

The development of Danish OHS regulation - organizational understanding and program theory

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Abstract. This paper focuses on a major recent amendment of the Danish Working Environment regulation concerning the cooperation of health and safety between employees and employer. The amendment, which came into force in October 2010, consists of four elements: 1) change of terminology, 2) flexibility in organizing OHS, 3) link between the companies' overall strategic management and OHS and 4) continuously competence development for the health and safety representatives. In this paper we present and analyze the individual elements of the legislative amendment. Subsequent we investigate the organizational understanding that underlies the amendment and we explore the program theory that the different elements of the reform subscribe to.

Keywords. Occupational Health and Safety Management, Legislative changes, Program theory

1. Introduction

The present Danish regulation of occupational health and safety (OHS) is rooted in the Working Environment Act passed in 1975, which has undergone several modifications throughout the years. However, the base of the Danish OHS legislation has more or less remained unchanged through the years; deeply rooted in worker participation and the cooperative tradition established by the Danish Labor Market Model.

This paper focuses on a major recent amendment of the Danish Working Environment regulation, which came into force in October 2010. We will address two central questions: 1) what is the intention – the program theory – behind the amendment? And 2) Can the amendment contribute to the efficiency of the health and safety management in Danish companies?

2. Background: the Danish Health and Safety legislation

The present Danish regulation of occupational health and safety is rooted in the Working Environment Act passed in 1975. Even though the act has undergone several modifications through the years the general objective and scope of the act has remained unchanged:

Part 1: Objectives and scope

The provisions of this Act shall have effect with a view to creating:

1. *a safe and healthy working environment which is at all times be in accordance with the technical and social development of society, and*
2. *the basis on which enterprises themselves will be able to solve issues relating to health and safety under the guidance of the employers' and workers' organisations, and under*

the guidance and supervision of the Working Environment Authority.(WEA 2011, §1)

The objective of the act emphasizes the importance of establishing local initiatives at enterprise level to comply with the law. Originally the law gave strict specification on how to organize these local activities: It is the employers' duty to assure a safe and healthy working environment for the employees. However, this duty should be fulfilled in cooperation with first line-managers and employees. To support this cooperation a mandatory 'health and safety organization' should be established consisting of 'health and safety groups' for each department in the company and a 'health and safety committee' directing and coordinating the activities of the health and safety groups. The groups consisted of the first line manager of the department and a health and safety representative (HS rep) elected by the employees. The health and safety organization were responsible for tasks such as investigating accidents, risk assessment (labelled workplace assessments), substitution of chemical substances, and assessing plans for development of production from an OHS-perspective besides handling existing problems related to occupational health and safety. (WEA 2011)

2.1 Critic of the legislation

The legislation regarding the organization of cooperation of health and safety activities between employees and employer is based on legislation from the late 1950s. This only covered parts of the industry. In the 1970s, the regulatory framework was extended to cover the entire Danish labor market, but the regulatory framework was still customized to fit an average Danish 1950s workplace: a medium-sized iron industrial company (Hasle 2001). However, the Danish labor market has evolved a great deal since then due to factors such as technological development and globalization. Additionally the present day labor market is much more heterogeneous with more knowledge and service producing companies and companies with very diverse and different organizational set-up than the mentioned rigid model (AMR 2009).

The Danish OHS legislation can be characterized as reflexive regulation based on self-regulation (Wilthagen 1994) stressing goals to be accomplished and procedures to follow (Frick et al. 2000). Even though the legislation emphasizes the importance of coordinating with production planning and management, the reasoning of the law is limited to the OHS-activities. This also became evident in studies of the functioning of the legislation. The results of more studies have been summed up under the concept of 'the sidecar functioning of the health and safety organization' (Jensen 1997; Hasle 2001). This refers to a situation where:

- Management gives a verbal support to the activities but do not follow up with expectations for actions expressed in goals or results. As a consequence OHS-issues are left out of the planning processes where the most effective and less expensive preventive effort could be established.
- Employees are not eager to get elected to the safety groups and therefore representatives are typically rather passive
- First line managers are taking the job as 'another job' which has to be taken care of, often without great enthusiasm.
- The level of the motivation among the actors involved has as a consequence that the safety organization lives isolated from other decision making activities in the enterprise. Their role being to point to OHS issues forgotten in the primary decisions and arguing for a repair of investments already made. To reduce this role the safety organization often ends up in handling simple problems with simple solution not involving other departments.

The results from these studies initiated a discussion between central stakeholders – social partners, researchers, and health and safety professionals – which lasted several decades.

3. Program theory and policymaking

To address the first question on the attention with the amendments to the law, Pawson (2006) has under the heading of 'realistic evaluation' proposed a conceptual model for analyzing the effects of implementing legal regulation. The legislative bodies have a 'local theory' – a program theory – on how the different elements in the law will produce the desired effects in the regulatory field.

