Compatibility with Legal Requirements of an OH&S Management System based on the SR OHSAS 18001:2008 Standard

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Abstract: One of the most important items to be considered when developing and implementing of an OH&S management system based on the SR OHSAS 18001:2008 standard is to ensure the compatibility of the described processes and activities with the national legislation regarding occupational health and safety. The scope of the paper is to identify the main points where the standard requirements should be subordinated to the legal requirements when developing the documentation of the OH&S management system.

Key-Words: - OH&S, occupational health and safety, management, risk assessment method

1. INTRODUCTION

One of the most important note stated by the SR OHSAS 18001:2008 standard foreword is that the compliance with the standard cannot confer immunity from legal obligations and also, nor ensure the compatibility with these obligations. The compliance with legal provisions is an absolute performance requirement regarding OH&S, but the standard scope is not to provide methods to fulfill this requirement. In this context, the practice shows that in many situations, on developing the OH&S management system documentation, the standard requirements are not aligned properly with the national legislation requirements on domain. The scope of the paper is to identify the main points where, when documenting an OH&S management system, an important attention should be paid to the specific legal requirements in connection with the standard clauses.

2. METHOD AND RESULTS

For each standard clause the relevant requirements of the national OH&S legislation where analyzed in order to identify the points where specific legal provisions should be linked to the standard requirements.

In the following, the results are presented grouped by the standard clauses.

2.1. Terms and definitions

As regarding the Chapter 3 of the standard, “Terms and definitions”, the followings observations where established:

O1. The followings terms, defined by the OH&S Law no.319/2006, correspond to the ill health, as defined by the standard:
- occupational disease – “illness occurring as a consequence of practicing a trade or an occupation, caused by physical, chemical or biological harmful agents, specific to a workplace, as well as by the over-stressing of the different organs or body systems, in the work process” (art.5 lett.h) and
- work related disease – “a disease caused by multiple factors, to which some of the determining factors are of an occupational nature” (art.5, lett.r).

O2. The followings terms, defined by the OH&S Law no.319/2006, correspond to the incident, as defined by the standard:
- accident at work – “a violent injury of the organism, and also occupational acute intoxication, occurring during work or whilst engaged in an occupational activity and which leads to a temporary incapacity to work of at least three calendar days, invalidity or death” (art.5, lett.g);
- dangerous incident – “identifiable event, such as explosion, fire, damage, technical accident, major emissions of harmful substances, resulted from a malfunctioning of an activity or of a work equipment and/or caused or might have produces material damages” (art.5, lett.o);
- light accident – “event having as a consequence superficial injuries/lesions that need only first aid treatment and entailing incapacity to work of less than three days” (art.5, lett.q); and
- work related disease.

O3. OH&S Policy defined by the standard can be linked with the coherent prevention policy defined as one of the general prevention principles by the OH&S Law no.319/2006, and which should cover “technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment”;
O4. The workplace definition from the standard, although more general, is similar with that for this term provided by the OH&S Law no.319/2006: “the place intended to house workstations on the premises of the undertaking and/or establishment and any other place within the area of the undertaking and/or establishment to which the worker has access in the course of his employment”.

2.2. Hazard identification, risk assessment and determining controls

For this standard clause (4.3.1), the following observations where established:

O5. Risk assessment represent a requirement of both standard and OH&S Law no.319/2006 – art.7 par.(3), art.12 par.(1) lett.a and b.

O6. Methodological Norms for applying the OH&S Law no.319/2006 provide that the risk assessment must be performed for “each component of the work system, respectively performer, work tasks, means of production/work equipments and working environment by workplaces/work post” – art.15, par.(1) pt.1; thus, the legal requirements are more restrictive than those of the standard;

O7. The standard, as well as the legislation, does not require a certain risk assessment method. The selection of such a method represents an option of the employer, with conditions that the method be consistent with the performed activities types and fulfills the general requirements of the standard.

2.3. Resources, roles, responsibility, accountability and authority

For this standard clause (4.4.1), the following observations where established:

O8. When defining roles, according to the standard requirements, the provisions of the OH&S Law no.319/2006, Chapter III “Employer’s obligations”, 2nd section “Preventive and Protective Services” should be fulfilled.

O9. When defining roles, according to the standard requirements, the followings sections of the Methodological Norms for applying the OH&S Law no.319/2006, Chapter III “Preventive and Protective Services” should be fulfilled.

