separates from the general system of responsibility of the Civil Code in three main aspects
  - reduction of the excellent budgets of responsibility
  - reduction of causal eximentes
  - tarifación and limitation of the repair to the loss of the laborativa capacity.
- Payment preferredly in form of rent and not like indemnifications of unique payment
- trusteeship of the credit of the worker
  - reinforcement to the irrenunciabilidad (prohibition of the pact of quota litis)
  - bottom of guarantee to cover the patrimonial insufficiency with the employer
- possibility of deciding on the general regime of the Civil Code, resigning to the special system

Law 12,631 of year 1940: (it modifies law 9.688)

- Regula the shared in common responsibility of the pattern with the contractors, excepting to the loggings, agricultural, cattle or fishing.

Law 18,018 of year 1968: (it modifies law 9.688)

- Establece a minimum term of incapacity to be included/understood in the law.

Law 18,913 of year 1970: (it modifies Law 9.688)

- Amplía the definition of disease and industrial accident, theory of concausa.
- Amplía the included/understood subjects.
- Establece completely the unique payment of the indemnifications, leaving the system of rents, that had been lapsed in 1955 (Decree-Law 650/55) and restituted in 1958 (Decree-Law 4834/58).
- is allowed to take an insurance in favor of the working employees or.

Law 19,233 of year 1971: (it modifies Law 9.688)

- Modifica the designation of the included/understood subjects.
- Establece the mode of payment of the indemnifications, trying to protect the rights of the Bottom of Guarantee.
- Reglamenta the Bottom of Guarantee, its sources of financing and the calculation of the prescription of the actions relative to the collection to the Bottom of Guarantee.

Law 20,272 of year 1973: (it modifies Law 9.688)

- Ample sources of financing of the Bottom of Guarantee.

Law 20,505 of year 1973: (it modifies Law 9.688)

- Actualiza the maximum amounts for expenses of sepelio and indemnification to rightful claimants.

Law 21,034 of year 1975: (it modifies Law 9.688)

- Actualiza the maximum amounts for expenses of sepelio and indemnification to rightful claimants and modifies the calculation formula.

Law 23,643 of year 1988: (it modifies Law 9.688)

- Regula the responsibility of contractors, subcontractors and companies of possible services, giving the possibility to the worker of demanding combines indifferently them or.
- Permite the direct demand to the insuring company
- Modifica the compensatory formula and the tops

- Measured Establece in protection on the credit of the victim and the bottom of guarantee.
- Modifica the calculation of the daily wage
- Modifica the calculation of the prescription
- Amplía the borders of the professional diseases
- Modifica the regulation of the denunciation of the industrial accident

Law 24,028 of year 1991: (Law 9.688 replaces)

- Reproduce the system created by the law 9,688 and its successive modifications. Their main innovations are:
- competent law when the option by demand with sustenance in the Civil Code was exerted.
- is proclaimed that the repair by disease will only include the labor incidence and will discard the factors other people's to the work, having eradicated concausa.
- modify the compensatory tops

Law 24,557 of year 1995: (Law 24.028 replaces)

- took place substantial changes, whose characteristics are enunciated more down (to see # 2). One struggled if one were a subsystem of the social security or if one of individual responsibility, until the Supreme Court of Justice of the Nation it was sent in favor of this last position.

Dto. 1278/01 of year 2001: (The Reformation Law 24.557)

- Improvement the indemnifications
- Establece a procedure for the individual recognition of diseases not including in the listing

2.**How is the organized system? How finances?**

The system reparatorio created by Law 24,557 is organized with the following characteristics:

- Surely obligatory for employers deprived public and
- Is possible the car-surely for employers that credit to be able to face the benefits that the Law determines (Art. 3,2 L.R.T.). The car-surely must be authorized by the Authority of Application.
- insurance manage qualified private organizations (Insuring of Risks of the Work – A.R.T.)
- A.R.T have to their position the benefits in species and money.
    - They are benefits in species:
        - Medical aid and pharmaceutical
        - Prótesis and ortopedia
        - Rehabilitation
        - professional Recalificación
        - funeral Service
    - They are benefits in money:
        - Temp Labor Incapacity – ILT- (100% of the Entrance Base by 1 year maximum)
        - If not outside sufficient the term of ILT for the definitive discharge, Labor Incapacity Permanent Total (+ 66% t.o.) or

Partisan (+50% t.o.), enters in a period of Provisoriedad in which a percentage of the Entrance happens Base by a maximum of 5 years.

- ❖ Once obtained the definitive discharge, an indemnification by Total or Partial Labor Incapacity, according to a priced formula.
- ❖ If the victim requires of the permanent attendance of a person for the elementary acts of her life (great dissability) adds extreme a fixed one to him per month, life.

- ➢ assured the assured employers nor car are not responsible for the wrecks and must pay, in addition, a fine to the Bottom of Guarantee (that covers the insolventes employers).
- ➢ system finances with the aliquot one of insurance, that counts on a base regulated by the Authority of Application and the prices of the market. Possibility exists of graduating it based on the sinisterness as the activity in general and the company in individual.

