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# Environmental Protection Series

## "Prevention, Management and Punishment" under the New Work Safety Law: Improving Businesses Work Safety Compliance

**Preface:** Work safety is always a top priority for enterprises. Enterprises are now faced with more and more challenges due to the implementation of the work safety inspection slogan "Four nos and two gos"; namely, "no notice, no warning, no reporting, no accompanying reception - go straight to the grassroots and go straight to the site". Under this framework, an amendment to the Work Safety Law of the People's Republic of China (hereinafter "**Work Safety Law**") (hereinafter "**Amendment**") was announced on June 10, 2021 and will come into effect on September 1, 2021. This is an important milestone in the optimization of China's legal work safety regime. In this article, we will briefly introduce how the Amendment will impact enterprises from three different aspects, namely prevention, management and punishment, and what actions enterprises may take.

### I. "Prevention" – emphasizing prevention and the improvement of risk classification and control systems

Preventing accidents from occurring is the most effective way to strengthen work safety. The Amendment requires enterprises to establish a "Safety Risk Classification and Control System"("安全风险分级管控制度" in Chinese); if an enterprise fails to establish the aforesaid system or fails to implement management measures in accordance with the aforesaid system, the enterprise will be met with certain administrative penalties, including the suspension of production and business. In addition, the Amendment requires enterprises to (i) establish a "Work Safety Accident Identification and Control System"("生产安全事故隐患排查治理制度" in Chinese), (ii) truthfully record the identification and control of accident hazards, and (iii) notify their employees through employees' meetings, employee representatives' meetings, or information bulletin boards. The information on the identification and control of potential risks of major accidents shall be reported in a timely manner to the departments responsible for work safety supervision and administration and the employees' meetings or employee representatives' meetings.

### II. "Management" – emphasizing work safety responsibility systems and the requirements for stricter work safety supervision

The Amendment provides that a manufacturer's main responsible person shall be the major responsible person for work safety (not only for

the statutory obligations to establish and improve the work safety responsibility system of the entity and organize the formulation of work safety rules and operating procedures of the entity, but also for the statutory obligations to implement the aforesaid system/procedures), and shall be fully responsible for work safety, while other responsible persons shall be in charge of work safety to the extent of their respective duties. The Amendment provides that after an accident occurs, the relevant governmental department responsible for investigating and dealing with the accident shall, within one year after approving the accident investigation report, evaluate the implementation of the accident rectification and the preventive measures of the relevant manufacturer, and publicize the evaluation results in a timely manner. In addition, the Amendment provides that a manufacturer in industries which rely on platforms and other emerging fields shall establish, improve and implement the All-staff Work Safety Responsibility System and strengthen the work safety education and training considering the nature of those industries.

## III. "Punishment" – shall be stricter and broader and there will be heavier liabilities for violations

1) **Dual Punishment Policy**. According to the Amendment, subject to the severity of the relevant violations, a manufacturer may be shut down or its license/permit be revoked; meanwhile, the main responsible person of this enterprise shall not (i) serve as the main responsible person of any other manufacturer in all industries for five years, or (ii) serve as the main responsible person of any other manufacturer in the same industry as such manufacturer for a permanent time period, in any of the following circumstances: (a) the manufacturer has had significant potential accidents and has been subject to administrative penalties imposed in accordance with the Work Safety Law three times within six months or four times within one year; (b) the manufacturer fails to meet the work safety requirements after being ordered to cease its production and business for rectification; (c) the manufacturer fails to meet the required work safety conditions, which results in a serious or extremely serious work safety accident; or (d) the manufacturer refuses to abide by the competent authority's decision to cease its production and business for rectification.

2) **Possibility to exceed the upper limit of penalties**. If a work safety accident occurs, a fine ranging from RMB 200,000 to RMB 20 million would be imposed in accordance with the currently effective Work Safety Law. The Amendment increases the lower limit of the fine to RMB 300,000, and allows the upper limit of RMB 20 million to be exceeded under certain conditions. Namely, if any work safety accident occurs that is particularly serious and has a significantly adverse impact, the competent authority may impose a fine of between two and five times an amount within the aforesaid fine range. Thus, the maximum fine amount for work safety accidents may be up to RMB 100 million, namely five times RMB 20 million.