• section 1 – General provisions;
• section 2 – Organizing the preventive and protective activities;
• section 3 – Designated workers;
• section 4 – Internal Preventive and Protective Services;
• section 5 – External Preventive and Protective Services;
• section 9 – Workers representatives with specific responsibilities on OH&S domain,
• as well as Chapter IV – “Organizing and functioning of the OH&S Committee

2.4. Competence, training and awareness

For this standard clause (4.4.2), the following observations where established:

O10. When establishing the procedures regarding this clause, the requirements of the OH&S Law no.319/2006, Chapter III “Employer’s obligations”, section 5 “Workers informing” and section 7 “Workers training” should be fulfilled.

O11. For this clause, the requirements of the Methodological Norms for applying the OH&S Law no.319/2006, Chapter III “Preventive and Protective Services”, section 9 “Workers representatives with specific responsibilities on OH&S domain” and Chapter V “Workers training on OH&S domain” should be considered.

2.5. Communication, participation and consultation

O12. When establishing the procedures regarding communication, participation and consultation of workers, the provisions of the OH&S Law no.319/2006, Chapter III “Employer’s obligations”, section 6 “Workers consultation and participation” should be considered;

O13. Regarding this clause, the provisions of Methodological Norms for applying the OH&S Law no.319/2006, Chapter VI – “Organizing and functioning of the OH&S Committee” are relevant.

2.6. Emergency preparedness and response

For this standard clause (4.4.7), the following observations where established:

O14. The procedures should ensure the compliance with the OH&S Law no.319/2006, Chapter III “Employer’s obligations”, section 3 “First aid, fire fighting, evacuation of workers, serious and imminent danger”;

O15. For this clause, the requirements of Methodological Norms for applying the OH&S Law no.319/2006, Chapter VI “Serious and imminent danger and zones with high and specific risk” should be considered.

O16. According to the specific of the organization’s activities, the legislation on the domain of fire prevention and fighting, civil protection, using explosive materials etc. are also relevant.

2.7. Evaluation of compliance

O17. Evaluation of compliance with legal requirements and other requirements to which organisation subscribes (clause 4.5.2) represents a provision of both standard and OH&S Law no.319/2006 (art.13 lett.f). Thus, the employer must “ensures and controls the knowledge and the application by all workers [...] of the legal provisions on OH&S domain”.

O18. From the OH&S Law no.319/2006 perspective, the importance of the evaluation of compliance is equal
with that of the risk assessment, as the failure to fulfill each of these requirements is considered contravention and is sanctioned with fine from 4.000 to 8.000 RON, according to art.39 par.(4).

2.8. Incident investigation

For this standard clause (4.5.3.1), the following observations where established:

O19. Procedures regarding incident investigation should treat these events in a differentiate mode, according to the five possible situations in which the incident (as defined by the standard) can be, according to the OH&S Law no.319/2006: accident at work, professional disease, dangerous incident, light accident or work related disease;

O20. For the situations in which the incident represents a work accident or professional disease, the provisions of the OH&S Law no.319/2006, Chapter VI "Notification, investigation, registration and reporting of events" should be considered, as well as the provisions of the Methodological Norms for applying the OH&S Law no.319/2006, Chapter VII “Notification and investigation of events, registration and evidence of accidents at work and dangerous incidents, notification, investigation, declaring and reporting of professional diseases”.

3. CONCLUSIONS

Establishing, documenting, implementing, maintaining and continually improving of the OH&S management system should be based equally on the complying the SR OHSAS 18001:2008 standard requirements and the national legislation on OH&S domain.

The paper synthesize in 20 observations the common aspects of the SR OHSAS 18001:2008 standard and of the national OH&S legislation, which should be considered when developing a management system for this domain. The analysis covers only the primary legislation, represented by the OH&S Law no.319/2006 and its Methodological Norms. A more detailed analysis, performed on certain organization should consider, moreover, the secondary legislation, represented by Government Decision on OH&S relevant for the organization activities, applicable connected legislation (with subsidiary references to OH&S) as well as other requirements to which organization subscribes (e.g. internal instructions, company standards etc.).

References:
[3]*** SR OHSAS 18001:2008 „Occupational health and safety management systems. Requirements”;
[4]*** SR OHSAS 18002:2009 „Occupational health and safety management systems – Guidelines for the implementation of OHSAS 18001:2007”