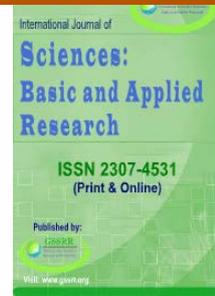




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## A Comparison between Turkish Occupational Health and Safety Act and OSH Act in Terms of Employee Rights and Liabilities

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### Abstract

Usually forming basic occupational health and safety standards, defining the rights and liabilities of participants is a difficult process in construction sector. This study aims to draw attention to employees` rights and liabilities in terms of ensuring occupational health and safety in Turkey. For this purpose, in the scope of the study, main deficiencies related to the employees` rights and liabilities in Turkish Occupational Health and Safety Law were identified. Also for detecting the main deficiencies, a comparision enviroment is provided between the Turkish Occupational Health and Safety Law and OSH Act as an example for the protection of employees` rights in USA. As a result of this comparision, it is found out that basic deficiencies in the Turkish Occupational Health and Safety Law are insufficiency of the employees` right to speak and insufficiency of the employees` encouragement in terms of stating their complaints with regards to occupational health and safety.

**Keywords:** Occupational Safety; Employee Rights; Turkish Occupational Health and Safety Law; OSH Act; OSHA.

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## **1. Introduction**

The construction sector's unique structure that requires working with heavy machinery and intensive labor, causes many hazards that are different from other manufacturing industries. The way in which construction work is organized makes the management of occupational health and safety more challenging than in other industries [1-2]. This position requires addressing the concept of occupational safety in a comprehensive manner in construction sector. Also the considerable increase in the overall rate of accidents in construction sector requires the questioning the application of employee rights and liabilities in occupational health and safety. According to Mungen [3] in order to minimize the accidents in the job sites and the losses related to them, identification of security measures based on scientific research studies and their implementation creates "work safety". Based on this approach, Mungen [3] states that all of the methodical studies for prevention of employees from hazards that are caused by working conditions and investigation of these hazards constitute the definition of work safety. Taylor and his colleagues [4] define safety as an individual's judgment of the acceptability of risk. In general, the concept of work safety consists of protection of employees, businesses and all kinds of manufacturing from danger and harm. Maurice and his colleagues [5] emphasis safety is a state in which hazards and conditions leading to physical, psychological or material harm are controlled in order to preserve the health and well-being of individuals and the community. It is an essential resource for everyday life, needed by individuals and communities to realize their aspirations. On the other hand, Maslow [6] states that safety must not be defined as a total absence of hazards. Indeed, it should not necessarily be the ultimate goal to achieve, it could even be risky. Because of the priority of human life, it is seen that safety issues about business and manufacturing have secondary importance and in the international arena the concept of work safety is expressed as the general safety of employees. Although the concepts of work safety and work health are usually used meaning vice versa, the concept of work safety discloses all of the technical rules that are the liabilities of the employers for removing the hazards faced by employees during the work or reducing them to a minimum level [7]. Regarding these, although reducing the risks of an accident, which vary from project to project, and ensuring the work safety by taking necessary measures are seen as the responsibility of the employer, the full compliance of employees to these measures is more important. Safety of both project personnel and construction workers cannot be guaranteed by legislation alone, nor should safety be the sole responsibility of the employer, the contractor. Employees must be involved beside them. Work safety must be a team effort and can be achieved by training and education [8]. When practices related to occupational health and safety in various countries are analyzed, it is seen that basic studies in field of occupational safety have started a long time ago. The approach involving cooperation in OHS between employers and employees which was introduced in Britain, Canada and Australia in the 1970s had its origin in Sweden twenty years earlier. The USA took a different approach, which still envisages cooperation between employers and employees but does not formalize this with joint health and safety committees or elected health and safety representatives [4]. Occupational Safety and Health Act (OSH Act), which was enacted to prevent losses of work-related accidents in USA in 1970, is providing important benefits for reducing the high accident rates. Occupational Safety and Health Administration (OSHA) was founded to encourage the employees and employers for the application of health and safety programs in order to reduce hazards in the working area. Severe penalties for the employers in case of violation of the act are prescribed in the OSH Act, thus implementation of the act has become

compulsory by the application of these penalties. Also many new rights and liabilities for the employees have been defined in the scope of the act.