3) **Daily penalties**. The Amendment allows "daily penalties" to apply under the Work Safety Law. This means that if a manufacturer is ordered to rectify a violation and has a fine imposed in accordance with the Work Safety Law, and if such a manufacturer refuses or fails to make rectifications, the competent authority may impose a successive fine on a daily basis with the original fine as the calculation base, and calculate from the second date following the issuance date of the relevant correction order.

4) **Illegal acts related to work safety may lead to poor credits**. The competent authority will record illegal acts of enterprises in a database, and publicize those to relevant industries, investment departments and financial institutions. Moreover, enterprises may face more frequent inspections, barriers to obtain project approvals, higher insurance premium rates and other adverse consequences due to "poor credits", and the relevant personnel may also face adverse legal consequences such as industrial or occupational bans.

## IV. Countermeasures for enterprises to consider to strengthen their compliance management

1) **Establishing an enterprise's safety awareness.** A manufacturer shall establish a staff safety awareness, and procure and instruct staff to voluntarily implement safety awareness by undertaking measures such as emergency drills, training and simulated accidents and encourage staff to be aware of potential risks. They should secure a fundamental awareness and acknowledge that "the management of safety shall be the priority for the management of industry, business, production and operation".

2) **Establishing and implementing a work safety responsibility system.** A manufacturer's main responsible person shall understand that they are in charge of the manufacturer's work safety, and other responsible persons shall oversee work safety to the extent of their duties. In order to clarify the subjects' respective responsibilities, a manufacturer shall clearly define the internal division of functions and responsibilities by defining the organizational structure of the relevant lines of work safety, the responsible persons for each post, the scope of responsibility, the appraisal standards and the reporting mechanisms. It is advisable to use safety information systems to facilitate the implementation of the personnel's work safety responsibilities.

3) **Establishing the Safety Risk Classification and Control System and Work Safety Accident Identification and Control System.** A manufacturer shall establish a Safety Risk Classification and Control System to identify and assess work safety risks, assess in a timely manner the safety risk levels and adopt corresponding management and control measures. They should pay particular attention to the development of monitoring measures and management plans for hazard sources (especially major hazard sources), and take measures to discover and eliminate potential accidents in a timely manner; in case of any investigation or any potential risks of major accidents, enterprises shall perform their statutory reporting/reporting obligations in accordance with the applicable laws.

4) **Implementing enterprise safety training and assessment and accident emergency drills.** A manufacturer shall pay attention to daily work safety training, and especially provide systematic training for management and safety awareness. They should regularly organize employee training relating to operational safety (especially operations with major potential safety risks), equipment operational safety and fire protection and electricity use safety, so as to enable each employee to master the basic safety skills of their posts through examination, and organize retraining on a regular basis. In addition, the manufacturer shall carry out emergency drills in accordance with the applicable laws.

5) **Conducting enterprise EHS compliance audits, and discovering safety**

**management problems and potential risks of accidents in a timely manner.** A manufacturer may consider conducting regular internal and external compliance audits for EHS. An EHS compliance audit may include an internal compliance audit and a supply chain compliance audit, and may be conducted from various dimensions such as policies and operational procedures, organizational structures, personnel, funds, facilities and on-site management. EHS compliance audits can help a manufacturer comply with its policies and control relevant legal risks in advance.

6) **Properly dealing with administrative cases, making timely rectifications and summarizing accident experiences.** Where an administrative case occurs, a manufacturer shall liaise in a timely manner with its in-house counsel and/or external legal advisors and track the progress to keep abreast of the situation; if it is reasonable to believe that there is a mistake with respect to any fact or the application of the laws, a manufacturer shall promptly and properly attend to the hearings. Where a manufacturer is ordered to make rectifications due to the violation of laws or accidents, it shall make timely rectification and submit rectification results to the competent authority, to avoid triggering daily penalties. For any accidents, a manufacturer shall strive to learn from the experience to avoid the occurrence of similar accidents.