2.**Which is its cover (in many countries it does not include/understand all the wage-earning workers)? Which are their main exclusions (for example, small companies, companies nonindustrialists, workers, domestic, at home occasional)?**

They are obligatorily including in the scope of Law 24.557:

- ➢ civil employees and employees of the national public sector, the provinces and their municipalities and the Municipality of the City of Buenos Aires;
- ➢ workers in relation of dependancy of the private sector;
- ➢ forced people to serve of obligation owned to government.

They are including in the scope of Law 24,557, by way of the Dto. 491/97 (Art. 1° and 2°), but a norm of the Supervision of Risks of the Work must be dictated that fixes its scheme of aliquot:

- ➢ domestic workers;
- ➢ independent workers;

They are including in the scope of Law 24,557, but its entrance is conditional to a prescribed norm that not yet was dictated:

- ➢ tie workers by nonlabor relations;
- ➢ voluntary firemen.

Within the nonlabor relations, already they were including by way of the Dto. 491/97 (Art. 3°):

- ➢ regulated by the System of Pasantías approved by the N° Decree the 340/92 and by the Contract of Learning established in the Law N°24,465 (replaced by the Art. 1º of Law 25,013) and its prescribed norms.
- ➢ made ones by virtue of the fulfillment of Beca.

By legal definition (articles 21 and 99 of Law 20,744), the occasional workers are workers in dependancy relation, reason why still with benefits of little duration they must be assured.

3.**What risks that the system covers?**

The system covers the professional industrial accidents and diseases, according to the following definitions:

- ➢ considers **industrial accident** to all sudden and violent event happened by the fact or in occasion of the work, or the passage between the address of the worker and the place of work, as long as the victim will not have interrupted or altered this passage by causes other people's to the work.

- consider **professional diseases** those that are including in a Listing of Professional Diseases that elaborates and reviews the Executive authority, with obligatory intervention of the tripartite Permanent Consultative Committee created by the Law. The listing identifies the risk agent, the clinical pictures, the exhibition and activities in capacity to determine the professional disease.
- **diseases not including in the listing**, like their consequences, also will consider resarcibles if in the tactical mission, the Central Medical Commission (administrative court created by the law) determines like caused by direct and immediate cause of the execution of the work, excluding the influence from the factors attributable to the worker or other people's to the work.

The following ones are excluded from the cover of the system:

- industrial accidents and the professional diseases caused by dolo of the worker or force greater stranger to the work:
- preexisting to the initiation of the labor relation and credited incapacities of the worker in the conducted preoccupational examination according to the guidelines established by the application authority.

4.**The passage accident is including in the cover? In affirmative case, how defines it?**

As it were enunciated precedingly, the system includes the passage accidents, those that are defined of the following way:

- considers industrial accident to all happened sudden and violent event… *(omisis*)… or in the passage between the address of the worker and the place of work, as long as the victim will not have interrupted or altered this passage by causes other people's to the work.
- worker will be able to declare in writing before the employer, and this one within the seventy and two (72) hours before the insurer, that itinere is modified for reasons of study, concurrence to another use or attention of ill and nonconviviente direct relative, having to present/display the pertinent certificate to requirement of the employer within the three (3) working days of required

5.**What relations exist, if there are them, between the system of protection/indemnification of risks of the work and the general system of disease insurance?**

ContractLaw 20,744 of Work, imposes the economic cover of the accidents and innocent diseases to him to the employer, by a limited term (Arts. 208 to 212 L.C.T.).

As well, Law 24,557 allows that the employers can also contract withthe A.R.T this cover (Art. 26,4, Inc. a), which has actually not extended.

The cover of the benefits in species that demand those accidents and diseases is in charge of the National System of the Insurance of Health, managed by Social Works (Law 23,660).

6.**Is possible to dismiss a worker in the occasion of its consecutive absences of the work to a labor risk? If it is possible, exists some procedure that is due to follow with this intention?**

It is possible to dismiss a worker in the occasion of its consecutive absences of the work to a labor risk and to do does not entail it any special nor additional indemnification. The procedure for the dismissal is he himself who stops any other.

Without damage of it, the damaged worker continues receiving from the A.R.Tthe benefits in species until his definitive discharge and all the benefits in money that correspond.

II. RESPONSIBILITIES OF THE EMPLOYER

7.**The employer has a general obligation of prevention? How sanctions its breach? In what cases it can have criminal responsibility?**

The employer has the main responsibility in the prevention of the industrial accidents and professional diseases.

- generic norm (art. 75 L.C.T.) establishes in their first paragraph: "The *employer this forced to observe the legal norms on hygiene and security in the work. and to make observe the pauses and limitations the established duration of the work in the legal ordering*".