## 2. Research Significance

In construction, most of the problems encountered in the implementation of work safety measures, arise from not adequately informing of the employees about their work safety liabilities. On the other hand, it has been determined that the employees don't have sufficient motivation about using their work safety rights because of their concerns about job loss. This study aims to identify deficiencies related to the employees' rights and liabilities in Turkish Occupational Health and Safety Law (OHS Law). For this purpose, to determine the main deficiencies, employees' rights and liabilities that are defined in OSH Act are evaluated, and these rights and liabilities are compared with those in OHS Law. In literature review, previous studies that provide a comparison environment between OSH Act and Turkish OHS Law or other countries' OHS Laws are investigated (Table 1). The references point out that similar comparisons between OSH Act and the other countries' occupational health and safety laws, have been conducted previously. However, it is found out that these comparisons do not contain employees' occupational health and safety rights and liabilities among the criteria. Besides, a study about the comparison of OSH Act and Turkish OHS Law does not exist.

**Table 1:** Literature review

Author/ Year	Comparison Criteria	Compared Countries
Singleton (1983) [9]	Occupational Safety and Health Legislation	Switzerland, UK and USA
Wilson (1986) [10]	Occupational Safety and Health Legislation	UK and USA
Occupational Safety and Health Administration (1992) [11]	Occupational Safety and Health Programs	Mexico and USA
Viner (1992) [12]	Labor Law	European Economic Community Law and Turkish Law
Suazo and Jaselskis (1993) [13]	Honduran Labor Code and OSH Act	USA and Honduras
Koehn and his colleagues (1995) [8]	Construction Safety Legislation	USA and India- Taiwan
Walters (1996) [14]	Health And Safety Strategies	13 Member States of the European Union
BPRDB (1997) [15]	Occupational Health And Safety Statutes	British Columbia, Canada and USA
Office of the Australian Safety and Compensation Council (2008) [16]	Occupational Health And Safety Arrangements	Australia and New Zealand
Elsafty and his colleagues (2012) [17]	Construction Safety And Occupational Health Education	Egypt and USA
Chen and his colleagues (2012) [18]	Legal System Of Occupational Safety And Health	Hong Kong and Mainland China
Raheem and Hinze (2014) [19]	Construction Safety Standards	22 Countries
Sun and his colleagues (2014) [20]	Laws, Rights, And Administrative Structures	China and USA
Walker (2014) [21]	Protection Of Employees' Health And Safety	China and USA

### **3. OSH ACT**

Enactment of the OSH Act in 1971 was the major step for ensuring the work safety in USA. With the act, removal of the dangers threatening the occupational health and safety in the workplace and prevention of occupational accidents has been targeted. According to the act, the ministry of labor has been authorized to develop the mandatory occupational health and safety standards. Aim of the OSH Act is to assure safe and healthy working conditions for working men and women,

- by authorizing enforcement of the standards developed under the act,
- by assisting and encouraging the states in their efforts to assure safe and healthy working conditions,
- by providing research, information, education and training in the field of occupational safety and health, and for other purposes [22, Sec.1].

By establishment of the OSH Act, Occupational Safety and Health Administration has been created within the Federal Department of Labor to administer the act. In order to fulfill judicial function regarding the occupational health and safety practices, Occupational Safety and Health Administration Review Commission has been established. On the other hand, task of preparing occupational health and safety programs appropriate to standards have been given to the state representatives.