## V. Conclusion

With the implementation of the Amendment, China's work safety legal regime will gradually step into an era with stricter requirements, more strengthened administration and heavier penalties. A manufacturer should strengthen its work safety compliance and management, and actively and timely follow up and pay attention to the development of work safety legal requirements and standards, to remove or control its legal risks and secure the safety of its personnel and property to realize sustainable development.


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JUNHE

2021 年 7 月 12 日

# 环境健康与安全专题系列（二十）

## 新《安全生产法》下的“防、管、罚”：提升企业安全生产合规管理

**导言：**安全无小事。近年来，我们“四不两直”安全生产暗查暗访制度（“不发通知、不打招呼、不听汇报、不用陪同接待、直奔基层、直插现场”）给企业合规带来新的考验。2021 年 6 月 10 日，《中华人民共和国安全生产法》（下称“**《安全生产法》**”）修正案（下称“**《修正案》**”）正式公布，并将于 2021 年 9 月 1 日起正式生效。这是我国安全生产法律体系完善的又一个重要里程碑。本文将从“防、管、罚”三维度简要介绍《修正案》生效后可能对生产型企业产生较大影响的内容，提醒企业注意安全生产相关的合规要求。

### 一、“防”--- 强调源头防范，完善安全风险预防控制体系

为加强企业生产的安全防控，应从源头上排除和防范事故的发生。《修正案》要求企业建立“安全风险分级管控制度”，并且明确未建立前述制度或未按照前述制度实施管理措施应受到行政处罚（可能导致企业停产停业整顿）。此外，《修正案》要要求企业建“生产安全事故隐患排查治理制度”，并且应当如实记录事故隐患排查治理情况，并通过职工大会或者职工代表大会、信息公示栏等方式向从业人员通报。其中，重大事故隐患排查治理情况应当及时向负有安全生产监督管理职责的部门和职工大会或者职工代表大会报告。

### 二、“管”--- 强调安全生产责任制，加强安全生产监管

《修正案》规定生产经营单位的主要负责人为安全生产第一责任人（除负有建立、健全本单位安全生产责任制和组织制定本单位安全生产规章制度和操作规程的法定义务，还负有落实上述制度/规程的法定义务），对安全生产工作全面负责，而其他负责人对职责范围内的安全生产工作负责。《修正案》明确安全事故发生后，负责事故调查处理的相关部门应在批复事故调查报告后一年内，对相关单位的事故整改和防范措施落实情况评估并及时向社会公开评估结果。此外，《修正案》明确平台经济等新兴行业、领域的生产经营单位应当根据本行业、领域的特点，建立健全并落实全员安全生产责任制，加强安全生产教育和培训。

### 三、“罚”--- 加大处罚的力度、广度和时间跨度，加重违法责任

1) **明确“双罚制”**。《修订案》规定在以下违法情形下，企业可能被关停或吊销证照，视情节严重程度，主要负责人五年内不得担任任何生产经营单位的主要负责人或者终身不得担任同行业生产经营单位的主要负责人：（1）存在重大事故隐患，且半年内受到三次或在一年内受到四次《安全生产法》规定的行政处罚的；（2）经停产停业整顿后，仍不具备要求的安全生产条件的；（3）不具备要求的安全生产条件，并因此而导致重大、特别重大生产安全事故发生的；（4）企业拒不执行主管部门作出的停产停业整顿的决定的。

2) **增加处罚上限突破条款**。针对发生生产安全事故的情形，原《安全生产法》下规定了从二十万元至两千万元的罚款区间。《修订案》将罚款下限从二十万元提升至三十万元，还引入了上限突破机制，即发生生产安全事故，情节特别严重、影响特别恶劣的，主管部门可以按照上述罚款区间数额的二倍以上五倍以下对企业处以罚款。如果主管部门运用该条上限突破罚则，生产安全事故的最高处罚可达 1 亿元。