As far as the legal norms of hygiene and security to that reference in the Art. becomes 75 L.C.T., are the following ones:

- Law 19,587 (year 1972), that is the generic norm in the matter of accident prevention of work and professional diseases.
- mentioned law was regulated by the Decree 351/1979, norm that through its eight annexes, in detail regulates all the atinentes aspects to the hygiene and security in the work. By means of Decree 1057/2003, one authorizes tothe Supervisionof Risks Of the Work (Autarkic Being in the orbit of the Ministry of Work, Use and Social Security) to grant terms, to modify annexed values, agreements and requirements established in the regulation and, that are approved by Decree 351/1979, by means of founded his Resolution, and to dictate complementary norms (Article 2º). In exercise of that faculty "to dictate complementary norms", the Supervision of Risks of the Work dictated a profuse atinente amount of Resolutions to prevention, hygiene and labor security.

The breach to the norms on prevention those that are different in their amount and in the Authority are sanctioned with fines (without damage of the rights of the victims to demand the repair), that applies it, if the breaches in a roving inspection are detected or if that inspection is motivated by a industrial accident or professional disease.

- If breaches to prevention norms, health and labor security in a roving inspection were detected, the application authority will be the Provincial Administrative Authority. The amount and destiny of the fines are regulated in Annexed the II of Law 25,212 (Federal Pact of the Work).
- If breaches to prevention norms, health and labor security as a result of an industrial accident were detected or the professional disease, the employer will have to pay to the Bottom of Guarantee, a sum of money whose quantity will graduate based on the gravity of the breach and whose determination will be in charge of the Supervision of Risks of the Work.

In the Argentine legislation there are no specific penal dispositions for the breach of prevention norms, health and labor security, although most of the authors it identifies precedingly to the fines mentioned like a "labor penal right".

In their case, the norms of general the Penal Code could be applied, that establishes pains for the Homicide (Arts. 79 and ssgtes.) and for Lesiones (Arts. 89 and ssgtes.) although the doctrine has not matured the concept and preceding jurisprudenciales do not exist on the point.

8.**What obligations have the employer in the matter of protection of the life and the health of the workers? How is implemented in the scope of the company? How controls its implementation?**

According to he comes off himself the effective legislation, the employer must do all whatever is to its reach to prevent professional accidents and diseases.

On the individual, in addition to the generic norm of art. 75 LCT (already mentioned in # 8) law 19,587 (of year 1972) establish (Art. 8º):

- *"All employer must adopt and put in practice the suitable measures of hygiene and security to protect the life and the integrity of the workers, specially in the relative thing:*
  - *to the construction, adaptation, installation and equipment of the buildings and places of work in suitable environmental and sanitary conditions;*
  - *to the positioning and maintenance of defenses and protectors of machineries and all sort of facilities, with the devices of hygiene and security that the best technique advises;*
  - *to the provision and maintenance of the personal protective equipment;*
  - *to the operations and processes of work "*.

Generic dispositions in the Decree 351/79 (or mentioned in # 8) and specific ones in numerous Resolutions to the Supervision of Risks of the Work (or mentioned in # 8) and in some Collective Agreements exist in addition.

The companies have the amplest freedom to determine their policies of prevention, health and security in the work, in as much fulfill the objectives that raise the norms (to see # 10). The only exception is given for the calls "companies critics", that must subject to an action plan that establishes the Insurer of Risks of the Work, that will have in addition to control its fulfillment (art. 4º Law 24,557). Critical is considered "company" that that determines the application authority (Supervision of Risks of the Work), that to this end will have to consider specially, among other parameters, the degree of fulfillment of the hygiene norm and security in the work, as well as the index of sinisterness of the company.

The Inspectionof the Work is the one who must control the implementation of the suitable measures to preserve the health and security in the work. The system of inspection of the work is integrated by the Ministry of Work, Use and Social Security of the Nation and the provincial authorities of the work and the Independent City of Buenos Aires, that will act under the principles of coresponsibility, co-participation, cooperation and coordination, to guarantee its effective and homogenous operation in all the national territory (28 Art. Law 25,877). The same norm establishes that to this end agreements will be celebrated and executed actions with the provinces and the Independent City of Buenos Aires and, to the date of this report, are little the agreements made in the matter. Our National Constitution is sustained in a federal system, in which matters exist that the Provinces can not delegate in the Nation. It is for that reason that the Power of Police in the matter of "quality of work" is in head of each one of the provincial governments.

9.**Can the employer delegate its powers in the matter of health and security in the work? To whom and whereupon effects?**

According to the uniform interpretation, the employer cannot delegate his obligations in the matter of health and security in the work. Nevertheless, if he can delegate his powers, and if he did it is under his responsibility.

The employer is forced – under certain circumstances to count on internal or external character of Services of Medicine and Hygiene and Security in the Work.

On the point decree 1338/96 establishes the minimum amount of hours to receive from the Services of Medicine and Hygiene and Security in the Work, based on the amount of equivalent workers who serve. (Equivalent Workers: the 100% of the workers destined to production, plus 50% of the administrative workers).

According to Art. 14 of the mentioned decree, they are excepted of the obligation to have allocation of professionals and technicians in hygiene and security the following organizations:

- The establishments dedicated to agriculture, hunt, forestry and fish, that they have up to FIFTEEN (15) permanent workers.
- The agricultural operations by season.