According to this regulation, OSHA is responsible to:

- Develop mandatory job health and safety standards, and enforce them,
- Maintain a reporting and record-keeping system to monitor job-related injuries and illnesses,
- Encourage employers and employees to reduce workplace hazards, and implement or improve health and safety programs,
- Provide for research in occupational safety and health,
- Establish training programs to increase the number and competence of occupational health and safety personnel,
- Establish separate but dependent liabilities and rights for employers and for employees to achieve better health and safety conditions,
- Provide state-level occupational health and safety programs in those states that request to control their own programs [23].

The OSHA standards are defined in four different areas i.e. construction, maritime, agriculture and general industry. The employers are obliged to comply with all applicable OSHA standards [24]. According to the OSH Act, the employer is determined as a responsible party for constituting safety and healthy workplaces. At the end of audits made by OSHA, in case of a violation of health and safety measures by the employer, OSHA has the authority to give a penalty to the employer. OSHA inspections are conducted by Secretary of Labor (referred as secretary in OSH Act). In addition to state authorities' inspections, OSHA itself performs inspections once a year for the proper application of OSHA standards. However, regarding the number of work places under OSHA's control, it is impractical for OSHA to inspect all of them. Thus, priority for OSHA inspections is given

to the workplaces with highest risk [25, 26].

### **3.1. Employee Rights and Liabilities in OSH Act**

Although employees` responsibility has a passive role in occupational safety, awareness of the employees about their authorities and liabilities in occupational health and safety practices is a very important issue since they are the most affected party from the hazards [27]. As well as the establishment of the required standards and measures by the employer, application of these standards and measures by the employees is also very important in terms of ensuring occupational health and safety in the workplaces. According to the OSH Act, each employee should comply with occupational health and safety standards and all rules, regulations and orders issued pursuant to OSH Act [22, Sec.5.b].

By encouraging the employees to take an active role in occupational health and safety applications, OSHA has identified some basic liabilities for the employees. Although any enforcement is not predicted related to violation of these liabilities, according to the relevant provisions, all employees must conform to the occupational health and safety standards, rules and regulations. Basic liabilities defined in OSH Act are:

- To comply with occupational health and safety standards of OSHA [22, Sec.5.b]
- To comply with occupational health and safety rules of his employer [22, Sec.5.b]
- To report hazardous conditions [22, Sec.8.f.1]
- To be in collaboration with OSHA inspectors during inspections [22, Sec.8.b].

On the other hand employees have other liabilities about using all required protective gear and equipment, reporting work-related accidents and diseases, following employer`s health and safety rules, reading the OSHA health and safety posters, using employee rights defined in OSH Act [23].

The fulfillment of these liabilities which aim to inform employees about existing hazards and precautions is very important for the success of the measures taken and for the prevention of the occupational accidents. A vast majority of accidents in construction sector are caused by negligence and lack of concentration, therefore the employees should take the first step by fulfilling their liabilities.

In addition to the defined liabilities, the employees have important rights related to occupational safety and health. The employees` rights stated in the OSH Act could be summarized under ten main headings.

#### **1. Right to Get Training:**

Employees are entitled to get training about occupational health and safety programs. Establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthy working conditions are the liabilities of the secretary of labor [22, Sec.21.c]. Besides, the state agencies should also provide counseling to employers who request support, and prepare training programs for employees and employers. On the other hand, the employers have obligations such as labelling chemicals, preparing safety data sheets

containing risk information of materials, informing employees about the chemicals' negative effects on health, providing training about the ways of protection from these effects [28]. The employers should prepare a comprehensive hazard communication program containing information about hazardous materials to ensure that the employees are aware of the dangers of hazardous materials, and to take the necessary protection measures. In addition, trainings for the implementation of the program should be provided.

## **2. Right to Request Information about Standards:**

The employers should keep employees informed about their protections and obligations under the OSH Act, including the provisions of applicable standards [22, Sec.8.c]. The employees can receive a copy of these standards upon their request. Any employer may apply to the secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under the act in case of being unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard. Such a temporary order may be granted only after a notice to employees and an opportunity for a hearing [22, Sec.6.b.6.A].