The transformation from policy over program and specific OHS legislation to implementation in a company and effect on the working environment is illustrated in figure 1, which is a simplification of the model introduced by Hasle et al. (2012). A distinction is made between the legislative level and the company level. At the legislative level policymakers design programs and formulates legislation, at this level policymakers are viewed as consigners of a given program or legislation. The consignee of the program or legislation is the company level where the legislation is adopted in a given context. At the company level a set of context specific 'mechanisms' interact with the legislation and thereby determine if the program theory holds true.

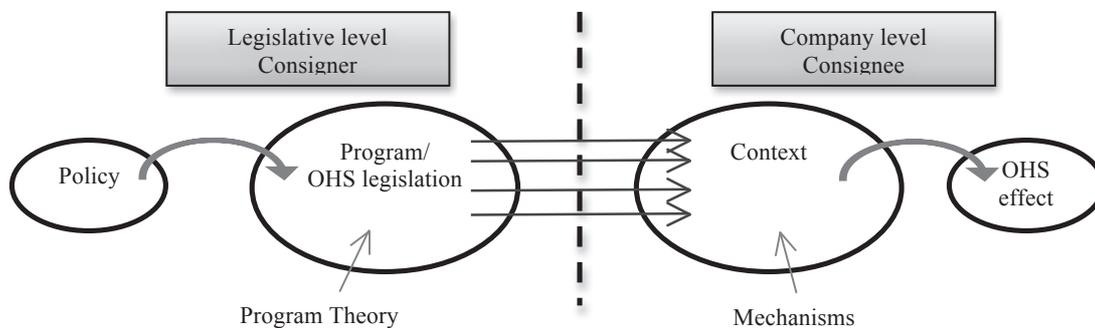


Figure 1: Model illustrating the transformation from policy to OHS effect

In this paper we will take outset in the legislative level in our analysis of the 2010 amendment. We will explore the program theory behind the different elements in the amendment and the organizational understanding of companies in the program theory..

4. Development of the OHS legislation - Analysis of the 2010 OHS amendment

The critic of the legislation on organization of cooperation of health and safety activities and the 'sidecar'-effect gave rise to a tripartite discussion on a modification of the legislation. In this discussion the social partners argued for broadening the reflexive aspects by giving enterprises the possibility to deviate from the relatively rigid organizational structure specified in the act:

It is recommended that all enterprises are given the opportunity to organize their working environment activities to fit the company's general structure and core functions based on a principle of subsidiarity. The new concept is to accommodate both large and small enterprises (AMR 2009, p. 24)

The tripartite discussion resulted in an amendment in 2010 which introduced several

changes to the organization of cooperation on health and safety. In this paper we go through and analyze the major changes by grouping them in three groups: 1) organization for flexibility, 2) strategic approach to occupational health and safety and 3) continuously competence development.

1.1 Organization for Flexibility

Local cooperation between employer and employees with the employer having the legal responsibility and emphasis on local cooperation and problem solving close to the problem field are components central to the Danish OHS legislation since 1975, and they still are. Consequently, emphasis is on joint local action oriented toward problem solving, and not on a professional approach to the field.

To accommodate the critic of the legislation (AMR 2009) the 2010 amendment opens for deviation from the previous mandatory organization of health and safety activities described in the law in 1975.

I co-operation with the employees and the first line managers the employer decides on necessary number of members in the working environment organization and working environments groups needed based on a principle of subsidiarity. (*E.O. no. 1181 §16*).

More detailed issues are only vaguely described:

The number of members and health and safety groups shall be determined in such a manner that the health and safety organization shall at all times be able to carry out its activities in a satisfactory way [...] Furthermore, the number of health and safety representative shall be determined at a level that ensures that all employees are able to contact their health and safety representatives and so that employees are able to discuss health and safety issues with the members of the health and safety organization within the working hours of the employees. (E.O. no. 1181 § 16; 2 & 3)

The demands that the number of HS reps shall match the number of 1.line managers is upheld. However, a formal requirement of a safety manager is omitted.

The program theory behind the flexibility element is based on the assumption that a health and safety organization adapting to the general organization and the core activities of the enterprise will raise motivation and ownership to the health and safety activities. This element of the reform can be interpreted as a deregulation leaving decisions on how to organize the health and safety activities to the enterprise – and ultimately to the employer. This might lead to greater variations in the organization of health and safety activities in Danish companies, but the theory is that it also will strengthen the health and safety work in the companies. It is up to future research in the area to identify the predominant trends in organization of health and safety in Danish companies.

1.2 strategic approach to occupational health and safety

The amendment introduces health and safety issues as a strategic element. In the tripartite discussion leading to formulation of the amendment it is stated that:

Work environment activities should be placed in the core of the company. This way health and safety issues become part of the strategic as well as the daily management, and the health and safety issues are raised in forums, where the company already discuss strategy, values, planning, production, quality, reliability, economy etc. (AMR 2009, p. 8)

The objective of this element is to curb the previously mentioned sidecar-tendency. Surprisingly, in the final amendment the element of strategic health and safety management is only vaguely formulated and the focus is on the division between operational and strategic health and safety management which is associated to the distinction between committee and group levels which was also a part of the previous legislation.