- The establishments dedicated exclusively to administrative tasks of up to TWO HUNDRED (200) workers.
- The establishments where servicos of up to ONE HUNDRED (100) workers are developed to commercial tasks or of, whenever are not manipulated, they store or they divide toxic, inflammable, radioactive and dangerous products for the worker.
- The medical services without internment.
- The educative establishments that do not have factories.
- The repair shops of automotive that they use up to FIVE (5) equivalent workers.
- The places of public relaxation that do not tell on areas destined the maintenance, of less than THREE (3) workers.

In the establishments where the employer is excepted to have the Services of Medicine and Security in the Work, the Insurer of Risks of the Work will have to lend the advising necessary in order to promote the fulfillment of the effective legislation on the part of the employer.

10.**Existen outer organisms or institutions to the company that can collaborate with the employer in the matter of protection of the health in the work? If there are them, which are their nature and competitions?**

In addition to the collaboration that offers to the Services of Medicine and Hygiene and Security in the Work regulated in the Dto. 1338/1996 (to see # 10), the employer counts on the recommendations that, in the matter of protection of the health in the work, to him the Insurer of Risks of the Work formulates. These recommendations can have origin in two totally different situations:

A) When one is special activities in which the employer is excepted to have the Services of Medicine and Security in the Work, in which case the Insurer of Risks of the Work will have to lend the advising necessary in order to promote the fulfillment of the effective legislation on the part of the employer. These activities are:

- The establishments dedicated to agriculture, hunt, forestry and fish, that they have up to FIFTEEN (15) permanent workers.
- The agricultural operations by season.
- The establishments dedicated exclusively to administrative tasks of up to TWO HUNDRED (200) workers.
- The establishments where servicos of up to ONE HUNDRED (100) workers are developed to commercial tasks or of, whenever are not manipulated, they store or they divide toxic, inflammable, radioactive and dangerous products for the worker.
- The medical services without internment.
- The educative establishments that do not have factories.
- The repair shops of automotive that they use up to FIVE (5) equivalent workers.
- The places of public relaxation that do not tell on areas destined the maintenance, of less than THREE (3) workers.

B) When the employer is described like “company critics” (to see definition in # 9). In those cases, according to the article 4° of Law 24,557 (Text according to Dto. 1278/00), the Insurers of Risks of the Work will have to exclusively establish for each one of the companies or considered establishments critical, of conformity to which it determines the application authority, an action plan that contemplates the fulfillment of the following measures:

- The periodic evaluation of the existing risks and its evolution;

- Periodic visits of control of fulfillment of the norms of prevention of risks of the work and the plan of action elaborated in fulfillment of this article;
- Definition of the corrective measures that will have to execute the companies to reduce to the identified risks and the registered sinisterness;
- A proposal of qualification for the employer and the workers in the matter of prevention of risks of the work.

ART and the employers will be forced to inform to the Supervision of Risks into the Work or to the provincial Job managements, according to corresponds, the formulation and the development of the action plan.

11.**What obligations have the employer in the matter of security and health in the work of the workers of third companies, for example of workers made its available by a company of temporary work, or workers of companies contractors or subcontractors who execute works in a work of which he is the main person in charge?**

The question is regulated in Art. 12, Dto. 491/97, that would seem to talk about only to the insurance, but also involves the prevention duties.

In effect, the main industralist must fulfill the obligation to require his contractor, subcontractor or to the company of possible services the certainty of to have contracted an insurance and to maintain the policy pays or, in his defect, of which was authorized it to operate like car-assured. If he did not do, will have to pay it the aliquot ones to the Insurer, being able even to retain of the payments that must do to them by their owed aliquot services of term overcome.

The same norm establishes that affiliation of the contractor, subcontractor or Insuring assignee to an authorized one to work, or his rating to accede to the regime of autoseguro, in front of exempts to the main, contracting or assigning industralist of all responsibility by risks of the work the personnel occupied by those and their rightful claimants, with the single exception of the assumption of dolo anticipated in article 1072 of the Civil Code.

In synthesis, the main industralist who perform one's duty to require the certainties of the insurance and its payment, is exempted to be responsible for the security of the personnel of his contractor, subcontractor and of the companies of possible services, because he would not be responsible for the damages, except for case of dolo.

There is no resolution still in the judicial planteos of those who they try to draw for the application of that norm and drive against the main industralist by the general responsibility of security (Art. 75 LCT), the one that would extend the personnel of the contractors, subcontractors and of the companies of possible services by application of the general norms of solidarity (29 Arts. 30 and bis LCT).

A series of resolutions of the Supervision of Risks of the Work exists (to see # following) that it forces the main one to diagramar the security tasks when contracts or subcontracts tasks to execute them in its establishment. As the Resolutions oppose the arranged thing in the Law, in agreement it finishes narrating, would be doubtful his ejecutoriedad.