## **3. Right to Access Records:**

Each employer should maintain accurate records of, and to prepare periodic reports on work-related deaths, injuries and illnesses -other than minor injuries- which require only first aid treatment and a medical treatment is not involved, loss of consciousness, restriction of work or motion, or transfer to another job [22, Sec.8.c.2]. The employers should also maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations should provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. The employer should enable each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer should promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational health and safety standard promulgated under the act, and should inform any employee who is being thus exposed of the corrective action being taken [22, Sec.8.c.3].

## **4. Right to File a Complaint:**

Although OSHA does not directly give the employees the right to refuse unsafe and unhealthy work, US courts have brought the right to refuse the work which has the risk of serious injury or death. If a worker believes working conditions are unsafe or unhealthy, OSHA recommends that he or she bring the conditions to the employer's attention, if possible. An employee may file a complaint to OSHA concerning a hazardous working condition at any time. However, employees are not allowed to leave

the worksite merely because they have filed a complaint. If the condition clearly presents a risk of death or serious physical harm, there is not sufficient time for OSHA to inspect, and, where possible, a worker has brought the condition to the attention of the employer, the worker may have a legal right to refuse to work in a situation in which he or she would be exposed to the hazard [29]. Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the secretary or his authorized representative of such violation or danger [22, Sec.8.f.1]. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein does not appear in such copy or on any record published, released, or made available. Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the secretary or any representative of the secretary responsible for conducting the inspection, in writing, of any violation of the act which they have reason to believe exists in such workplace. The secretary should, by regulation, establish procedures for informal review of any refusal by a representative of the secretary to issue a citation with respect to any such alleged violation and should furnish the employees or representative of employees requesting such review a written statement of the reasons for the secretary's final disposition of the case [22, Sec.8.f.2].

#### **5. Right to Participate in Inspections:**

A representative authorized by employees could accompany the secretary or his authorized representative during the physical inspection of any workplace for the purpose of aiding such inspection. Where there is no authorized employee representative, the secretary or his authorized representative consults with a reasonable number of employees concerning matters of health and safety in the workplace [22, Sec.8.e]. If, upon inspection or investigation, the secretary or his authorized representative believes that an employer has violated a requirement of the OSH Act or, of any standard, rule or order or of any regulations he should with reasonable promptness issue a citation to the employer. Each citation should be in writing and should describe with particularity the nature of the violation, including a reference to the provision of the act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation should fix a reasonable time for the abatement of the violation [22, Sec.9.a]. If the employer fails to notify the secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees within such time, the citation and the assessment, as proposed, is deemed a final order of the Occupational Health and Safety Review Commission and not subject to review by any court or agency [22, Sec.10.a].

#### **6. Right to Access to Audit Conclusions:**

The inspector should convey the final inspection report to the employees or employees' representatives [22, Sec.8]. Whenever and as soon as an inspector concludes that conditions or practices described in the act exist in any place of employment, he should inform the affected employees and employers of the danger [22, Sec.13.c]. If the secretary arbitrarily or capriciously fails to seek relief, any employee

who may be injured by reason of such failure, or the representative of such employees, might bring an action against the secretary in the United States district court [22, Sec.13.d].

**7. Right to File a Discrimination Complaint:**

To help ensuring that employees are free to participate in health and safety activities, section 11(c) of the OSH Act prohibits any person from discharging or in any manner retaliating or discriminating against any employees for exercising rights under the act. These rights include raising health and safety concerns with an employer, reporting a work-related injury or illness, filing a complaint with OSHA, seeking an OSHA inspection, participating in an OSHA inspection and participating or testifying in any proceeding related to an OSHA inspection [30]. No person could discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the OSH Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by the Act. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection 11.c of OSH Act may, within thirty days after such violation occurs, file a complaint with the secretary alleging such discrimination. If the secretary determines that the provisions of the OSH Act about discrimination have been violated, he could bring an action in any appropriate United States district court against such person. In any such action the United States district courts have jurisdiction, for cause shown to restrain violations of OSH Act and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay [22, Sec.11.c].