3) **引入按日处罚机制**。《修正案》首次在《安全生产法》项下引入了“按日处罚”机制。企业因违反《安全生产法》规定被责令改正且受到罚款处罚，如拒不改正，主管部门可以自作出责令改正之日的次日起，按照原处罚数额按日连续处罚。

4) **安全生产违法行为可能导致企业陷入“失信”风险**。主管部门将记录企业的违法行为，将其纳入违法行为信息库，并将重大违法信息向相关行业、投资主管部门以及有关金融机构进行披露。此外，企业还将可能因“失信”而面临加大执法检查频次、暂停项目审批、上调保险费率等不利后果、相关人员可能面临行业或者职业禁入等不利后果。

## 四、企业应考虑从以下几个方面重点加强合规管理

1) **建立企业的安全文化理念**。企业应形成以人为本的安全发展理念，通过应急演练、模拟事故、培训和鼓励发现隐患等多种方式贯彻并使所有员工认可并自发宣传安全文化理念，并真正贯彻和通过多种方式使得高层及管理人员培养对“管行业必须管安全、管业务必须管安全、管生产经营必须管安全”的根本性意识和充分认识。

2) **建立和落实安全生产责任制。**企业主要负责人需充分了解其对企业的安全生产全面负责。此外，考虑其他负责人对职责范围内的安全生产工作负责，为了明确责任主体，企业应尽量明确内部的权责划分（明确安全生产相关条线的组织架构、各岗位的责任人员、责任范围和考核标准等内容）和汇报机制。操作层面可考虑采用安全信息化系统，便于落实人员的安全生产责任。

3) **构建安全生产风险分级管控和隐患排查治理双重预防体系。**企业应建立风险分级管控制度，进行安全生产风险辨识和评估，及时评估安全风险等级并采取相应管控措施，尤其注意制订危险源（尤其是重大危险源）的监控措施和管理方案，采取措施，及时发现并消除事故隐患；如果涉及重大事故隐患排查治理情况，企业应当依法履行法定的汇报/报告义务。

4) **重视并落实企业安全生产培训与考核及事故应急演练。**企业应重视安全生产的日常教育，尤其是安全意识的培养，对管理层和从业人员提供系统性的教学和培训，定期组织员工进行岗位作业（尤其是有较大潜在安全风险的作业）安全、设备操作安全、消防及用电安全等的相关知识培训，并通过考核，让每位员工掌握岗位的基本安全技能，定期组织复培。此外，企业应依法做好应急演练。

5) **做好企业 EHS 合规审计，及时发现安全管理问题和隐患。**企业可考虑定期进行 EHS 内、外部合规审计，EHS 合规审计包括企业内部合规审计和企业供应链合规审计，可从规章制度和操作规程、组织架构、人员、资金、设施和现场管理等各个维度展开。EHS 合规审计能够帮助企业自身合规，降低处罚风险、信用风险、商业风险，助力持续经营，提前防范相关法律风险。

6) **正确处理行政案件，及时整改并总结事故经验。**企业发生行政案件的，应当及时与企业内、外部法律顾问联系，跟踪案件进程，把握时间节点；如有合理理由认为存在事实或法律适用问题的，应及时澄清并争取申辩/听证的权利。企业因违法或事故被责令整改的，应尤其注意及时整改和向主管部门反馈整改结

果，以避免适用按日计罚的制度，同时，要充分地总结事故经验，避免再次发生类似情况。

## 五、结语

伴随《修正案》的实施，我国的安全生产法规体系将逐渐步入严要求、强监管、高罚则的时期。企业唯有加强自身的安全生产合规，对监管要求的更新和变化保持一定的敏锐度，同时，加强安全生产管理，对潜在的安全事故隐患的排查，才能有效防范相关的法律风险，保障企业财产和人员的生命安全，从而实现可持续发展。


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