



Legal framework and procedures of occupational health. A hermeneutic analysis

Marco legal de la salud laboral. Un análisis hermenéutico

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ABSTRACT

Establishing safety standards for regulating workers' health is one of the main components of a labor system. In order to optimize productive activities in a way that aligns with the well-being, rights, and duties of the worker, it is crucial to properly operationalize the legal framework, the procedures for its execution, and the establishment of clear responsibilities and guarantees. The study was aimed at a qualitative and hermeneutic review of the relevant literature, both nationally and internationally, in the Scielo, Redalyc, Dialnet, and Scopus databases. The study allowed for the mapping of the literature, a critical assessment of the texts, and the representation of the main categories according to the initially established themes. The results indicate that it is necessary to implement a safety plan in light of current regulations. In addition, this legal device must operate in conjunction with other cooperatives, the union with the academic sector, and the support of state health entities, thus establishing cooperative work that benefits all sectors in the spinoff style.

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INTRODUCTION

The concepts linked to the protection of the worker against occupational dangers and risks and the corresponding legislation were aspects practically unknown in Colombia until the beginning of the 20th century. At the beginning of the 20th century, issues related to worker safety began to appear in the national context. Specifically, in 1904, Rafael Uribe Uribe laid the foundations for the future analysis of work accidents and occupational diseases, precedents eleven years later facilitating the law to regulate occupational health (Palacio, 2023).

The delay in establishing regulations for worker safety was mainly due to the existing production systems, based on the exploitation of cheap labor and a very poor mechanization of processes. Additionally, a restricted political vision about the role of workers, their rights, and their duties promoted an uneven scenario for their protection (Casso-Hartmann et



al., 2022; Cuadros-Meñaca, 2020; Gallego et al., 2020). Therefore, Law 57 of 1915 was followed by others that sought to strengthen the protection of workers against the dangers and risks of their work, which had significance in the future of occupational health in Colombia (Ley 57 de 1915; Valero-Pacheco & Riaño-Casallas, 2020).

In the field of occupational health, the legal framework plays a pivotal role in safeguarding the well-being of workers (Kaufmann, 2024). In Colombia, this framework is instrumental in outlining the obligations and responsibilities of employers and defining the rights and protections afforded to employees (Ortiz-Barrios et al., 2022). A thorough understanding of these legal aspects is paramount for ensuring compliance and enhancing the overall efficacy of occupational health practices. Furthermore, the jurisprudential and legislative analysis must consider the history of the country, with emphasis on phenomena such as corruption, abuse of power, the low state presence in certain territories, and the disparate effects caused by the armed conflict (Bautista Espinel et al., 2023; Escallón, 2021; Lara-Rodríguez, 2021; López-Cazar et al., 2021).

The legal aspects of occupational health encompass a wide array of regulations and guidelines that dictate how workplace safety and health are to be managed and maintained (Habibi et al., 2024; Jain et al., 2021; Salguero-Caparrós et al., 2020). These regulations are designed to prevent occupational hazards and address the consequences of accidents or health issues. In this context, the procedural aspects refer to the processes and steps that must be followed to ensure compliance with the law (Ferracuti et al., 2022; Hauke et al., 2020). Internationally, patrimonial responsibility pertains to the financial liabilities and compensations associated with occupational health incidents (Bavorová et al., 2021; Golob, 2024; Hernández-Herrero & Cayón-De Las Cuevas, 2022; Muinde & Prince, 2023).

This hermeneutic review aims to delve into Colombia's intricate legal landscape of occupational health, focusing specifically on procedural and patrimonial responsibilities. Hermeneutics, as a methodology, provides a comprehensive approach to interpreting legal texts, enabling a deeper understanding of the legislative intent and practical implications (Schommer et al., 2022; Tjon Soei Len, 2020). This interpretive approach, combined with content analysis based on grounded theory coding procedures, allows the exploration of text and context, the constant comparison of sources, and the generation of new categories (Burns et al., 2022; Hovey et al., 2022; Urcia, 2021).

This review will analyze key legislative documents, judicial rulings, and scholarly interpretations to construct a nuanced understanding of occupational health's legal obligations and liabilities. The objective is to provide a coherent and comprehensive overview that will serve as a valuable resource for legal professionals, policymakers, and scholars in the field.

METHOD

Literature review approach

The primary purpose of the research was to analyze the literature and review the legal aspects related to the occupational health of Colombian workers. In addition, a broad and well-contrasted review of articles of particular importance in the mainstream was pursued so that the leading national and international trends could be compared and assessed. In light of this intention, a qualitative and hermeneutic approach was chosen for the literature review because this type of design allows a deep understanding of various topics and periods (Burns et al., 2022; Chance et al., 2020).