**8. Right to Appeal a Given Time for Removal of the Danger:**

Any employee or representative of employees could file a notice with the secretary alleging that the period of time fixed in the citation prepared by inspector for the abatement of the violation is unreasonable [22, Sec.10.c].

**9. Right to participate to the Investigation as Parties:**

The affected employees from the hazards or representatives of affected employees have the opportunity to participate as parties to inspections and hearings [22, Sec.10.c].

**10. Right to Give Advice for the Development of the Standards:**

The employees or representative of employees could appeal to the secretary about any rule that should be promulgated in order to serve the objectives of the act [22, Sec.6.b.1]. Also the Occupational Health and Safety Review Commission could appoint administrative law judges and other employees as he deems necessary to assist in the performance of the Commission's functions [22, Sec.12.e]. The head of each Federal agency to establish and maintain an effective and comprehensive occupational health and safety program which is consistent with the standards after consultation with representatives of the

employees [22, Sec.19.a].

#### **4. Employee Rights and Liabilities in Occupational Health and Safety Law No.6331**

In Turkey, until 2012, regulations related to occupational health and safety had been ensured in accordance with Labor Law that was enacted in 2003. In 2012 with the issuance of "Occupational Health and Safety Law No. 6331", occupational health and safety issue was enacted as a separate law. With the implementation of the law, some of the occupational health and safety issues that were not in the scope of the Labour Act had been covered. Additionally, important regulations had been presented by this law. OHS Law targets to regulate duties, authorities, responsibilities, rights and obligations of employers and employees in order to ensure occupational health and safety at workplaces, and to improve existing health and safety conditions [31, Article.1]. The rights and liabilities of the employees regarding occupational health and safety are defined in detail by the law.

When employees` liabilities stated in article 19 of the law are analyzed, it may be determined that it is the responsibility of the employee to watch his own health and safety to the extent of his authority and that of other persons affected by his acts or commissions at work in accordance with his training and the instructions related to occupational health and safety given by his employer [31, Article.19.1]. In the same article, the following are listed as liabilities of the employees:

- To make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and other means of production; use such safety devices correctly and refrain from changing or removing arbitrarily safety devices fitted.
- To make correct use of the personal protective equipment supplied to them, and to protect themselves.
- To inform the employer and/or the employees' representative of any work situation they have reasonable grounds for considering represents a serious and immediate danger to health and safety, and of any shortcomings in the machinery, apparatus, tools, facilities and buildings.
- To cooperate with the employer and/or employees' representative to enable any tasks or requirement imposed by the competent authority to protect the health and safety of employees at work to be carried out.
- To cooperate with the employer and/or employees' representative for occupational health and safety of employees within their field of activity [31, Article.19.2].

In addition to liability provisions of the OHS Law, listed above, the rights that are provided to employees are summarized below that are similar to those in the OSH Act under the headings listed in the previous section.

##### **1. Right to Get Training:**

The employer should ensure that each worker receives health and safety training. This training should be provided on recruitment, in the event of a transfer or a change of job, in the event of a change in equipment or introduction of a new technology. The training should be adapted to take account of new or changed risks, and repeated periodically if necessary [31, Article.17.1].

## **2. Right to Request Information About Regulations:**

The employer should inform the employees and employees' representatives of the following issues taking into account the characteristics of the enterprise for the purpose of ensuring and maintaining the occupational health and safety:

- a. The health and safety risks and protective and preventive measures.
- b. Their legal rights and liabilities.
- c. Employees designated to handle first aid, extraordinary situations, disasters, fire-fighting and evacuation [31, Article.16.1].

