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Protecting Workers' Psychological Wellbeing: Some Legal Aspects

Olena Rym, Svitlana Synchuk, Volodymyr Burak¹

Abstract

The paper aims to study and compare the experience of the European Union and Ukraine in relation to the protection of employees' psychological health, applying both a quantitative and qualitative approach. The analysis focuses on the problems of protection of the psychological health of employees and the need to implement effective legal mechanisms for stress prevention in the workplace. The drawbacks of the protection strategy are highlighted, as is the need to implement more effective measures. It thus demonstrates the advisability of a comprehensive approach to solving the problem of professional burnout, through the introduction of measures both within labour law and social security law.

1. Introduction

Work organization has undergone major changes over the last decades, the result of the widespread use of technology in production processes and new ways of exercising the right to work. Atypical forms of employment and new working conditions have increased workers' pressure, posing a threat to their mental health. In this regard, many cases of occupational burnout have been reported.

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¹ Olena Rym (corresponding author) is Associate Professor of Legal Studies at the Faculty of Law of Ivan Franko National University of Lviv (Ukraine). Email address: olena.rym@lnu.edu.ua. Svitlana Synchukis Professor of Social Security Law at the Faculty of Law of Ivan Franko National University of Lviv (Ukraine). Email address: synchuksvit@gmail.com. Volodymyr Burakis Associate Professor of Legal Studies at the Faculty of Law of Ivan Franko National University of Lviv (Ukraine). Email address: burakvj@yahoo.com.The authors would like to thank the two anonymous referees for their comments, which enabled them to improve the quality of the paper. Any error in this article is the authors' sole responsibility.

A recent survey conducted by Gallup – a U.S. research and advisory company –on 7,500 employees, has found that 23% of them report feeling burnout at work often or always, and 44% of them suffer from work-related stress². This is such a serious issue that on 28 May 2019, the World Health Organisation (WHO) included burnout in the 11th Revision of the International Classification of Diseases (ICD-11), regarding it as an occupational illness³. While not considered to be a medical condition, burnout is defined as syndrome resulting from chronic workplace stress which has not been successfully dealt with. Burnout is characterised by a feeling of exhaustion, increased mental distancing from work and lower professional efficacy.

The opportunity provided by new technologies to work around the clock contributes to occupational burnout, increasing both physical and mental overloads. Furthermore, the blurring of boundaries between work and family life limits one's chances of resting and the ability to cope with stress, all the more so in a time when workers are overexposed to psychological pressure.

The necessary condition to deal with work-related stress is to remove the psychosocial causes originating it. This could be done in the context of Occupational Health and Safety (OHS), but a review is needed of the mechanisms safeguarding employee wellbeing in order to adapt to current times.

Consequently, mental health preservation makes it topical to implement effective legal provisions preventing occupational burnout and the consequences of work-related stress. In this respect, this paper aims to examine how problems related to employees' psychological wellbeing have been managed, concurrently putting forward some OHS measures.

2. Research Discussion

The fact that the burnout syndrome can be caused or worsened by work is well-established. Medical staff, social operators, police officers, teachers as well as service sector workers are more likely to suffer from burnout.

² Wigert, B, Agrawal, S: Employee Burnout, Part 1: The 5 Main Causes. July 12, 2018 URL: https://www.gallup.com/workplace/237059/employee-burnout-part-main-causes.aspx. Accessed 26 January 2020.

³ World Health Organisation Burn-out an «occupational phenomenon»: International Classification of Diseases(2019) URL: https://www.who.int/mental_health/evidence/burn-out/en/. Accessed 26 January 2020.

Some research has also argued that lawyers and managers are stress-sensitive⁴. Occupational burnout prevention should start with stress assessment in the workplace. This is considered one of the most complicated tasks in the OHS context, since one's stress level depends not only on the type of work, but also on personal perception. Still, the conditions of work that most frequently lead to stress, burnout or depression can be identified. Among them are excessive workload, unclear distribution of responsibilities, controversial managerial instructions, absence of ways for employees to contribute to business growth, inefficient organizational and managerial activities, downtime in production, temporary unemployment, low levels of communication between employees and managers, harassment in the workplace⁵.