12.**How organizes the prevention of the labor risks when two or more companies operate in he himself site of work?**

Within the framework of the normative delegation that took place in favor of the Supervision of Risks of the Work, three norms were dictated that force the companies to coordinate or to subordinate prevention measures, when they operate in he himself site of work.

Program for the accident prevention of Work and Professional Diseases in Pymes. Resolution SRT Nº 01/05, modified by Resolution 1579/05.

Program for the reduction of fatal accidents. Resolution SRT Nº 1721/04, modified by 1392/05.

Program for companies that did not improve the prevention (Companies critics). Resolution SRT Nº 1139/04, modified by 1270/05.

In all the cases the main company coordinates the prevention functions. If there were not a main one, the even companies must celebrate prevention agreements, along with their ART.

III. PARTICULAR PROBLEMS

13.**To what extent the psychic risks with a view to determining the responsibility of the employer are taken into account (for example to prevent stress in the place with work)?**

In Argentina the contents of the concept of Conditions and Environment only work of Trabajo (CYMAT) in the academic scope and some sectors of the public use.

The legislation it does not contemplate to the psychic risks as resarcibles contingencies reason why do not exist preventive measures in such sense either. They could get to be it in some precise case, when it is demonstrated before the Central Medical Commission (Maxima administrative authority to dissolve conflicts) that the pathology caused by direct and immediate cause of the execution of the work, excluding the influence from the factors attributable to the worker or other people's to the work (conf. Art. 6, aparado 2, interjection b) of Law 24,557).

The debates on the CyMAT and the Stress in the labor scope are taking place in the scope of the public use, in which also the development of norms to prevent the labor violence is advanced, like one of the possible causes of the Stress. Some provincial laws exist to prevent the labor violence and the harassment sexual (Provinces of Buenos Aires, Missions, Santa Fe, Tucumán and Jujuy, as thus also in the Independent City of Buenos Aires) and in the National Congress has parliamentary state 7 projects of law on the subject, to regulate the situation in the National Public Administration and its Decentralized Beings.

The Constitution National, in its article 14 bis (or new), establishes in the pertinent part that "the *work in its diverse forms will enjoy the protection of the laws, those that will assure the worker: worthy and equitable conditions of work…*".

In the scope of the deprived use, the Contract Law of Work limits the faculty of direction of the employer, establishing who must preserve and improve the personal rights of the worker (Art. 65). The employer can modify the forms and modalities of the work, whenever it does not cause a moral damage to the worker (Art. 66). It will be able to carry out personal controls to protect his goods, but these do not have to affect the dignity of the worker (Art. 70 and 71). This review of the most important norms (next to the National Constitution), in the scope of the deprived use, is invoked generally for the contractual denunciation with right cause because of the opposite, but the cases in which in addition a psychological damage calls to each other, like that are few motivates this question.

14.**Can be commited to the employer to take measures to guarantee to the workers nonsmokers an atmosphere of free work of tobacco smoke?**

Which is reiterated that, as were maintained in # 14, in Argentina the contents of the concept of Conditions and Environment only work of Trabajo (CYMAT) in the academic scope and that the greater advances on the subject (although modest) took place in the scope of the public use, in some Ministries emitted resolutions that they prohibit to smoke in the scope of work. The same it happens in multinational companies, that voluntarily imposed the internal norm in such sense.

A project of law in the National Congress exists with which it is tried to prohibit to smoke in the atmosphere of work, impelled by the Ministry of Health of the Nation.

15.**Existen restrictions to the occupation of certain groups in activities or tasks that expose them to risks for which they are particularly vulnerable (for example, prohibition of certain works to embarrassed, smaller or working women possible)?**

As much for the women as for the minors between 14 and 18 years, they govern the following dispositions of the Contract Law of Work:

- It is prohibited to order to the execution of works at home to women occupied in some premises or another dependancy in the company. (191 Arts. 175 and)
- It is prohibited to occupy to women and minors in works that have laborious, dangerous or unhealthy character (191 Arts. 175 and)

Respect to the minors, governs the following dispositions of the Contract Law of Work:

- It is prohibited to the employers to occupy minors of fourteen (14) years in any type of activity, persecutes or profit nonaims (Art. 189).
- It will not be able to take care smaller of fourteen (14) to eighteen (18) years in any type of tasks for more than six (6) hours daily or thirty and six (36) weeklies, without damage of the unequal distribution of the workable hours (Art. 190)
- The day of the minors of more than sixteen (16) years, previous authorization of the administrative authority, will be able to extend to eight (8) hours daily or forty and eight (48) weeklies (Art. 190).
- It will not be possible to be occupied minors of one or another sex in nocturnal works, being understood like such the interval between the twenty (20) and six (6) hours of the following day. In the cases of manufacturing establishments that they develop tasks in three daily turns that include the twenty-four (24) hours of the day, the period of absolute prohibition as far as the use of minors, will be governed by this title and the arranged thing in article 173, last part, of this law, but only to the smaller men of more than sixteen (16) years. (Art. 190)
- To effects of responsibilities and indemnifications anticipated in legislation labor, in case of industrial accident or of disease of minor, if some of the tasks prohibited to its respect is verified to be its cause, or carried out in conditions that mean infraction to their requirements, is considered by that single fact to the accident or the diseases like resultant of fault of the employer, without admitting test in opposite. (Art. 195)
- If the accident or disease will obey to the fact circumstantially to be the minor in a work site in which illicit or its presence will be prohibited, without knowledge of the employer, this one will be able to prove its lack of fault. (Art. 195)