## **3. Right to Access Records:**

The employer should keep a list of all occupational accidents and diseases by which the employees suffer, and draw up reports after required studies are carried out, investigate and prepare reports on incidents that might potentially harm the employees, work place or work equipment, or have damaged the work place or equipment despite not resulting in injury or death [31, Article.14.1]. The employer should also ensure that support staff and employees' representatives have access to the risk assessments, protective and preventive measures related to health and safety at work, the information yielded by measurements, analysis, technical checks, records, reports and inspections [31, Article.16.2.c].

## **4. Right to File a Complaint:**

The employees exposed to serious and imminent danger should file an application to the committee or the employer in the absence of such a committee requesting an identification of the present hazard, and measures for emergency intervention. The committee should convene without delay, the employer should make a decision immediately and record the decision. The decision should be communicated to the employees and employees' representative in writing [31, Article.13.1]. If the committee or the employer takes a decision that is supportive of the request made by the employee, the employee may abstain from work until necessary measures are put into practice [31, Article.13.2].

## **5. Right to Participate in Inspections:**

Although the employees have responsibilities about being in collaboration with the employer and employees' representative in terms of the elimination of deficiencies identified in the workplace by the competent authority during inspections, there isn't any relevant provision about employees' participation to the inspections at their own requests.

## **6. Right to Access to Audit Conclusions:**

The employer should ensure that support staff and employees' representatives have access to the risk assessment, protective and preventive measures related to health and safety at work, the information yielded by

measurements, analysis, technical controls, records, reports and inspections [31, Article.16.2.c].

**7. Right to File a Discrimination Complaint:**

The employees or their representatives are entitled to appeal the authority responsible for the protection of health and safety at work if they believe that the measures taken and the means enforced by the employer are not adequate for the purpose of ensuring occupational health and safety. The employees may not be placed at a disadvantage because of their respective activities [31, Article.18.3].

**8. Right to Appeal a Given Time for Removal of the Danger: N/A**

**9. Right to Participate to the Investigation as Parties: N/A**

**10. Right to Give Advice for the Development of the Regulations:** The employer should consult the employees or their representatives authorized by trade unions to ensure the consultation and participation of employees. This presupposes:

- a. Consultation with regards to occupational health and safety, the right of employees or their representatives to make proposals and allowing them to take part in discussions and ensuring their participation.
- b. Consultation with regards to the introduction of new technology and the consequences of the choice of equipment, the working conditions and the working environment for the health and safety of employees [31, Article.18.1].

Also the employer should ensure that support staff and employees' representatives should be consulted in advance with regards to:

- a. The assignment of occupational physicians, occupational safety specialists and other staff inside the enterprise or the enlistment, where appropriate, of the competent services or persons outside the undertaking and/or enterprise and assigning people to be in charge of first aid, fire-fighting and evacuation.
- b. Identification of the protective equipment, and protective and preventive measures to be introduced as a consequence of risk assessment.
- c. Determining the health and safety risks and providing protective services.
- d. Worker information.
- e. The planning of training to be provided to employees [31, Article.18.2].

**5. Comparison of OSH Act and Turkish OHS Law in Terms of Employee Rights and Liabilities**

OSH Act, which is developed to position employee to take the primary role in occupational health and safety issues, includes very important provisions regarding the employees' rights and liabilities. By means of developing standards and applying severe sanctions within the scope of the law, employers' attention is drawn to occupational health and safety issues, and to employees' rights related to these. OHS Law, which came into force in 2012, is deemed as a significant step in terms of the existing legislation on occupational health and

safety. When the OSH Act and Turkish OHS Law are compared in terms of the employee rights and liabilities, it may be stated that certain OHS Law provisions, which are essential for comparisons, have similar content with the provisions of the OSH Act. On the other hand, it is also determined that certain rights and liabilities stipulated in the OSH Act do not have a counterpart in the OHS Law. Main headings that are based on comparison are summarized in Table 2.

