



Having OSH rules in place at EU level is an essential prerequisite, but not enough to guarantee healthy and safe working conditions for all workers.”

Conclusions

This chapter examined five examples of OSH failures pertaining to the Covid-19 pandemic, through the lens of OSH regulation. Each of them illustrates the negative consequences of a narrow understanding of OSH regulation that overlooks the reality of working conditions for many people.

We began by highlighting how the application of a key OSH Directive, the Biological Agents Directive, failed to grasp the severity of the virus triggering Covid-19. The analysis carried out in that section revealed a very peculiar phenomenon: the non-application of the Directive's own principles (the four classification levels) in the classification of the virus. While the definitions of the different categories clearly point to group 4 being the most appropriate one for the SARS-CoV-2 virus, it ended up being classified in group 3. Moreover, the failures evidenced by this revision exercise indicate the need for a deeper revision of the Directive, in order to place an additional emphasis on how an agent such as this virus can constitute 'a serious hazard for workers', and how the classification of viruses should take into account the occurrence of a pandemic situation.

The section on staffing shortages in the healthcare sector, and on the impact that these shortages had on the health and safety of healthcare workers during the pandemic, reveals one of the most obvious misalignments between OSH theory and its practice: treating OSH as a bolt-on topic instead of an integral part of workplace policy planning. OSH is not something that can be retrofitted, especially once the organisation of work has already been structured in ways that essentially frustrate safe working practices. OSH principles need to be part and parcel of work planning and of the subsequent development of sectors and workplaces, as also demanded by Article 6 of the 1989 Framework Directive. The notion of 'organisation of work' refers to the choices made within the corporation or workplace in respect of issues such as how certain tasks are to be performed and structured and how they are allocated to workers. Staffing levels and skills obviously influence the way work can be organised. If the consequences of staffing reductions are not adequately thought through and their consequences for work organisation are systematically ignored or downplayed (for example, by redistributing or re-organising tasks or ultimately even eliminating some tasks) the health and safety of workers will inevitably be affected. One can only reduce staff so much until these choices will lead to a plethora of psychosocial risks such as work overload, overtime, time pressure, and an insufficient number and duration of breaks and time off. Moreover, less time will be available for the proper training of staff, in itself an additional risk factor. These psychosocial risks also amplify other risks, such as the risks for accidents and, in the case of the current pandemic, the risk of infection by the virus.

The consultation and participation of workers in the organisation of work are also of paramount importance for addressing these issues. Both the

OSH Framework Directive and its 22 'daughter directives' adopt the information, consultation and participation of workers in OSH policies as a basic principle, considering workers to be the main specialists when it comes to their own working conditions, as opposed to a top-down technical approach where rules devised by supposed experts prescribe what is healthy and safe for workers. However, while consultation and participation rights are codified in specific directives for other areas of OSH, such a directive on psychosocial risks is lacking.

The third section explored some of the limits of gig economy work and its regulatory framework which became evident at a time when social distancing rules and lockdown policies created the ideal circumstances for digitally mediated work to become the norm, rather than a niche of the labour market. The section revealed that after an initial noticeable rise in the number of workers engaged in online gigs, the figures soon started to dwindle. Meanwhile, the pandemic exposed the consequences of an inadequate application of an OSH regulatory framework conceived for the analogue world, and the visible struggles of adapting such a framework to the hazards (including the psychosocial hazards) faced by workers in the digital world.

The fourth section highlighted that differences in working conditions between groups of workers are often sector-related, and feminised occupations have high levels of psychosocial risk. While this is a known fact, measures to eliminate psychosocial risks in the world of work have been irregular. While social partner initiatives have contributed to the implementation of psychosocial risk prevention in many workplaces, these developments are not evident in all countries due to the different traditions of social dialogue (EU-OSHA 2014).

The fifth and final section pointed out that working conditions (for example, the ability to telework, or concerning work in 'frontline occupations') as well as employment conditions (precarious, atypical and low-paid jobs) are key in determining the level of risk workers are exposed to in relation to the virus. Occupational health and safety risks are gendered as a consequence of sex segregation in the labour market; that is to say, occupational segregation results in women and men being exposed to different types of OSH risks. Ethnicity and migrant status also often intersect with working conditions and employment factors, amplifying structural inequalities in the world of work. Many sectors with bad working and employment conditions are mainly dominated by women and/or migrants, as are many lower occupational positions (vertical segregation).

It is apposite to conclude that having OSH rules in place at EU level is an essential prerequisite, but not enough to guarantee healthy and safe working conditions for all workers. Proper implementation and application of the rules is not self-evident and is being hindered by issues outside the scope of OSH



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regulation, most notably the unequal power relations that shape employment and working conditions.

It is clear that the Covid-19 crisis has increased inequalities in employment and working conditions. It is therefore vitally important to collect and use reliable data on Covid-19 infections, morbidity and mortality, disaggregated by sex, age, ethnicity, migration status, and socioeconomic status (e.g. occupation, employment status, income, education). Women face a much higher exposure to the virus, and gender-disaggregated data is needed to study the sex-specific factors that impact Covid-19 outcomes (Womersley et al. 2020). Khalatbari-Soltani et al. (2020) argue that socioeconomic factors must be considered as clinical factors that determine the outcome of the disease. Occupation- and ethnicity-related data collected in the US and the UK shows that certain sectors, communities and occupations are overrepresented among Covid-19 victims. UK public health services have called for the development of 'culturally competent occupational risk assessment tools' to reduce risks, especially for key workers (cited in Iacobucci 2020). These tools would take into account the broad range of cultural and ethnic backgrounds in the labour force and be designed to cater to them. An essential element in creating more equal relations and improving

conditions is the guarantee and safeguarding of workers' involvement at all levels (national, sectoral and workplace). EU OSH regulation is exemplary in this respect and should be utilised to a far greater extent.

Finally, critical scrutiny and continuous updating of the regulation itself remains essential so that it corresponds to the lived reality of workers. The Biological Agents Directive and the relevance of its classification system in relation to the Covid-19 pandemic is one example of the need for revision. Another one is the coverage of OSH legislation. The Framework Directive and most of its 'daughter directives' remain relevant as regards their content: they prescribe a useful system of preventive and protective measures, with balanced responsibilities and rights. However, in the face of the growing phenomenon of self-employed workers that are actually dependent workers, the issue of coverage cannot be avoided any longer. The question is whether this should be solved within the context of OSH regulation – for example, by broadening its scope to include self-employed workers and/or drafting new definitions of workers and employers – or whether the issue goes beyond OSH and should be solved in the broader scope of labour law.