The strategic i.e. overall activities shall be carried out by the health and safety committee (E.O. no. 1181 §17). The operational, i.e. day-to-day activities shall be carried out by the health

and safety group in the part of the enterprise covered by the health and safety group (E.O. no. 1181 §18).

Besides the distinction between committee and group levels there only general, vague descriptions on how the companies should address health and safety issues as a strategic element, and there are no legal obligation concerning a direct integration of health and safety issues neither in the strategy nor the decision concerning operations. Furthermore this part of the amendment is not sanctioned

Summing up it can be stated that this element of the amendment subscribes to a program theory that emphasizes the integration of health and safety as well in strategy as in operations. This interpretation has been accentuated as important by many stakeholders behind the law (i.e. social partners, consultants within the field and researchers). Therefore, it is remarkable that this is not clearly formulated in the amendment.

One component in the amendment can be interpreted as supporting integration with the overall strategy is the annual health and safety talk, which is a mandatory requirement for the companies to, on a yearly basis, establish a discussion on health and safety issues:

[...] The employer shall conduct health and safety talks with the members of the health and safety organization every year, and 1) plan the content of the health and safety activities of the enterprise for the forthcoming year, 2) determine how this cooperation shall take place, including forms of cooperation and how often meetings shall be conducted, 3) assess whether the enterprise has achieved the goal set for the previous year and 4) define goals for cooperation in the forthcoming year. (E.O. no. 1181 §9).

This rather modest component played an important role in the debate on the amendment. It is a tool to promote a more preventive approach to working environment activities by establishing a mandatory procedure to evaluate the efforts for the year passed, to formulate new goals and a corresponding plan of action.

Two basic understandings of organizations can be identified behind this component: Firstly, strategy processes are controlling all important activities within the organization and secondly, integrating health and safety in strategy formulation implies giving priority to the field in decision making processes and thereby in the day-to-day running of the company.

1.3 Continuously competence development

As part of the political compromises behind the amendments the mandatory education for HS reps and 1.line managers was reduced from five to three days. The amendment focuses instead on continues education and competence development for the members of the health and safety organization. The amendment states that new members shall within the first year be offered two days of additional supplementary training, and each year hereafter present members shall be offered 1½ days supplementary courses. The aim is:

[...]To assure regular updates in the area that strengthen the skills of health and safety representatives and supervisors in the health and safety organization. Supplementary health and safety training shall impact knowledge and skills that are relevant with regard to health and safety activities in the enterprise. (E.O. no. 1181 §38)

It is to the company to decide what subjects to address and what form to follow. It should be noticed, that it is not required that the members of the health and safety organization participate in the additional training, but it is required that the employer offers the training. The demand is that the enterprise has to offer the possibility for competence development to the persons involved in the health and safety organization.

This element of the amendment subscribes to a program theory which stresses that efficiency of the health and safety activities can be enhanced by qualifying the members of the organization. This might also be seen as a tactic for handling the loss of knowledge which might be the result of removing the mandatory demand on a safety manager.

1.4 Summing up

The following table sums up the analysis of the amendment based on the concept of program theory.

Table 1: Summing up the program theory behind the amendment

<i>Amendment</i>	<i>Program theory</i>
<i>Flexibility in how to organize health and safety activities</i>	<i>Local cooperation between employer and employees, rather than adapting a professional approach, is crucial in health and safety management. Efficient health and safety management requires alignment with the organization and local way of organizing activities.</i>
<i>Coupling the operational OHS activities with the overall strategy of the company</i>	<i>By addressing and regarding health and safety issues as strategic element in the line with planning, production, quality etc. more priority is given to health and safety issues also by top-managers.</i>
<i>Continuously competence development</i>	<i>Giving more competencies to members of the health and safety organization will have a positive effect on the efficiency of the health and safety management.</i>

5. Conclusion

The program theory behind the amendment dictates that instead of legal requirements and rigid rules, flexibility and opportunity for strategic management of health and safety will motivate the companies to make an effort to improve the working environment. Thereby the program theory behind the amendment is based on an organizational understanding of organizations as rational and oriented towards upholding legitimacy by fulfilling the intentions behind the law. The motivation is linked to ideals of good and professional management being transferred to working environment activities. Knowledge, systematic approaches and cooperation is perceived as levers for a more efficient set of activities within working environment. This is consistent with the fact that the social partners have labeled the amendment ‘the reform of good intentions’. But as we have shown in our analysis the ‘good intentions’ that were seen in the initial discussion has ended up as vagueness and non-sanctioned rules in the final legal text. The law do not emphasis the role of the intermediaries (like safety managers) interpreting the intentions in the law an how to apply the new possibilities productively. Consequently only limited effect of the law is to be expected in most Danish enterprises

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