

Legal update

Venezuela introduces new standards for health and safety services and manual transportation of loads in the workplace

September 2016

Labour

On August 24, 2016, the Ministry of the People's Power for the Social Process of Work published: (i) Resolution N° 9.588 concerning the Technical Standard for Safety & Health at Work (Technical Standard); and (ii) Resolution No. 9589 concerning the Technical Standard for the control of handling, lifting and manually transporting loads (the Resolution). Both standards were set forth in the Official Gazette of the Bolivarian Republic of Venezuela No. 40.973 of August 24, 2016. Here are the most significant aspects of both decrees:

Technical Standard for the Services of Safety & Health at Work

Overview:

Object:

The purpose of the Technical Standard is to establish guidelines that employers must follow for the organization, establishment, registration and operation of the Service of Safety and Health at Work (SSH), in order to fulfill the purpose and functions of the SSH established in the Organic Law on Prevention, Conditions and Working Environment (OLPCWE)¹.

Scope of application:

The provisions established in the Technical Standard are applicable to all employers, cooperatives and other community associative forms of productive character or service, profit or non-profit, regardless of their nature, location, or public or private character.

Autonomy of the SSH:

The SSH committee and the professionals who compose it should enjoy full independence from the employer, who must refrain from any act of coercion or duress seeking to influence their actions and decisions.

In addition, the SSH shall have authority over the highest levels of the employer's management and the decisions taken by the SSH must be implemented.

Provision of information:

Different departments of the employer, including human resources, are required to provide the SSH with information on issues related to the health and safety of the employees.

Also, when the SSH takes measures to be adopted by the employer they must notify the prevention delegates, the employer and the employees in writing of such measures.

The employer must implement a measure within a period not exceeding 15 working days, except in the case of situations that threaten the personal integrity, life or human rights of the employees, in which case the implementation must be immediate.

Person responsible for the SSH:

The SSH must have a person in charge of its management or coordination who also liaises with the employer. The person responsible for the SSH must be part of the team of professionals that comprise the SSH.

Hiring contractors:

The employer may hire independent professionals to carry out activities in the areas of workplace hygiene, safety and health, but these professionals will not be considered part of the SSH.

Types of SSH:

The Technical Standard organizes the SSH by private and joint committees.

The private SSH should be understood as an organizational structure of the employer dedicated exclusively to said employer, that monitors and promotes workplace safety, health, and work conditions.

The joint SSH is defined as the organizational structures made up of different employers who agree to create a joint SSH, and are considered as services of the employers that comprise it.

Regime applicable to the private SSH:

Organization and location:

Employers should have an SSH of their own in each workplace or in its vicinity if any of the following applies:

- They have more than 250 employees.
- They have between 50 and 250 employees and are involved in any of the activities referred to in Article 13 of the Technical Standard (i.e.: food processing, dairy processing, wholesale beverages, wholesale tobacco products, wholesale gas and oil products, wholesale pharmaceutical and medical products, oil extraction and natural gas extraction, among others).

Composition:

The composition of the private SSH committee will be determined as follows, according to the number of employees working for the employer:

Number of employees	Number of professionals
50 to 100	3
101 to 250	5
251 to 350	7
351 to 500	8

When the employer has more than 500 employees, the number of professionals sitting on the committee will be increased in increments of two per every 250 employees.

In addition, all private SSH committees must have at least:

- An occupational physician.
- A nurse.
- An industrial engineer, industrial safety engineer, industrial safety technician, disaster management technician, industrial manager or professional with related experience.

When the SSH has more than three members, they must be professionals in any of the following areas according to the activities carried out by the employer:

- Industrial engineering or technical level
- Industrial safety engineering or technical level
- Disaster management
- Ergonomics
- Industrial security
- Occupational hygiene
- Psychology
- Social work
- Occupational therapy
- Occupational medicine
- Nursing
- Physiotherapy
- Law
- Any other in the area of safety and health of workers.

Services provided to employees by the SSH:

The private SSH committee must provide services to employees throughout the workday.

Regime applicable to the joint SSH:

Organization and location:

Employers must have a joint SSH in each workplace or in its vicinity if any of the following applies:

- They have fewer than 50 employees.
- They have between 50 and 250 employees and do not carry out any activities that warrant having their own SSH in accordance with Article 13 of the Technical Standard.

The SSH may be located within one or more of the workplaces that comprise the joint SSH, or in its vicinity, provided they are in the same civil parish.

Creation and composition:

Employers must express in writing their willingness to form a joint SSH, and incorporate the requirements and documents set out in Article 20 of the Technical Standard.

This association may not be composed of more than 20 employers, and the total number of employees who benefit from the service may not exceed 250.

Types of joint SSH:

The joint SSH committee may be:

- Type I: when the group of employers hires professionals in the various required disciplines and creates the structure of the SSH for every workplace.
- Type II: when the group of employers hires a company who will be the provider of the service for the formation of SSH for every workplace.

