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**LABOR PROTECTION IN BRANCHES:
EUROPEAN EXPERIENCE OF NORMATIVE
SUPPORT OF RISK-ORIENTED APPROACHES**

Abstract. It is considered a system of organization of labour protection in Ukraine and the normative principles of safety and health in the European Union in the article. It is analysed the European normative principles of providing a risk-oriented approach to labour protection based on the principle of “unity and differentiation” of legal regulation of labor protection. At the same time, the differentiation of the provision of labor protection at European enterprises, in contrast to domestic ones, is provided both in terms of the specifics of work organization in a particular field of economics and the differentiation of the implementation of a risk-oriented approach to ensuring the safety and health of large, medium and small businesses. The particular attention is given to the methodological support of employers from European authorities by providing them with recommendations on risk assessment on the workplace. It is stressed that European standards on occupational safety and health establish that the work environment in the workplace of worker should not only reduce and prevent the impact on physical health of workers of production factors, but also ensure the worker’s health as a state of complete physical, mental and social well-being and not only the absence of illness or infirmity. It is substantiated that in order to improve the organization of labour protection of workers in Ukraine, it is necessary to review existing approaches for creation of safe and healthy working conditions and implement a risk-oriented approach. The basis for such review should be the improvement of labour legislation in a part of the legal regulation of labour protection. In Ukraine, for organization of labour protection system, it is necessary to introduce a European experience of ensuring safe and healthy working conditions on the workplace. The improvement of domestic system of labor protection in general and labor protection in the economic sectors should be based on established normative minimum standards of safety and health at the workplace, and the differentiation of legal regulation of occupational safety should take into account the peculiarities of labor processes in the industries and create conditions for implementing a risk-oriented approach to safety and health at small and medium enterprises.

Keywords: labor protection, risk-oriented approach, normative support, safe and healthy working conditions, workplace, and industrial environment.

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**ОХОРОНА ПРАЦІ В ГАЛУЗЯХ:
ЄВРОПЕЙСЬКИЙ ДОСВІД НОРМАТИВНОГО ЗАБЕЗПЕЧЕННЯ ВПРОВАДЖЕННЯ
РИЗИК-ОРІЄНТОВАНИХ ПІДХОДІВ**

Анотація. Розглянуто систему організації охорони праці в Україні та нормативні засади безпеки і гігієни праці в Європейському Союзі. Проаналізовано європейські нормативні засади забезпечення ризик-орієнтованого підходу до охорони праці, які

базуються на принципі «єдності і диференціації» правового регулювання охорони праці. Водночас диференціація забезпечення охорони праці на європейських підприємствах, на відміну від вітчизняних, забезпечується як у розрізі особливостей організації праці в конкретній галузі господарювання, так і диференціацією впровадження ризик-орієнтованого підходу до забезпечення безпеки і гігієни праці великого, середнього та малого бізнесу. Окрему увагу приділено методологічній підтримці роботодавців із боку європейських органів через надання їм рекомендацій щодо оцінки ризиків на робочому місці. Наголошено, що європейські стандарти з безпеки і гігієни праці встановлюють, що виробниче середовище на робочому місці працівника має не лише знижувати та попереджувати вплив на фізичне здоров'я працівників виробничих факторів, а й забезпечувати здоров'я працівника як стану повного фізичного, психічного та соціального благополуччя, так і відсутність хвороби чи немочі. Обґрунтовується, що для вдосконалення системи організації охорони праці працівників в Україні необхідно переглянути наявні підходи до створення безпечних і здорових умов праці та впровадити ризик-орієнтований підхід. Першоосновою такого перегляду має стати вдосконалення трудового законодавства в частині правового регулювання охорони праці. В Україні для організації системи охорони праці необхідно впровадити європейський досвід забезпечення безпечних і здорових умов праці на робочому місці працівника. Вдосконалення вітчизняної системи охорони праці загалом та охорони праці в галузях господарювання має базуватися на закріплених нормативно мінімальних стандартах безпеки і гігієни праці на робочому місці, а диференціація правового регулювання охорони праці має враховувати особливості процесів праці в галузях та створювати умови для впровадження ризик-орієнтованого підходу щодо безпеки і гігієни праці на малих і середніх підприємствах.