Thus, creating and implementing a system for assessing occupational burnout should be a priority for politicians, lawmakers and the social partners. However, Ukraine's Mental Health Care Development Concept Note, which will remain in effect until 2030, makes no reference to occupational burnout or work-related stress, though an increasing number of people in the country is reported to suffer from these diseases⁶. Furthermore, employees were not included among those for whom psychological support services will be made available.

Leaving the problem unattended at the level of state administration causes considerable damage to the interests of employees, employers and the national economy. Moreover, it runs counter to Ukraine's commitments made to the European Union (the EU) pursuant to the Association Agreement concluded on 27 June 2014. Here reference is made to the duty to implement Directive89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers

⁴ Lastovkova A, Carder M, Rasmussen HM, Sjoberg L, Groene GJ, Sauni R, Vevoda J, Vevodova S, Lasfargues G, Svartengren M, Varga M, Colosio C, Pelclova D.: Burnout syndrome as an occupational disease in the European Union: an exploratory study. Ind Health. (2018) Apr 7;56(2): P. 161 doi: 10.2486/indhealth.2017-0132. Epub 2017 Nov 3. PMID: 29109358; PMCID: PMC5889935.

⁵ EU-OSHA: Psychosocial risks and stress at work URL: https://osha.europa.eu/en/themes/psychosocial-risks-and-stress. Accessed 26 January 2020

⁶ Кабінет Міністрів України: Концепціярозвиткуохоронипсихічногоздоров'я в Українінаперіоддо 2030 року, щосхваленарозпорядженнямвід 27 грудня 2017 р. № 1018-р. (2017) [Ukraine's Cabinet of Ministers: The concept of mental health development in Ukraine for the period up to 2030, approved by the decree of December 27(2017) URL: https://zakon.rada.gov.ua/laws/show/1018-2017-%D1%80#top [in Ukrainian]. Accessed 26 January 2020.

at work, obliging employers to protect their employees against all types of health risks, in particular, psychosocial ones⁷. Therefore, it might be useful to go through the OHS measures put in place at the EU level, which might also be implemented in national contexts.

2.1. EU Measures to Ensure Employees' Psychological Wellbeing

As pointed out in recent research, more than 50% of employees in the EU believe that stress is a customary and typical characteristic of their work. Therefore, in the EU context, psychosocial risks and occupational burnout are regarded as some of the most complicated problems to deal with as far as OHS is concerned. Many absences from work are caused by work-related stress. Besides, occupational burnout increases the risk of accidents by five times, and a fifth of staff turnover is related to stress at work. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work lays down the minimum OHS requirements at the EU level. This Directive places employers under the obligation to assess OHS risks, to take preventive measures and to provide special OHS training. The same obligations are in place for work-related stress. This aspect is also outlined in the Framework Agreement on work-related stress concluded by the social partners in 2004¹². This agreement highlights the need to

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⁷ The Council of the European Communities: Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work OJ L 183, 29.6.1989, p. 1–8. (1989).

⁸ EU-OSHA: Psychosocial risks and stress at work URL: https://osha.europa.eu/en/themes/psychosocial-risks-and-stress. Accessed 26 January 2020.

⁹ European Commission: Communication «Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy». COM/2017/012 final (2017) URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:0012:FIN. Accessed 26 January 2020.

¹⁰ The Council of the European Communities: Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work OJ L 183, 29.6.1989, p. 1–8. (1989).

European Commission: Communication «Safer and Healthier Work for All - Modernisation of the EU Occupational Safety and Health Legislation and Policy». COM/2017/012 final (2017) URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:0012:FIN. Accessed 26 January 2020.

¹² The European Trade Union Confederation, the Union of Industrial and Employers' Confederations of Europe, the European Association of Craft Small and Medium-sized Enterprises, the European Centre of Enterprises: Framework agreement on work-related

prevent or reduce stress in the workplace, through the implementation of individual or collective measures. These measures may concern management (e.g. improvement of the system of duty distribution among employees; enhancement of the authority and the role of management in supporting both individual employees and staff in general; agreement on the degree of responsibility and control over work activity; improvement of work organization and working conditions) or information (e.g. special training to raise awareness and to understand the reasons for work-related stress and ways to tackle it). Additionally, in 2014 the European Agency for Safety and Health at Work (EU-OSHA)developed some e-guidelines to manages tress and psychosocial risks ¹³. A description is provided of stress at work and psychosocial risks, their consequences for employees and employers, and some measures are put forward aimed to prevent them.