Composition:

The formation of the joint SSH shall be determined as follows, according to the number of employees that constitute each employer of the joint group:

Number of employees	Number of professionals
Up to 50	3
51 to 100	4
101 to 200	5
201 to 250	6

In addition, all joint SSH committees must have at least:

- An occupational physician.
- A nurse.
- An industrial engineer, industrial safety engineer, industrial safety technician, disaster management technician, industrial manager or professional with related experience.
- When the joint SSH has more than three members, the other professionals must have experience in one of the specialties mentioned above for a private SSH.

Services provided to employees by the joint SSH:

The joint SSH should provide the following expertise throughout the working day provided that the employer has a minimum of 100 employees: industrial engineering, industrial safety engineering, industrial safety technician, disaster management technician, industrial manager or professional with related experience, and one occupational medicine or medical professional.

SSH registration

Employers must register with the National Registry of Services of Safety & Health at Work in accordance with Article 29 of the Partial Regulations of the Organic Law on Prevention, Conditions and Working Environment (PROLPCWE)², and meet the requirements of Article 25 of the Technical Standard for registration.

Medical exams and forbidden health screenings:

Periodic reviews:

The SSH should perform medical exams for its employees, regularly and in accordance with the provisions of the Technical Standard and PROLPCWE,³ at the beginning of the employment relationship, at its termination, before and after vacations and any other special health evaluations.

In the case of pre-vacation health exams, these must be carried out during a period not exceeding 15 working days prior to the vacation period, and post-vacation health exams during a period not exceeding 15 working days following the employee's return. In both cases the physical assessment should include assessment of functional status of the joints, for which the physician should use the goniometry as the method of evaluation.

The results of the pre-admission exams and termination exams must be given to the employee within a period no longer than 24 hours after completion, and must indicate their suitability for taking the job, in the case of pre-admission exam, and any change in the health status in the case of termination exams.

The SSH must make special health evaluations in cases provided for in Article 31 of the Technical Standard: (i.e.: after the return of an employee after a period of disability during a work accident, an occupational disease or accidents or illnesses of common origin, after surgery or after an incident or circumstances in the workplace that could cause damage to the health of the employee, among others).

Forbidden health screenings:

The SSH must not perform the following tests without the consent of the employee:

- Pregnancy tests.
- Nuclear magnetic resonance.
- Testing antibodies against the human immunodeficiency virus (HIV).
- Those seeking to undermine the individual and collective rights of workers.

Medical report:

For assessments and medical examinations carried out by the SSH, the occupational physician must write a report whose content must meet the requirements set out in Article 33 of the Technical Standard.

Validity and obligation of application:

The Technical Standard will be effective from the time of its publication in the Official Gazette, specifically from August 24, 2016.

Notwithstanding this, employers will have 120 days counted from its entry into force to adapt their SSH to the requirements of the Technical Standard.

Within 60 days after the entry into force of the Technical Standard, the Institute of Prevention, Health and Labour Safety will make available through its website the form to complete to create a joint SSH and the format to be used when gathering an employee's occupational medical and clinical bio/psycho/social history.

Technical Standard for the Control in Handling, Lifting and Manual Transporting of Loads**Overview:**Object:

Establish guidelines, criteria and fundamental procedures for regulating the handling, lifting and manual transportation of loads greater than three kilograms.

Regulated Matters:

The Resolution regulates matters relating to: work systems and control measures, recovery periods at work, implementation of technologies and controls in positions and work areas, surface conditions and load transfer, ergonomic assessments of work posts, regulation of work in the standing position and cargo handling, features, design and grip of packaging and loading, training of employees who handle and move loads manually.

Validity and obligation of application:

The Regulation will be effective from the time of its publication in the Official Gazette, that is, from August 24, 2016.

Employers will have a term of 180 days counted from its entry into force to adapt their processes to the requirements of Resolution.

Yanet C. Aguiar
Valentina Albarran Luttinger
Esther Cecilia Blondet Serfaty
Yeoshua Bograd Lamberti
Eirys Mata Marcano
Juan Carlos Pró-Rísquez

Footnotes

- ¹ Official Gazette of the Bolivarian Republic of Venezuela N° 38.236 of July 26, 2005.
- ² Official Gazette of the Bolivarian Republic of Venezuela N° 38.596 of January 3, 2007.
- ³ Article 27 of the Partial Regulations of the Organic Law on Prevention, Conditions and Working Environment.

For further information, please contact one of the following lawyers:

> Yanet C. Aguiar	Caracas	+58 212.276.0011	Yanet.Aguiar@nortonrosefulbright.com
> Valentina Albarran Luttinger	Caracas	+58 212.276.0017	Valentina.Albarran@nortonrosefulbright.com
> Esther Cecilia Blondet	Caracas	+58 212.276.0018	Esthercecilia.Blondet@nortonrosefulbright.com
> Yeoshua Bograd Lamberti	Caracas	+58 212.276.0027	Yeoshua.Bograd@nortonrosefulbright.com
> Eirys Mata Marcano	Caracas	+58 212.276.0026	Eirys.Mata@nortonrosefulbright.com
> Juan Carlos Pró-Rísquez	Caracas	+58 212.276.0008	Juancarlos.pro@nortonrosefulbright.com

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.