Ключові слова: охорона праці, ризик-орієнтований підхід, нормативне забезпечення, безпечні і здорові умови праці, робоче місце, виробниче середовище.

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ОХРАНА ТРУДА В ОТРАСЛЯХ: ЕВРОПЕЙСКИЙ ОПЫТ НОРМАТИВНОГО ОБЕСПЕЧЕНИЯ ВНЕДРЕНИЯ РИСК- ОРИЕНТИРОВАННОГО ПОДХОДА

Аннотация. Рассмотрена система организации охраны труда в Украине и Европейском Союзе. Проанализированы европейские нормативные основы обеспечения риск-ориентированного подхода к охране труда. Акцентируется внимание, что в странах Европейского Союза безопасность и гигиена труда базируется на принципе «единства и дифференциации» правового регулирования охраны труда. В то же время дифференциация правового обеспечения охраны труда на европейских предприятиях, в отличие от отечественных, обеспечивается как в разрезе особенностей организации труда в конкретной отрасли хозяйства, так и в дифференциации внедрения риск-ориентированного подхода к обеспечению безопасности и гигиены труда большого, среднего и малого бизнеса. Особое внимание уделено методологической поддержке работодателей со стороны европейских органов путем предоставления им рекомендаций по оценке рисков на рабочем месте.

Ключевые слова: охрана труда, риск-ориентированный подход, нормативное обеспечение, безопасные и здоровые условия труда, рабочее место, производственная среда.

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Introduction. The efficiency of production, labor productivity and efficiency of workers as development factors of domestic economy largely depend on the organization of labor protection in the sectors and in every considered enterprise. The ensuring safe and healthy working conditions in the production environment directly affects the health of workers and their ability to work, and it in its turn, affects the final results of the enterprise. However, in recent times, the labor protection is increasingly out of attention of employers, as evidenced by the statistics of accidents and occupational diseases in Ukraine. Such state negatively affects the general level of employability of population, and, accordingly, the system for providing workers with safe and healthy working conditions needs to be reviewed and upgraded.

Analysis of research and problem statement. The basic conditions for organization of labor protection in general and as a factor of increasing the efficiency of production at the expense of employability of workers, have been paid attention in their work by such scientist as: V.A. Vovk, A.P. Girman, V.D. Gogunsky, O.I. Zaporozhets, Iu.S. Chernega and others. At the same time, the normative basis of work organization in the branches is established by the legislation of Ukraine, which requires reconsideration and improvement taking into account the foreign experience.

The purpose of the article is a justification for the need to revise the modern system of organization of labor protection in the branches and improve the working conditions in the workplace in order to increase the production efficiency as a result of activity of employable worker.

Research results. Labor protection as an integral system of legal, socio-economic, organizational and technical, sanitary and hygienic and therapeutic and preventive measures and means aimed at preserving the life, health and employability of a person in the work [1] acts not only as a system of measures on preserving the employability of a person, but also as a complex task for the organization of the workplace of an employee. At the sectoral level, labor protection requires the state and local governments to create legal conditions for organization of a safe industrial environment, at the enterprise level, the labor protection requires managerial management decisions aimed at creating the appropriate working conditions at every workplace.

Inadequate working conditions which lead to accidents or occupational diseases require certain financial costs, which, in our opinion, are more appropriate to prevent accidents and occupational diseases and pay it to suffered employees. According to the Social Insurance Fund of Ukraine in the first half of 2018, the number of accidents and occupational diseases remains high. There were registered 2385 (173 of them - fatal) suffered employees of industrial accidents by bodies of the Executive Directorate of Fund in the first half of 2018. According to it there were prepared the acts of the form H-1 [2]. These data inform that the organization of the labor protection system in Ukraine needs to be revised and improved in order to reduce occupational injuries and occupational diseases.

Scientists rightly approve that the scientific substantiation and development of mechanisms of socio-economic management of labor protection should be carried out through the implementation of risk-oriented approach, as well as of insurance, benefits and compensation systems, incentives and compensation systems for victims of accidents and occupational diseases [3, p. 21]. That is, the system improvement of management of occupational safety and health in the branches requires review of not only managerial approaches at the enterprise, but also improvement of legislation on these issues.