16.**Can be made responsible to the employer by damages in the health of the dimanantes workers of the use of products or substances whose harmfulness was not known in the moment of its use or whose injurious effects only can be appreciated in the long term (for example the asbestos)?**

The answer is affirmative and the cover of the benefits in species and money would be in charge of the Insurer of Risks of the Work.

In such sense, the victim would have to require to the Central Medical Commission that determines that it is professional diseases caused by direct and immediate cause of the execution of the work, excluding the influence from the factors attributable to the worker or other people's to the work. (Art. 6, separated 2, interjection b, Law 24.557)

17.**The employer can demand that the postulantes to a use are put under a genetic test or a test of detection of AIDS/VIH with a view to determining if they are apt for a work that would expose them to a risk for which they can be particularly vulnerable?**

The employer cannot make none a test of detection of AIDS/VIH, unless the worker lends volunteer consent. (National Law of AIDS, Nº 23.798)

18.**Can a worker retire of a work situation with respect to which it has reasonable reasons to consider that it involves a danger for its life or its health?**

A specific disposition does not exist on the point.

Voices authorized in doctrine exist and some failures, that would thus justify an attitude as opposed to a serious and imminent danger, based on dispositions of the Civil Code which they allow to the indebted one of a benefit to retain it until as much the creditor lets be in Moor respect to the hers preexisting one (Art. 510 and 1201). That is to say, it would be justified that the worker retains his benefit, if to execute it ran a serious and imminent danger in its life or health.

IV. REPAIR OF RISKS OF THE WORK

19.**What benefits guarantee their national system of repair of risks of the work? How is administered? Can be denied, and in what case can be it?**

Insuring of Risks of the Work or the car-assured employers they have to its position the benefits in species and money.

- They are benefits in species:
  - Medical aid and pharmaceutical
  - Prótesis and ortopedia
  - Rehabilitation
  - professional Recalificación
  - funeral Service
- They are benefits in money:
  - Temp Labor Incapacity – ILT- (100% of the Entrance Base by 1 year maximum)
  - If not outside sufficient the term of ILT for the definitive discharge, Labor Incapacity Permanent Total (+ 66% t.o.) or Partisan (+50% t.o.), enters in a period of Provisoriedad in which a percentage of the Entrance happens Base by a maximum of 5 years.
  - Once obtained the definitive discharge, an indemnification by Total or Partial Labor Incapacity, according to a priced formula.

The A.R.T can deny the benefits to the victim when they had doubts on the labor origin of the injury, or when outside litigious if the contingency is included/understood in the system.

In order to dissolve these controversies, an administrative system, made up of administrative public organizations denominated Medical Commissions was created. As opposed to an opinion of a Regional Medical Commission, it is possible to be resorted before the Central Medical Commission or the Justice of the Work (this last option arises from Fallo of the Supreme Court of Justice of the Nation, of 7/9/2004, in cars “Castle, Angel Holy c/Cerámica Alberdi S.A.”, that declared inconstitucional the norm that it established that the resource had to interpose before Federal Justice – Art. 46,1 L.R.T.).

20.**The benefits in money are priced or the wage-earner can try the integral repair of the suffered damage? Can the wage-earner choose between demanding an indemnification priced according to the special law or an integral indemnification according to the common right? Under what conditions?**

The benefits in money are priced with a formula that combines the loss of functional capacity, the wage of the victim and the age (in relation to the age jubilatoria).

According to the Art. the 39,1 of the Law 24,557 victims cannot try the integral repair of the suffered damage, under the norms of the Civil Code. Nevertheless, with date 21/9/the 2004 Supreme Court of Justice of the Nation he declared the unconstitutionality of that prohibition (in cars “Aquino, Isacio c/Cargo Servicios Industriales S.A. s/accidents law 9688”), reason

why today can demand the priced indemnification of the system and the difference that could correspond to him for integral repair.

21.**Existen special bottoms with object to guarantee the repair of damages caused to the life or the health of the workers in the occasion of the product use or substances whose harmfulness was not proven at moments of its use, or whose injurious effects only can be stated in the long term (for example the asbestos)?**

According to the effective regime, the repair of damages caused to the life or the health of the workers in the occasion of the product use or substances whose harmfulness was not proven at moments of its use, will be in charge of the Insurer of Risks of the Work that has effective its policy with the employer at the time of the first invalidante manifestation (Art. 47.1. LRT.).
When the contingency had originated in a process developed through time and circumstances such that were demonstrated that there was quotation or must have had quotation to different ART; ART forced to the payment according to the previous paragraph will be able to repeat of the rest the costs of the benefits paid or granted to the conducted payments, in the proportion in which each one of them is responsible according to the time and intensity for exhibition to the risk. (Art. 47.1. LRT.).
By means of Decree 590/1997 the Fiduciary fund for specific aims was created, that are financed by a fixed contribution that carries out each employer respect to each denounced worker. The bottom is administered by the A.R.T and has as only destiny paying the benefits in species and perceptivas money that demand hipoacusias.