**Table 2 :** Comparison of the OSH Act and Turkish OHS Law in Terms of the Employee Rights and Liabilities.

<b>Employees` Rights and Liabilities</b>	<b>OSH Act</b>	<b>OHS Law</b>
<b>Employees` Liabilities</b>		
To comply with the standards and regulations	Sec.5.b	-
To comply with the employer`s rules related to health and safety	Sec.5.b	Article.19.2
To report dangerous conditions	Sec.8.f.1	Article.19.2
To be in cooperation during the inspections	8.b	Article.19.2
<b>Employees` Rights</b>		
<b>1. Right to Get Training</b>		
Right to get training about occupational health and safety issues	Sec.21.c.1 Sec.21.d.2	Article.17.1
<b>2. Right to Request Information About Standards/Regulations</b>		
Right to request information about laws and related standards/regulations and liabilities of the employees	Sec.8.c.1	Article.16.1
Right to be informed about changes in standards made by the employer	Sec.6.b.6.A	-
<b>3. Right to Access Records</b>		
Right to access records containing details of work-related deaths, injuries and diseases	Sec.8.c.2	Article.16.2.c
<b>4. Right to File a Complaint</b>		
Right to complain about unhealthy working conditions and request inspection about these	Sec.8.f.1	Article.13.1
Right to request his name to be kept secret	Sec.8.f.1	-
Right to request inspection in different areas regarding any violation of the act	Sec.8.f.2	-
<b>5. Right to Participate in Inspections</b>		
Right to participate in inspection and accompany the inspectors voluntarily	Sec.8.e	-
<b>6. Right to Access to Audit Conclusions</b>		
Right to access the audit conclusions at the end of an inspection	Sec.8.c.3	Article.16.2.c
Right to be informed about the hazards and unhealthy working conditions detected	Sec.13.c	Article.16.2.c
Right to apply to the court for his losses if the inspector does not inform him about the results of the audit	Sec.13.d	-
<b>7. Right to File a Discrimination Complaint:</b>		
Right to file a complaint for discrimination or for being discharged because of using his rights	Sec.11.c	Article.18.3
Right to claim compensation for discrimination or for being discharged because of using his rights	Sec.11.c	-
<b>8. Right to Appeal a Given Time for the Removal of the Danger</b>		
Right to appeal a given time for the removal of the danger	Sec.10.c	-
<b>9. Right to Participate the Investigation as Parties</b>		
Right to participate as parties to inspections and hearings	Sec.10.c	-
<b>10. Right to Give Advice for the Development of the Standards/ Regulations</b>		
Right to appeal for the promulgation of any rule	Sec.6.b.1	-
Right to assist in the performance of the Commission's functions	Sec.12.e	-
Right to make consultation for the improvement of the occupational health and safety decisions	Sec.19.a	Article.18.1 Article.18.2

It is determined that OHS Law has similar provisions with those in OSH Act in terms of the employees' fulfillment of their liabilities related to complying with health and safety rules of the workplace, complying with the employer's rules about health and safety, reporting dangerous conditions, being in cooperation during the inspections. On the other hand, it is determined that obligation of the employee related to complying with standards and regulations for ensuring occupational health and safety is not clearly expressed in OHS Law.

Comparison between the two laws based on the employees' rights as to;

- Right to access the audit conclusions,

shows that both of the laws have similar provisions. On the other hand, it is found out that the employees' rights similar to those defined in OSH Act as to;

- Right to participate in inspections
- Right to appeal a given time for removal of the danger
- Right to participate to the investigation as parties

are not defined in the OHS Law.