So, nowadays in the legislation it is determined that at all enterprises, institutions, organizations there are created safe and harmless working conditions. The ensuring safe and harmless working conditions are on response of the owner or authorized body [4]. That is, the owner of an enterprise or an authorized body is obliged to create safe and harmless working conditions, but the ways of creating such conditions of work are chosen by the owner, and very often the employer's expenses for creation of safe and harmless working conditions are based on the financial capabilities of the enterprise, which is an incorrect approach to ensure the safety of workers and maintain the working capacity of workers.

In accordance with the Labour Code of Ukraine, the owner of an enterprise, institution, organization or authorized body or physical person undertakes to provide the worker with the labour conditions necessary for the performance of work provided by the labour legislation, collective agreement and agreement of the parties [4]. In this context, the measures for the employee's protection and their safety in the process of work require the employer to create working conditions "necessary" for the work implementation. And here the key is the fact that "conditions necessary for the work" and "safe working conditions" that provide the employee with protection from dangers and risks can be considered differently by parties of working agreement. Therefore, in order to avoid arguments between employees and employers on the organization of safe and harmless working conditions, modern approaches to the organization of labour protection need to be reviewed.

Critically assessing the domestic legislation on occupational safety, we note that the Law of Ukraine "On Occupational Safety" obliges the owners of enterprises, institutions, organizations with the number of employees 50 and more persons to create labor protection services, and on enterprises with fewer than 20 employees to perform the functions of labor protection service may be attracted by external specialists on contractual basis, which have an appropriated training [1]. Such normative requirements for ensuring safe and healthy working conditions are for large enterprises, and the owners of small enterprises do not fall under influence of such norms. It results that the issue of labour protection in such enterprises is unregulated by law, or provided on own discretion by the employer. All this, in our opinion, negatively affects the general level of efficiency of the population of Ukraine due to the fact that employees work with unfavourable working conditions losing their health.

It is also important to note that Art. 29 of the Code of Labour Law of Ukraine stipulate the obligation of the owner or his authorized body to instruct an employee and determine place of work for him [4]. And from this it follows that the management of labour protection should focus not on creating conditions of the working environment in general or the organization of work of labour protection services, but on the creation of safe and healthy working conditions in the workplace.

This is also confirmed by international experience. So, the Framework Directive 89/391/EEC on the implementation of measures for improving the safety and health of workers at work is aimed at protecting workers from dangers and risks at the workplace. In order to avoid ambiguous interpretations of regulations of named Directive, there is fixed that (a) worker: any person employed by an employer, including trainees and apprentices but excluding domestic servants; (b) employer: any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment; (c) workers' representative with specific responsibility for the safety and health of workers: any person elected, chosen or designated in accordance with national laws and/or practices to represent workers where problems arise relating to the safety and health protection of workers at work; (d) prevention: all the steps or measures taken or planned at all stages of work in the undertaking to prevent or reduce occupational risks [5]. That means there are created conditions for organization of labour protection, and more precisely, the safety and health of the workplace in close interaction between workers, employers, representatives of workers to prevent the threats and dangers at the workplace.

The European legislation stipulates that the employer shall have a duty to ensure the safety and health of workers in every aspect related to the work [5], and therefore the safety and health of workers are the main objective of all measures to organize the worker's place and the corresponding work environment at the workplace. At the same time, in the European Union, it is considered the creation of safe and healthy working conditions for an employee through the prism of "health", where health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity [6]. Therefore, at domestic enterprises for employees it is desirable to create such working conditions at the workplace, which not only protect workers from the influence of hazardous substances on their health, but also provide the employee with complete mental and social well-being.