The importance of implementing OHS regulation to tackle occupational risks, especially psychosocial ones, is constantly underlined by EU policymakers¹⁴. In this sense, provisions have been enforced at the EU level in the framework of employment and social security strategies. Examples include 'Europe 2020'¹⁵, the Agenda for New Skills and Jobs'¹⁶, and the Green Paper: "Improving the Mental Health of the Population - Towards a Strategy on Mental Health for the European Union"¹⁷. These documents underline that psychosocial wellbeing is an important

stress (2004) URL: https://travailemploi.gouv.fr/IMG/pdf/StressAccordCadresEuropeen.pdf. Accessed 26 January 2020.

13 EU-OSHA: Managing stress and psychosocial risks. E-guide (2014) URL: https://osha.europa.eu/sites/default/files/Eguide_stress_ENGLISH.pdf. Accessed 26 January 2020.

¹⁴ European Parliament: Resolution of 25 November 2015 on the EU Strategic Framework on Health and Safety at Work 2014-2020 (2015/2107(INI)) OJ C 366, 27.10.2017, p. 117–128.

¹⁵ European Commission: Europe 2020. Strategy for smart, sustainable and inclusive growth. COM(2010) 2020 final, Brussels(2010). Accessed 26 January 2020.

¹⁶ European Parliament: Resolution of 26 October 2011 on the Agenda for New Skills and Jobs (2011/2067(INI)) OJ C 131E , 8.5.2013, p. 87–102.https://eurlex.europa.eu/legal-

content/EN/TXT/?qid=1577043185006&uri=CELEX:52011IP0466. Accessed 26 January 2020.

¹⁷ Commission of the European Communities: Green Paper - Improving the mental health of the population - Towards a strategy on mental health for the European Union /COM/2005/0484 final/(2005) URL: https://eur-lex.europa.eu/legalcontent/EN/TXT/?qid=1488204560202&uri=CELEX:52005DC0484. Accessed 26 January 2020.

component when considering employee working conditions. Furthermore, it would be important that the national governments of EU Member States recognise that workers' mental and physical issues mostly develop in the workplace, so necessary measures should be implemented¹⁸.

2.2. Legal Instruments Preventing Occupational Burnout in Ukraine

Ukraine can rely on wide-ranging employment protection legislation. The Labour Code of Ukraine¹⁹, the Law of Ukraine "On Labour Protection" and the Code of Civil Protection of Ukraine²¹ are the main sources of regulation in this field. Mention should also be made of the National Social Programme for Safety Improvement, Workplace Hygiene and Production Environment for 2014 - 2018²², which was approved in 2013. The programme ended in 2018 but was extended through another provision.

18 Stavroula, L., Aditya, J.: Mental health in the workplace in Europe - Consensus Paper - EU Compass for action on mental health and well-being. Centre for Organizational

https://ec.europa.eu/health/sites/health/files/mental_health/docs/compass_2017work place_en.pdf. Accessed 26 January 2020.

Health & Development, School of Medicine, University of Nottingham. – p.26-27 (2017)

¹⁹ ВерховнаРадаУкраїни: КодексзаконівпропрацюУкраїнивід 10.12.1971 № 322-VIII (1971) [The Verkhovna Rada of Ukraine: Labour Code of Ukraine of December 10, 1971, № 322-VIII (1971)] URL: https://zakon.rada.gov.ua/laws/show/322-08 [in Ukrainian]. Accessed 26 January 2020.

²⁰ ВерховнаРадаУкраїни: Законпроохоронупрацівід 14.10.1992 р. № 2694-XII (1992) [The Verkhovna Rada of Ukraine: Law on Labour Protection of October 14, 1992, № 2694-XII (1992)] URL: https://zakon.rada.gov.ua/laws/show/2694-12 [in Ukrainian]. Accessed 26 January 2020.

