

Improvement notices and administrative fines in accordance with the Danish Working Environment Act

– when are employees responsible and when is management responsible?



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Improvement notices and administrative fines in accordance with the Danish Working Environment Act – when are employees responsible and when is management responsible?

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The limited liability of employers

The situation is common: the owner and management of a company think that they have made all the necessary efforts to ensure a good working environment and comply with the law, but one or more employees may decide on their own to do something not in accordance with these efforts, such as not erecting a scaffolding or a guardrail. Such a situation might end up with the Danish Working Environment Authority issuing an improvement notice in which the owner ends up with the liability and perhaps, ultimately, having to pay an administrative fine. This brochure examines how employers can comply with the law in their daily practice to avoid being penalized unnecessarily. ■



THE RESPONSIBILITY OF THE EMPLOYER
Employers must generally do everything they can to ensure a safe and healthy working environment. The employer does this by carrying out all the obligations specified by Part 4 of the Danish Working Environment Act.

Checklist ON THE RESPONSIBILITY OF THE EMPLOYER

The Danish Working Environment Authority emphasizes the following seven duties in assessing whether an employer has complied with all of the employer's obligations pursuant to the law.

1	whether the employer has ensured safe and healthy working conditions
2	whether the employer has planned and organized the work so that it can be carried out while ensuring safe and healthy working conditions
3	whether the necessary and appropriate safety equipment is present and complies with the rules on fitting out and use
4	whether the employer has instructed the employees in how the specific work tasks can be carried out to ensure safe and healthy working conditions
5	whether the employer has carried out effective supervision to ensure that the work is actually carried out under safe and healthy working conditions
6	whether the employer has prepared a health and safety risk assessment of the workplace; and
7	whether the employer has ensured that a health and safety organization is present if this is required

Employers that have complied with these seven duties have fulfilled their obligations as an employer. If the Working Environment Act has been violated, the Danish Working Environment Authority will always issue an improvement notice to the com-

pany, but if the employer has complied with the obligations as an employer, the company can avoid the Authority issuing a consultancy notice (being ordered to engage an authorized health and safety consultant) or imposing an administrative fine.

Employees and supervisors

Employees and supervisors are obligated to contribute to ensuring that proper working conditions in their areas of work. The Danish Working Environment Authority may report employees and supervisors to the police for the purpose of prosecution if they violate the Working Environment Act in situations in which they could have carried out the work in a safe, healthy and lawful manner. If the employer has made the appropriate safety and health equipment available, given sufficient instructions and effectively supervised the work, and the employees or supervisors still violate the law, they may be penalized for this. Such penalization may only be imposed if the employee or supervisor acts intentionally or grossly negligently: for example, that the violation takes place on the initiative of the employee or supervisor.

The Danish Working Environment Authority does not normally report employees to the police for the purpose of

prosecution if they become injured in connection with violating the law. The Danish Working Environment Authority may report a supervisor to the police for the purpose of prosecution if the supervisor's violation of the law has harmed employees or other people at the workplace.

COMPANY MANAGERS

Company managers are the top managers of a company, such as members of the board of directors, the CEO or other top managers with similar general competence. Company managers have the same obligations pursuant to the law as employers. The Danish Working Environment Authority may report a company manager to the police for the purpose of prosecution if this person has acted intentionally or grossly negligently. ■

These photos show violations of the law



Not wearing a helmet at a construction site



Unlawful securing of employees against falls

Inspections by the Danish Working Environment Authority

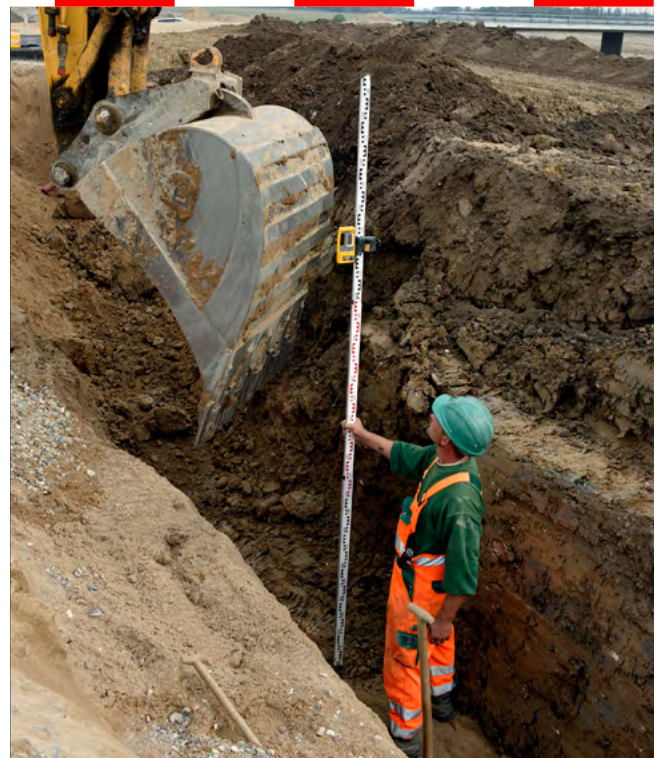
Inspections by the Danish Working Environment Authority – action and reaction

If the Danish Working Environment Authority finds situations that are not proper, this may lead to various types of reaction: guidance notes, improvement notices or prohibition notices. Employers should be especially aware of the following things.