Such European approach to safe and healthy working conditions is directly linked to organization of working time of workers. So, order to ensure the safety and health of Community workers, the latter must be granted minimum daily, weekly and annual periods of rest and adequate breaks; whereas it is also necessary in this context to place a maximum limit on weekly working hours [7]. In the Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time it is separately stressed that research has shown that the human body is more sensitive at night to environmental disturbances and also to certain burdensome forms of work organization and that long periods of night work can be detrimental to the health of workers and can endanger safety at the workplace [7]. It gives basic for concluding that the European approach for creating safe and healthy working conditions is wider than domestic legislation considering the system of ensuring the safety of workers.

Revealing the peculiarities of ensuring occupational safety and health in the European Union, the Human Rights Commissioner of the Verkhovna Rada of Ukraine stresses that “a management system based on the assessment and management of industrial risks is used in the EU countries and the world, and this practice is recognized as mandatory at the legislative level. The Commissioner considers that in Ukraine it is also necessary to reform the system of management of labor protection by using a risk-oriented approach at all management levels - from state to industrial one. The main objectives of such transformation are: to transfer from compensation for harm caused to the prevention of occupational injuries; to reduce regulatory pressure on employers and, at the same time, to strengthen their responsibility for ensuring safe and healthy working conditions; to redirect supervisory activity of state bodies to expand information and advisory support. In this case, the management and continuous monitoring of risks to the life and health of workers should be an obligation of employer, established at the legislative level” [8, p. 457]. Accepting the abovementioned, we note that the implementation of a risk-oriented approach to the organization of the labor protection system in Ukraine requires revision of the national labor safety legislation, which should enable employers to implement appropriate risk assessment procedures, including mandatory measures. The definition at the legislative level requires a minimum set of measures and procedures.

So, domestic scientists argue that the implementation of risk assessment and analysis procedures can implement the principles of security – “predict and prevent”, as well as take the necessary precautions and measures, which include: information support for security management; improving the quality of staff training; warning employees about the presence and nature of hazardous situations; control and self-control of personnel actions; enhancement of the culture of safety; development of abilities of probabilistic forecasting in employees [9, p. 85]. The proposed set of security measures and actions shows that domestic science is trying to solve the problem of preserving and ensuring the efficiency and health of the employee, but a critical analysis of the proposal shows that the implementation of such approach is not sufficient. The above measures should be attributed to those who enable the employee to independently assess the hazards and risks in the production environment and at their workplace.

To implement risk-oriented approaches to the organization of safety and health system is not enough active action by employees, employers should also actively work to prevent the occurrence of risks and dangers in the production environment and each individual workplace. Therefore, let's consider how European legislation establishes the employer's responsibilities for labor protection on the basis of risk assessment.

So the Article 6 of Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC) fixes that within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means. The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations. The employer shall implement the measures referred to in the first subparagraph of paragraph 1 on the basis of the following general principles

of prevention: (a) avoiding risks; (b) evaluating the risks which cannot be avoided; (c) combating the risks at source; (d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health. (e) adapting to technical progress; (f) replacing the dangerous by the non-dangerous or the less dangerous; (g) developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment; (h) giving collective protective measures priority over individual protective measures; (i) giving appropriate instructions to the workers [5]. So, the employer must not only take measures to avoid or control production risks, the employer has to assess them and generally have an idea of those industrial or occupational risks and dangers that negatively affect the health of worker at the workplace provided to him by the employer for performing the labor function. Schematically this can be displayed in this way (Fig. 1).