²¹ ВерховнаРадаУкраїни: КодексцивільногозахистуУкраїнивід 02.10.2012 р. № 5403-VI (2012) [The Verkhovna Rada of Ukraine: Code of Civil Protection of Ukraine of November 21, 2012, № 5403-VI (2012)] URL https://zakon.rada.gov.ua/laws/show/5403-17 [in Ukrainian]. Accessed 26 January 2020.

²² ВерховнаРадаУкраїни: ЗаконПро затвердження Загальнодержавної соціальної програми поліппення стану безпеки, гігієни праці та виробничого середовища на 2014-2018 рокивід 04.04.2013 р. № 178-VII (2013) [The Verkhovna Rada of Ukraine: Law on approval of the National Social Program for the Improvement of Safety, Occupational Health and Industrial Environment for 2014-2018 of April 4, 2013, № 178-VII (2013)] URL: https://zakon.rada.gov.ua/laws/show/178-18 [in Ukrainian]. Accessed 26 January 2020.

This list is not meant to be comprehensive. It only refers to some OHS measures enforced through normative acts forming part of a system which is unrelated to national labour legislation. While there exist many provisions of this kind, they are poorly implemented and their content needs updating, as most of them were issued during the Soviet period. The widespread normative approach to legal thinking hampers the application of general principles regarding the protection of workers' psychological health. In addition, no relevant case law is available; employees do not turn to the courts to exercise their rights as they believe they will not succeed. Unclear legal rules hinder workers' action when it comes to safeguarding their psychological wellbeing. This state of affairs explains why in Ukraine no preventive measures exist in relation to psychological wellbeing and work-related stress. This issue should not be neglected; a survey has found that 41.9% of employees in nongovernmental organizations in Ukraine report high or very high levels of occupational burnout, while 35.9% of them have been certified moderatedegree burnout²³.

The absence of a system to manage stress in the workplace can be explained with the fact that in the Soviet period, this aspect was dealt with through a set of more general measures intended to preserve employees' wellbeing. Yet labour law research contains much evidence of the need to promote a healthy work environment, by also taking account of psychological factors²⁴. Simply put: the 'occupational health and safety' concept should be taken to refer to both physical and psychological aspects.

²³ tsn.ua: Половина українських працівників страждає через професійне вигорання. Що робити та як не потрапити до зони ризику [HalfofUkrainianworkerssufferfromburnout. What to do and how not to reach the risk zone] (2019) URL:https://tsn.ua/zdorovya/polovina-ukrayinskh-pracivnikiv-strazhdayut-cherez-profesiyne-vigorannya-scho-robiti-ta-yak-ne-potrapiti-v-zoni-riziku-1373280.html [in Ukrainian]. Accessed 26 January 2020.

²⁴ Бек, У.П.: Правове регулювання охорони праці в Україні: теоретичний аспект [Текст] :дис. ... канд. юрид. наук : 12.00.05 / Бек Уляна Павлівна ; Нац. акад. наук України, Ін-т держави і права ім. В. М. Корецького. - К., 2013. – С. 85. [Век, U.Р.: Legal regulation of labour protection in Ukraine: theoretical aspect [Text]: diss. ... cand. jurid. sciences: 12.00.05 / Bek Ulyana Pavlivna; Nat. Acad. of Sciences of Ukraine, Institute of State and Law. V.M. Koretsky. - К. (2013). - р. 85[in Ukrainian]; Rym, O: Current issues of legal regulation of occupational safety in Ukraine // 3 rd International Conference of PhD Students and Young Researchers: Security as a purpose of law. Conference papers. 9 – 10 April 2015, Vilnius University Faculty of Law. Vilnius, Lithuania. P. 219.

In this regard, while much has been done through the implementation of the Mental Health Care Development Concept Note²⁵, further work is needed. For example, measures should be put forward ensuring employer engagement in programmes preventing work-related stress. This should be accompanied by investments allocated to tackle this issue, in order to reduce the economic loss caused by workers' reduced ability to work due to psychological factors.

The absence of burnout prevention initiatives in Ukraine does not mean that some issues cannot be dealt with at all. Collective agreements could play an important role in tackling occupational burnout and limit its consequences. Examples include: the involvement of professional experts, the provision of facilities where 'emotional release' practices can take place, the monitoring of leave taken to enjoy time off from work; and the provision of training helping employees to detect burnout symptoms or to deal with emotional breakdowns. Collective agreements could also lay down some form of compensation, should workers suffer from work-related mental disorders. A further step is the establishment of minimum annual leave and health improvement benefits, which are not paid if leave is not taken. Collective bargaining in Ukraine should also determine that it is for the employer to ensure a favourable working environment, so as to reduce as much as possible the risk of occupational burnout.