- The inspector must describe the actual conditions in connection with the inspection: one way is to ask the relevant employees and managers.
- When the inspection is completed, the inspectors must provide an inspection report to the company that briefly describes the inspection and their reactions.
- Several days later, the company receives the formal reaction that describes the violation and the rules the inspectors assert have been violated. The company normally has at least 1 week to respond to the Danish Working Environment Authority about how they have solved the problem.
- The company also has 4 weeks to appeal the improvement notice, if the company thinks that the inspectors' description or legal basis is not correct. If the employer appeals, the Danish Working Environment Authority will reconsider the improvement notice. The Authority may rescind the improvement notice because they have determined that they have made a mistake or they may uphold the improvement notice. If the Authority continues to uphold the improvement notice despite the objections, the case is brought before the Working Environment Appeals Board.
- The original letter from the Danish Working Environment Authority might say, for example: "The Danish Working Environment Authority is considering reporting the company to the police for the purpose of prosecution or levying an administrative fine." This means that one of the lawyers of the Danish Working Environment Authority is assessing whether the case is serious enough to levy an administrative fine on the company and, if this is the case, who should be fined. A company that has had a fine levied may challenge this in court, such as by claiming that the company management did everything required to ensure a safe and healthy working environment (the seven duties) but that an employee has disregarded the instructions and thereby violated the Working Environment Act.



Falling hazard



Suffocation hazard in connection with a potential collapse of the excavation

How can you prepare to be inspected by the Danish Working Environment Authority?

YOU SHOULD ENSURE THAT YOU HAVE COMPLIED WITH THE SEVEN DUTIES, INCLUDING ESPECIALLY ENSURING:

- that there are plans for carrying out the task and sufficient equipment for the task
- that a health and safety risk assessment of the workplace has been performed
- that each person has been instructed and trained for each task
- that supervision has been carried out – either on the site or through photographic or mobile telephone documentation
- that the health and safety organization is included in the processes

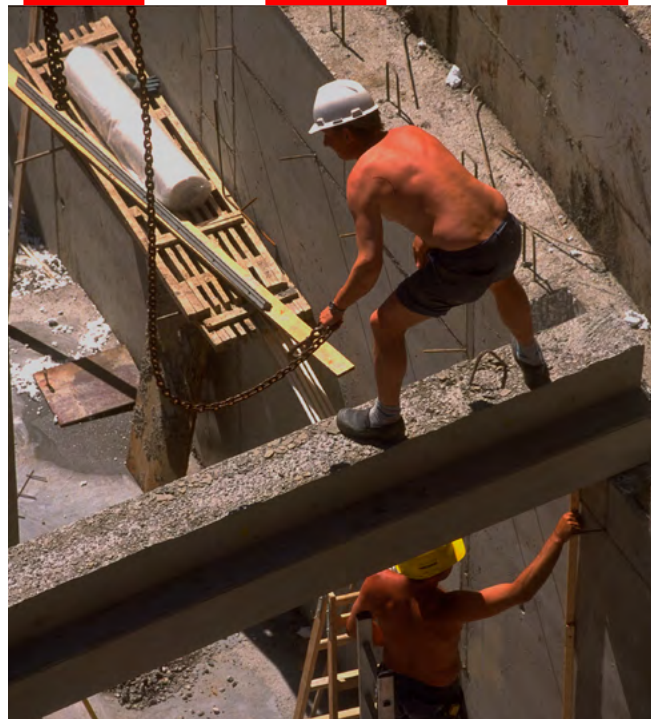
REMEMBER THAT THE DANISH WORKING ENVIRONMENT AUTHORITY HAS TO PROVE THAT YOU HAVE NOT COMPLIED WITH YOUR OBLIGATIONS.

Employers may therefore want to document as much they can themselves. Being required to document compliance with the seven duties for every order and every associated work task may seem extremely challenging, but this can be systematized with prepared forms, and employers may focus on the most hazardous and common situations that can lead to accidents and/or improvement notices.

These photos show violations of the law



The worker is not using personal protective equipment and is too close to the moving parts of the machine; this comprises a high risk for accidents



The worker has a high risk of falling, and the employees are not secured against falling

What should you do during and after the inspection by the Danish Working Environment Authority?

- Ensure that you inform the Danish Working Environment Authority if you believe that the management is not responsible for specific activities and that employees are responsible
- Inform the Danish Working Environment Authority that you can prove compliance with the seven duties
- Read the inspection report from the Danish Working Environment Authority to ensure that you understand what the inspector intends to do and what the basis of this is
- Object if you disagree with any part of the inspection report
- If and when the Danish Working Environment Authority issues any improvement notice, consider whether you will accept this or appeal to the Working Environment Appeals Board
- If the Danish Working Environment Authority recommends and the police impose an administrative fine, you can pay this or challenge this in court



The worker has a high risk of falling, and the employees are not secured against falling

THE DANISH CONSTRUCTION ASSOCIATION IS AVAILABLE TO ADVISE YOU IN CONNECTION WITH:

- inspections by the Danish Working Environment Authority – before, during and afterwards;
- assistance in assessing the entire case;
- appeals;
- assistance in assessing an administrative fine that has been imposed; and
- how you can document compliance with the seven obligations.

The earlier you contact us in the case, the better opportunities we have to assist and to influence the result in a direction that is positive for you.

Contact us at +45 72 16 00 00

The Danish Construction Association is a trade and employers' association within Denmark's building and construction sector. With about 6000 member companies, the Association is diversified geographically and in terms of trades and covers all aspects of construction.

The Association's main tasks are to influence public policy, participate in the public debate, provide consultancy services and ensure collective agreements so that the Association's members can develop their companies optimally to benefit employment.