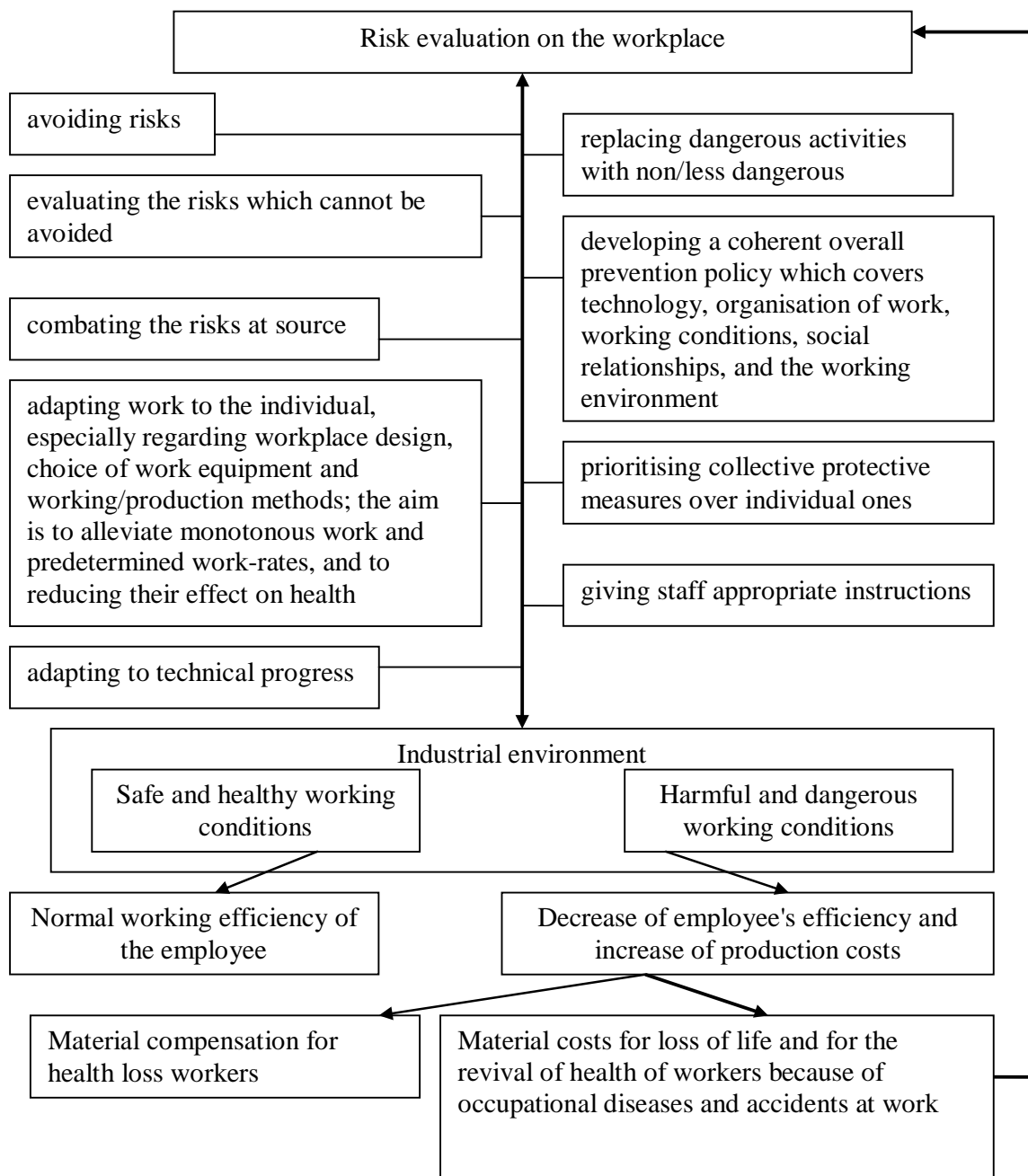


Fig. 1. Risk-oriented approach to ensuring safety and health at work

Implementation of risk-oriented approaches to occupational safety in branches should meet certain criteria that must comply not only with the standards of occupational safety in general, but also to take into account the peculiarities of the organization of work. The choice of approaches to risk evaluation at the workplace, based on European experts in the field of occupational safety and health, should depend on: the nature of the workplace (e.g. fixed establishment, transitory); the type of process (e.g. repeated operations, developing/changing process, work on demand); the task performed (e.g. repetitive, occasional such as batch processing, seasonal pesticide application, high risk – such as work on electrical switch gear, entry into confined spaces); technical complexity. In some cases a single exercise covering all risks in a workplace or activity may be appropriate. In other cases different approaches might be appropriate to different parts of a workplace [12, pp. 17-18].

It should also be noted that risk-oriented approaches to the organization of occupational safety in branches in the European Union are provided by the differentiation of the minimum requirements for occupational safety, depending on the economic branches. An example of such normative differentiation is Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers [13], Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment [14], Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work [15], Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites [16], Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling [17] and others.