2.3. Ensuring the Social Security of People Suffering from Work-related Stress

Occupational burnout resulting from chronic, work-related stress affects workers' performance, increasing the likelihood of occupational injuries and work inability.

Social security in Ukraine safeguards people in employment through compulsory insurances against work-related accidents and occupational diseases. Ukraine's Law on Compulsory State Social Security constitutes the legal basis for exercising the rights and duties related to insurance provision, social services and benefit payment²⁶. According to the WHO,

²⁵ Кабінет Міністрів України: Концепціярозвиткуохоронипсихічногоздоров'я в Українінаперіоддо 2030 року, щосхваленарозпорядженнямвід 27 грудня 2017 р. № 1018-р. (2017) [Ukraine's Cabinet of Ministers: The concept of mental health development in Ukraine for the period up to 2030, approved by the decree of December 27(2017) URL: https://zakon.rada.gov.ua/laws/show/1018-2017-%D1%80#top [in Ukrainian]. Accessed 26 January 2020.

²⁶ Верховна Рада України: Закон про загальнообов'язкове державне соціальне страхування від 23.09.1999 р №1105-XIV 23.09.1999 r №1105-XIV (1999) [The Verkhovna Rada of Ukraine: Law on Compulsory State Social Insurance of September

occupational burnout in domestic legislation should be regarded as a workplace disease covered by insurance. To this end, amendments should be made to current legislation, in that par. 1, Article 1 of the provision mentioned above defines 'occupational disease' as the result of work carried out by the insured person (i.e. the employee) which is caused, exceptionally or mainly, by harmful substances, certain types of tasks and other work-related factors²⁷.

Like many other EU Member States – 35 out of the 38 countries which participated in the survey²⁸ - Ukraine has drawn up a List of Occupational Diseases²⁹. If this list is examined, along with the instructions for its application³⁰, it can be noted that there are eight groups of occupational diseases originated from harmful chemicals, physical factors, industrial aerosols which are covered by national insurance. On the contrary, psychological factors – e.g. stressful working conditions – resulting in occupational burnout are not even mentioned in the list.

Some countries already consider burnout to be an occupational disease for which a social insurance is paid. For example, Italy's National Institute for Insurance against Accidents at Work (INAIL) includes burnout among occupational diseases³¹. Latvia's legislation on Compulsory Social Insurance related to Accidents at Production Sites and Occupational

23, 1999, №1105-XIV September 23, 1999, №1105-XIV (1999)] URL:https://zakon.rada.gov.ua/laws/show/1105-14 [in Ukrainian]. Accessed 26 January 2020.

²⁷ Верховна Рада України: Закон про загальнообов'язкове державне соціальне страхування від 23.09.1999 р №1105-XIV 23.09.1999 г №1105-XIV (1999) [The Verkhovna Rada of Ukraine: Law on Compulsory State Social Insurance of September 23, 1999, №1105-XIV September 23, 1999, №1105-XIV (1999)] URL:https://zakon.rada.gov.ua/laws/show/1105-14 [in Ukrainian]. Accessed 26 January 2020.

²⁸ Guseva Canu, Irina et al.: "Burnout syndrome in Europe: towards a harmonized approach in occupational health practice and research." Industrial health vol. 57,6 (2019): p.747, 748-749. doi:10.2486/indhealth.2018-0159.

²⁹ Кабінет Міністрів України: Перелік професійних захворювань від 08.11.2000 р. №1662 [Ukraine's Cabinet of Ministers: List of occupational diseases of November 8, 2000, No. 16662] URL: https://zakon.rada.gov.ua/laws/show/1662-2000-%D0%BF [in Ukrainian]. Accessed 26 January 2020.

Міністерствоохорониздоров'яУкраїни: Інструкціяпрозастосуванняперелікупрофесійних захворюваньвід 29.12.2000 № 374/68/338 [Ministry of Health of Ukraine: Instruction on application of the list of occupational diseases of 29.12.2000 № 374/68/338] URL: https://zakon.rada.gov.ua/laws/show/z0068-01 [in Ukrainian].