V. PAPER OF THE REPRESENTATIVES OF THE WORKERS IN THE SCOPE OF THE PROTECTION OF THE HEALTH AND SECURITY IN THE WORK

22.**How is organized the participation of the workers in the scope of the company with a view to improving the labor hygiene and security and preventing the risks with the work? Existen committees of hygiene and security, and in that case which is its composition, of what powers and faculties has and what right and guarantees enjoy their members? Reciben some formation related to its functions and responsibilities? Right Tienen to be made attend by external experts the company?**

In the Argentine legislation committees of hygiene and security do not exist. Some multinational companies created them voluntarily, although without it appears at least in the collective agreements.

The participation of the workers in the scope of the company with a view to improving the labor hygiene and security and preventing the risks with the work, is in head of such that exert their general gremial representation, that is to say, to the personnel delegates, chosen according to the forecasts of Art. 40 of Law 23,551, the one that fixes between the functions of the delegates: "*To verify, the application of the legal or conventional norms, being able to participate in them inspection that has the administrative authority the work*" (Art. 43, Inc. a).

The formation that in the matter can receive, depends on the Union to which they belong, because norms do not exist that force to no of the actors of the system to provide that specific qualification.

According to the experience, it would be very difficult that the delegates attend themselves with professionals in the matter, since norms do not exist that force the employer to allow the entrance to the establishments.

VI. OTHER QUESTIONS

23.**Present any other question that in the law or practice of their country has relation with this subject and has please not treated in this questionnaire.**

By means of a dated document the 10 of December of 2004, the Ministry of Work, Use and Social Security of the Argentine Republic fixed the lineamientos of a first draft of reform to the Law Nº24,557, on Risks of the Work.

Without damage of which next their main points are outlined, it is offered to Mr. Relatores to respond the questionnaire again if the sanction on the part of the National Congress of this one or another reform took place:

Main points of the reform first draft:

1. The Law of Risks of the Work and the Law of Hygiene and Security in the Work are reformulated integrally, fusing the result in a single normative body.

2. The system is reaffirmed changing the paradigm. In front of a first draft that in 81 articles proposes a hundred of reforms, to reaffirm the system it must be understood that the existence of a regime with obligatory insurance is ratified (with reserve and guarantee bottoms), in charge of deprived managers, with benefits in species and money that have like characteristics the automaticity and immediacy. In the mentioned document, by shift of paradigm one exposes the positioning in a high-priority place of the diverse measures and actions in favor of the prevention.

3. The text is reformulated doing it compatible with the National Constitution. According to one of classic works on the subject [1][1] can be indicated, to first glance and only on "the nudales" norms, 29 faults of unconstitutionality. Some of them already were declared in judicial seat and it does not discard that a detailed study of the prescribed norm throws a greater result.

4. According to the mentioned document, it tries greater legal security for the actors of the system, by means of the adjustment of the text to the National Constitution and the allocation of clear rolls within the system for each one of them.

Some LINEAMIENTOS in the matter of PREVENTION

5. Recovery of the presence of the State. In the document it is exposed that it is considered essential that the State recovers its roll in the matter of prevention. To this end it erects to the MTESS like application authority, with these attachment lines:

1. The dictation of prescribed norms
2. The diffusion and the qualification
3. The coordination of the inspection (Law 25.877)
4. The sanction.

In this scheme, the Supervision of Risks of the Work will have to its position to exert an active control on the A.R.T and the autoaseguradas companies, as far as all the obligations that the Law imposes to them like managers of the benefits in species and money, but will let have attributions in the matter of prevention.

6. It is tried to fortify the commitment of the employers and ART with the prevention, by means of the redefinition of the rolls of the parts, those that in some subjects today are exposed in confused form and superposed others.

7. The intervention of third, or by hiring or subhiring of services, total or partial cession of the establishment, use of personnel of companies of possible services is regulated or when, by any other cause, works or services of two concur in a same establishment or the more employers.

8. The collective negotiation for the dictation of the specific regulation by activity and dimension of companies is fomented, to avoid a generic norm like which today it prevails.

9. Intervention occurs him to the workers in preventive tasks, by means of the incorporation to the structure of the company of "Mixed Committees of Prevention, Health and Security"

[1][1] "Law on risks of the work. Constitutional and procedural aspects". Mario ACKERMAN and Miguel Angel CHURNS. Ed. Rubinzal Culzoni, Sta. Faith. 1999.