When comparisons are carried out based on;

- Right to get training, it is determined that employees are entitled to receive training in occupational health and safety issues according to both of the laws. However, it is determined that hazard communication program, which must be prepared by the employer, does not have a counterpart in the OHS Law.
- Right to request information about standards/regulations, as well as the identification of similar rights in OHS Law, in case of the mandatory requirements the employer has the opportunity to make temporary changes in existing standards. Additionally, the employers are required to inform their employees about changes. In the construction industry, which production methods and techniques are developed and changed continuously, to entitle such a right to the employer will provide significant benefits in terms of both cost and duration of the work.
- Right to file a discrimination complaint, according to both of the laws the employees have the right to complain about unhealthy working conditions and request inspection about these. However, in OHS Law employees do not have the right to request his name to be kept secret. Also in OHS Law, employees do not have the right to request inspection in different areas because of any violation of the act.
- Right to access the audit conclusions, although in OHS Law the employees have the right to access the audit conclusions at the end of the inspections, and the right to be informed about the hazards and unhealthy working conditions detected, there is no provision about the employees' right to apply to the court for his losses because of the inspector does not inform them about the results of the audit.
- Right to file a discrimination complaint, in both of the laws the employees have the right to file a complaint for discrimination or for being discharged because of using his rights. Whereas the employees have right to claim compensation for discrimination or for being discharged because of using his rights in OSH Act,

they don't have such a right in OHS Law.

- Right to give advice for the development of the standards/ regulations, although in both laws it is ensured that employees are enabled to make consultation with regards to occupational health and safety, they are not enabled to appeal for the promulgation of any rule or assist in the performance of the Commission's functions in OHS Law. It is also found out that the employees have more extensive rights about assisting performance of the Commission's functions as to make recommendations for regulations or abolition of existing provisions in OSH Act.

## **6. Conclusions and Recommendations**

The construction sector contains different kinds of hazards. There is an increase in the number of accidents resulting in serious injuries or death because of ignorance and being not conscious of employers and employees about the dangers and precautions that can be taken against these dangers. In order to reduce the number of accidents in the workplaces as well as the adequacy of the security measures taken, another fundamental point is the awareness of the employees, who are directly confronted with the danger, about their basic rights and liabilities regarding the occupational health and safety. Fulfilment of these rights and liabilities by them also has importance.

OSH Act used in USA, encourages the employees to use and protect their rights by means of its provisions. Findings obtained as a result of the comparison between two laws reveal the necessity of the implementation of employees' rights and fulfilment of their liabilities regarding the occupational health and safety. Scope of the occupational health and safety measures have been extended during the European Union harmonization process in Turkey. Although with the enactment of the OHS Law No. 6331 previously defined scattered rights and obligations are gathered, the OHS Law still does not appear to have sufficient clarity on certain issues. It is possible to handle the basic shortcomings in the law under two headings as insufficiency of the employees' rights to speak related to providing occupational safety, and insufficiency of encouragement of the employees' related to reporting their complaints. Regarding these, employees who have the most important role by assuming the implementation of decisions taken on paper to ensure the work safety, are not entitled to speak enough about safety issues. There are very important insufficiencies about participation as parties to inspections and hearings related to employer's impolicies, making consultation with the employers about safety regulations in OHS Law. As a solution to this problem participation of employees or employees' representatives should be increased both in audits, and in development of the laws and regulations related to safety issues. Second insufficiency area is related to matters about encouragement of the employees to report their complaints concerning occupational health and safety hazards. New provisions should be added to law which will make the employees feel that they will be protected by law in case they complain about safety hazards. A provision should be added to law that allows the complaining employee's name to be kept confidential, and thus the OHS Law should be the primary vehicle to encourage the employees for application of the work safety measures. For the development of the OHS Law in defined areas, the frequency of inspections and strengthening of sanctions are very important. In Turkey, being not aware of employees' rights and liabilities, also their concerns about being punished by the employer when they use their rights constitute main impediments in terms of the benefitting from their rights. Therefore, the employees should be informed about their rights and their obligations that they have to fulfill.

They should be encouraged to fulfill their liabilities both by departments and by laws. On the other hand, establishment of a healthy relationship between employers and employees should be based on mutual trust of both parties, it should also be noted that all individuals have to respect to each other's rights and liabilities definitely.

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