³¹ Eurofound: Burnout in the workplace: A review of data and policy responses in the EU, Publications Office of the European Union, Luxembourg. P. 9 (2018).

Diseases, specifies that an occupational disease is caused by physical, chemical, hygienic, biological and psychological factors at work (par. 5, Article 1)³². Specifically, burnout is defined as an occupational disease caused by the overload and overstressing of some groups and systems of individuals³³. While Section 4 of Ukraine's List of Occupational Disease refers to factors related to occupational diseases, no mention is made of psychological and psychosomatic reasons leading to burnout.

Still by way of comparison, in 2015 in the Netherlands occupational burnout caused disability in 4-5% of respondents, who also received benefits for their inability to work. The Dutch Agency of Employee Insurance has reported an increase in burnout arising from stress and disability. They stress that the lack of recognition of burnout as an occupational disease means that only 0.5% of applicants are granted disability benefits³⁴.

In Ukraine, occupational burnout is not a recognized disease, so there is no statistics concerning individuals suffering from it. However, the problem exists and needs to be solved urgently. In the authors' opinion, the most efficient way to deal with it is changing how current legal provisions are interpreted. In Ukraine, there is an open list of occupational diseases that can be amended by the national Social Insurance Fund, if supported by medical evidence.

This approach is effective and has been successfully implemented in Bosnia and Herzegovina, Denmark, Estonia, Hungary, Malta, Portugal, Slovakia, and Turkey³⁵. Furthermore, in Iceland, the Netherlands, and Sweden, occupational diseases are defined based on one's working conditions³⁶. Providing evidence for the establishment of occupational

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=57255&p_country=L VA&p_count=472. Accessed 26 January 2020.

Parliament of the Republic of Latvia: Law of 17 November 1995 on Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases (valid from 1 January 1997)
 URL:

³³ Eurofound: Burnout in the workplace: A review of data and policy responses in the EU, Publications Office of the European Union, Luxembourg. P. 9 (2018).

³⁴ Eurofound: Burnout in the workplace: A review of data and policy responses in the EU, Publications Office of the European Union, Luxembourg. P. 20 (2018).

³⁵ GusevaCanu, Irina et al.: "Burnout syndrome in Europe: towards a harmonized approach in occupational health practice and research." Industrial health vol. 57,6 (2019): p.747. doi:10.2486/indhealth.2018-0159

³⁶ Lastovkova A, Carder M, Rasmussen HM, Sjoberg L, Groene GJ, Sauni R, Vevoda J, Vevodova S, Lasfargues G, Svartengren M, Varga M, Colosio C, Pelclova D.: Burnout syndrome as an occupational disease in the European Union: an exploratory study. Ind

diseases in Ukraine lies with the Ministry of Health of Ukraine and the Academy of Medical Sciences³⁷. Therefore, it is them who must determine some clinical criteria so that burnout can be regarded as an occupational disease.

3. Conclusion

The workplace should ensure safe conditions as people spend most of their lives there. The work environment should also contribute to personal development, complying with health and safety requirements. Therefore, the development and introduction of effective legal mechanisms safeguarding employees' health call for the involvement of all those concerned. Employers, employees, the social partners and state authorities must all cooperate, setting the standards protecting employee psychological health care. These measures should be laid down both in the field of labour law and social security law, since a comprehensive and systemic approach is more effective to solving the issue at hand. Thanks to a wide-ranging set of measures preventing work-related stress, its early identification, and further support provided to the affected person, positive effects can be generated, without frustrating attempts to overcome these new challenges at work.

Health. (2018) Apr 7;56(2): P. 161 doi: 10.2486/indhealth.2017-0132. Epub 2017 Nov 3. PMID: 29109358; PMCID: PMC5889935.

³⁷ Міністерство охорони здоров'я України: Інструкція про застосування переліку професійних захворювань від 29.12.2000 № 374/68/338 [Ministry of Health of Ukraine: Instruction on the application of the list of occupational diseases of 29.12.2000 № 374/68/338] URL: https://zakon.rada.gov.ua/laws/show/z0068-01 [in Ukrainian].

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