The unity and differentiation of legal regulation of occupational safety in the countries of European Union is ensured not only by the definition of standards on safety and health in some economic branches, but also by differentiation of conditions of labour organization in large, small and medium enterprises of Europe. So, support for small and medium-sized enterprises' employers in their activity for risk-oriented approaches involves the specific guidelines for employers. Such guidelines include recommendations for developing a risk evaluation plan, putting it into effect and implementing a risk evaluation plan for workers at the workplace.

The European Commission in the management for risk assessment in the work for small and medium-sized enterprises offers the following: risk assessment must take into account all aspects that are all the sources of hazards, in each possible operational status. For most small and medium-sized businesses the approach to risk assessment could be as follows:

1. Draw up a plan for the assessment which covers all parts of the premises on a geographical basis during normal working...
2. Put the plan into operation with a structured approach so as to ensure assessment of all relevant risks...
3. Implement the plan by: identifying hazards, e.g. chemical hazards identified from labels and safety data sheets, machinery hazards by reference to manufacturers' literature or published standards, physical hazards of falls etc. identified from first principles; consultation and participation of workers and/or their representatives, including their observations of adverse health effects which may or may not be immediately linked to exposure to a specific hazard; taking note of information available from external prevention services (e.g. an occupational health service) on such matters as occupational related ill-health, results of exposure monitoring, audiometry and matters of concern raised by employees; identify who might be exposed to hazards, and when; evaluate the risk arising from a hazard; consider elimination of risks; assess the control measures in use by comparison with current good practice, e.g. as provided by legislation, national technical guidelines, codes of practice, trade association guidance, etc.; identify where control measures are not adequate, or risk could be reduced by additional control measures to improve protection; identify areas where further risk assessment is required; priorize actions to implement findings of risk assessment [12, p. 46-47].

It proves that the European community, desiring to create safe and healthy working conditions, provides employers with support in developing plans for measures to identify, minimize, counteract and prevent the negative effects of risks and health hazards of workers in the industrial environment.

Conclusions. Firstly. To improve the organization of occupational safety in Ukraine, it is necessary to review existing approaches to creating safe and healthy working conditions and implement a risk-oriented approach. The basis for such review should be the improvement of labor legislation in the legal regulation of occupational safety. The research showed that ensuring safe and healthy working conditions on the principle of “unity and differentiation” of legal regulation meets the generally accepted principles of the organization of labor protection in Ukraine, but this principle is used to achieve different goals. In Ukraine, for the organization of labor protection system, it is necessary to introduce a European experience of ensuring safe and healthy working conditions at the workplace. Therefore, taking into account the peculiarities of the organization of labor and technological processes in various branches of the national economy, further research of European experience in ensuring safe and healthy working conditions to identify the possibilities for its implementation in Ukraine.

The second. The main emphasis in the field of legal protection of occupational safety should focus not on improving the activities of health services and authorities, but to provide the legal regulation of minimum requirements in the workplace of worker. Dislocation of emphasis on setting up of work environment to ensure workplace safety will allow employers to implement a risk-based approach to provide each individual employee with safe and healthy working conditions at their workplace.

Thirdly. The improvement of domestic system of occupational safety in general and labor protection in the economic branches should be based on the established normative minimum standards of safety and health at the workplace. At the same time, the differentiation of legal regulation of labor protection should take into account not only the peculiarities of labor processes in the branches, but also create conditions for implementation of risk-oriented approach to safety and occupational health at small and medium enterprises, as it is implemented in the European Union. The occupational safety as a component of an employer's or an authorized body's activity should be accompanied by methodological support of the state. At the national level, it is necessary to develop models of risk-oriented safety and occupational health. With this purpose, it is proposed to take over a progressive European experience in risk assessment at the workplace and in the industry environment, and to continue the research the issue of ensuring safe and healthy working conditions in various branches of the economy.

Fourth, owners of enterprises, institutions, organizations regardless of ownership and sphere of management should implement in their activities a responsible approach to the occupational safety not only as a way to reduce the adverse effects of production environment on the health of the employee, but also as a component of social policy of an enterprise, where the health of employee is considered as an irrigation potential and resource for the development of an enterprise.

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