

VDSI position paper

“Legal position of the occupational safety specialist in the company”



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The legislator has clearly established the specialist's legal position:

In this regard, the German Occupational Safety Act (ASiG) states that: “Occupational physicians and occupational safety specialists or, if more than one occupational physician or occupational safety specialist have been appointed for an establishment, the managing occupational physician and the managing occupational safety specialist shall report directly to the manager of the establishment.” (ASiG, Section 8, Para. 2).

The manager of the establishment is the employer or the person he has put in charge of managing the establishment. The term “establishment” is defined in more detail in the German Social Accident Insurance (DGUV) Regulation 2 (Appendix 1). In the event of a conflict with the manager of the establishment, the occupational safety specialist has a right to make proposals to the employer (if not identical to the manager of the establishment), so for example to the management board of a stock corporation, the CEO of a limited company, or the owner of an individual company (ASiG, Section 8, Para. 3).

This situation is also reflected in legal practice. According to a judgement by the regional labour court of Cologne, the occupational safety specialist is part of the staff. The specialist must not be subordinate to the manager of a department in organisational or disciplinary terms (ref. no.: 10 (1) Sa 1231/02). Likewise in the area of public administration, according to a judgement by the German Federal Labour Court (judgement of 15 December 2009, ref. no.: 9, register ref. 769/08), the occupational safety specialist in charge must hold a staff position and be subordinate to the manager of the establishment not only in functional terms, but also in disciplinary terms. The justification for this decision makes reference to the “structural principle of the ASiG” in this regard.

A related comment about the German Occupational Safety Act reads: “The occupational physician and the occupational safety specialists are assigned a staff position by Section 8, Para. 2, to protect their independence and emphasise the significance of their work in the establishment.” (from: Nöthlich, Matthias (†); Weber, Horst Peter; Wilrich, Thomas: Arbeitsschutz und Arbeitssicherheit [Occupational Health and Safety]. Erich Schmidt Verlag, Berlin – looseleaf edition 19, supplement as of May 2010).

The same comment establishes that this subordination solely to the manager of the establishment applies regardless of whether an employed or freelance occupational safety specialist or an intercompany position was appointed.

It is not without reason that the legislator established a comparable connection between the data protection officer and the manager of the facility in a similarly difficult advisory position in the considerably more recent German Federal Data Protection Act (BDSG).¹

The Sifa long-term study has also confirmed that in functional terms, an occupational safety specialist can be more effective if he is appropriately connected.

Given the established legal situation regarding the direct assignment of the occupational safety specialist to the manager of the establishment in functional and disciplinary terms, and the position of the VDSI on this matter, the "structural principles of the ASiG" for operational practice, which is also explained by the German Federal Labour Court in the reasons for the judgement (judgement of 15 December 2009, ref.: 9, register ref. 769/08), should again be examined more closely:

This legal position of the occupational safety specialist has advantages for the employer. The legislator's decision is addressed to the employer and his subordinate managers, and they are explicitly responsible for implementing the occupational health and safety measures in the establishment. Direct collaboration and close coordination with the occupational safety specialist help the employer to fulfil these obligations that are imposed on him by the legislator. In the opinion of the VDSI, additional hierarchy levels between the employer / manager of the establishment and the occupational safety specialist lead to efficiency losses in the implementation of occupational health and safety measures. By being directly subordinate to the employer / manager of the establishment, the occupational safety specialist is also in a better position to apply his specialist knowledge, which is also anchored in law (ASiG, Section 8, Para. 1), independently and without instruction, in a targeted, efficient and sustainable manner.

The direct assignment as a staff position defines the occupational safety specialist's reporting/information path to the employer / manager of the establishment, and ultimately the ability to take the direct escalation path.

However, the advice and support of the occupational safety specialist in daily work must extend to all decision-makers of the relevant line organisation. For this, the occupational safety specialist has to convince with technically sound advice. A fundamental requirement, in addition to a suitable basic qualification (engineer, technician, foreman), is safety-related knowledge of the relevant industry. Only then can the advice meet with adequate acceptance and bring added value to the company. Those who provide training to occupational safety specialists have an important controlling function in this regard.

¹ BDSG, Section 4f, Para. 3: The data protection official shall be directly subordinate to the head of the public or private body. He is free to apply his specialist knowledge in the field of data protection without instruction. He must not be disadvantaged as a result of fulfilling his tasks. [...]

In summary, formal positioning as a staff position alone is not enough; it must be put into practice on all hierarchy levels with regard to content. Nonetheless, it would be even harder to require this efficiently implemented level of communication with the decision-makers if the legal requirement for formal positioning were to be omitted. A staff position for the occupational safety specialist is therefore a necessary, but not adequate, requirement for implementing efficient workplace safety in the establishment.

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