(for companies of more than 50 workers) and of “Representatives in Prevention, Health and Security” (for companies of less than 50 workers).

10. The specific consecration of the right of retention of tasks of the worker is anticipated, before a serious danger and imminent and, in symmetry, the obligation of the employer settles down to stop the work or service before the same circumstances.

11. In the matter of rights of the workers, in addition to the preservation of his health and security, it is anticipated that they tell on an ample one the information right, specially with respect to:

- all examination of health that is made
- risks of the activity to make

12. Prehorseradish tree prizes and punishments for the companies, by means of quotations that contemplate that the companies with greater sinisterness will have aliquot the greater one of insurance.

Some LINEAMIENTOS in the matter of INSURANCE, CONTINGENCIES AND REPAIR

13. The entrance of organizations without profit aims will be facilitated (Mutuales of employers), with such requisite of constitution that the A.R.T.

14. The creation of bipartite ART. through the collective negotiation is made possible.

15. The system of listing of professional diseases stays, to grant previsibility to him to the cost of the insurance. The initial incorporation in the listing of diseases today not recognized is anticipated (with position to the FFEP by two years), specially those that today demand the intervention of the Medical Commissions.

Also a mechanism is created that is considered more efficient and fast for the incorporation of diseases nonanticipated originally, those that also will be with position to the FFEP by two years, of way to avoid its immediate impact in the aliquot one.

Finally, a system of individual recognition of diseases not including in the L.E.P settles down., whose benefits will be with position to the FFEP. Its procedure invests effective (the Dto at the moment. 1278/2000), and before the denunciation of the worker automatically accede to the benefits, being incumbent on the ART. to initiate the procedure of determination of its labor nature (within the 15 days of the denunciation) before the Technical Commissions.

16. It is anticipated that the Cancer and the silicosis count on a special way to count the prescription.

17. It is tried to introduce in the legal text a scale or table of incapacities (today effective by decree) with the intention of uniforming at national level the evaluation on the subject.

18. As opposed to the damage, the system of benefits in species and money anticipated in the LRT is ratified. The improvements in the dinerarias would be the following ones:

- Update of the entrance bases during the period of rehabilitation.
- Extension of the maximum term of the Temp Labor Incapacity.
- Elimination of the period of Provisory Permanent Incapacity.
- Improvement of the extreme one fixes monthly life by Great Dissability.
- Modification of the compensatory formula.

19. The priced system stays indemnification, modifying its formula of calculation. In such sense, one sets out to also incorporate to the text the formula created from Caso “Vuotto c/Telefunquen” (CNAT, S III), well-known inside the country like “Marshall Formula”, that is the one that today uses most of the courts of the country to calculate the integral repairs in actions with foundation in the Civil Code. With the incorporation of this formula to the system, it is tried to avoid the unnecessary litigiosidad.

As the formula has certain defects because it repairs functional incapacities and he is only insufficient at the time of calculating indemnifications for workers with age outpost, prehorseradish tree the following corrections:

- term of amortization of capital never will be inferior to 5 years.
- adds a 20% to him by additional damages (with floor from 30% of incapacity),
- settles down a social floor by incapacity point ($ 1,000),
- settles down a floor by absolute incapacity and death ($ 150.000)
- all the tops are eliminated.

20. In the first draft it is anticipated that in all the cases, the victim has right to the benefits in substitute species and them wage (ILT). Once it knows with certainty the amount to perceive by the indemnifications of the system, it will be able to accept it or to choose to initiate a civil action in labor seat.

If it decided on the civil action, it would already have acquired the benefits in species and the wages by ILT. The excluding option by the civil action does not imply resignation to those benefits, like thus to which they do not correspond either by “great dissability”, if outside the case.

If the civil action were favorably welcome, ART will have to deposit the amount that had corresponded to him to cancel within the system. If the civil action were misestimated, the amount that had had to pay the ART. within the system, it will have to deposit itself at heart of Reserve,

21. The mode of payment of the indemnifications is modified.

The indemnifications that correspond to a smaller incapacity to 50% of the T.O., will be paid in unique payment.

In the indemnifications that correspond to a greater incapacity to 50% of the T.O, the victim or her rightful claimants they will have an option: to perceive in unique payment the indemnification, or to perceive an indemnification by the damage (with amounts superior to the fixed ones at the moment) and a life rent that compensates its income before the loss of its laborativa capacity. If it decided on the rent, with he himself technical capital necessary to contract it it will be able to also decide on a periodic rent.

The life benefits by great dissability, but cuadriplica stay their amount (to $ 1000 monthly ones).

22. It is anticipated to modify the system of management of controversies. The existing Medical Commissions by administrative organisms specialized in accidents and diseases of the work are replaced.

Its competition to the subjects is delimited strictly doctors and it is allowed the parts to assign other subjects voluntarily to them (like for example, the determination of the accident in itínere).

Against the solved thing by the local administrative organism a resource will be able to interpose before the regional administrative organism. Of solved there, an action will be qualified before the competent Courts of the Work, based on the regulation in the local procedural codes.

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