In this sense, the search was designed to generate an initial library, and, based on the analysis of a small number, the articles would guide the incorporation of new sources. These new sources would be analyzed, interpreted, and discussed through their own context and that generated in the transition from one manuscript to another. This notion was organized in the hermeneutic circle based on the researchers' argumentative, cognitive, and emerging needs (Sackstein et al., 2023; Valentine et al., 2021).

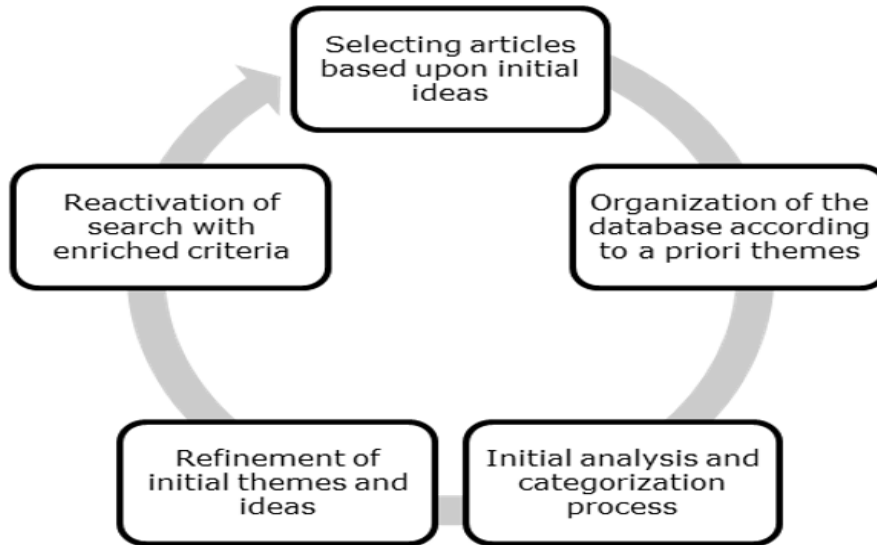
The hermeneutic circle was produced as a concentric process in response to the analytical stages and categories worked on previously (Gyollai, 2020). As an article was analyzed, the bases for a new search and interpretation were established, and notes were taken for the subsequent construction of the research report.

Methodological procedure

The review began with establishing three categories that would guide the search for sources: legal framework, patrimonial responsibility, and procedure. These themes allowed for the establishment of an initial framework of ideas so that the researchers could establish keywords, specific objectives for the analysis, and questions to interact with the texts and each other. Under this protocol, the articles were selected, organized, read, and analyzed from

one essential position to another, focused on categorization, to end with the refinement of the themes and initial ideas (Figure 1).

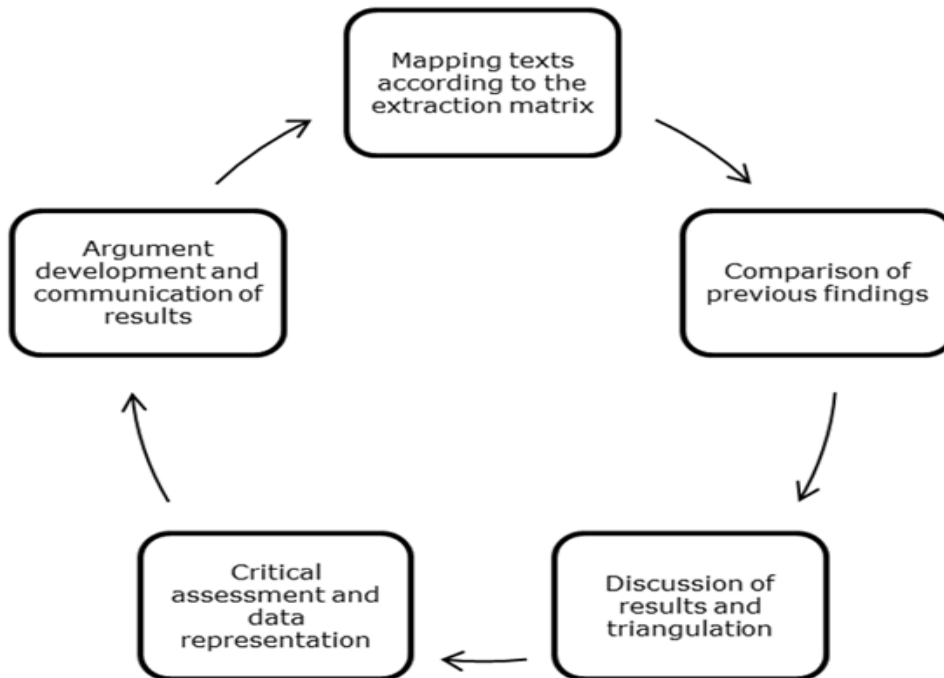
Figure 1.
Hermeneutic circle



Source: own elaboration

Data extraction and representation

Figure 2.
Analytical process



Source: own elaboration

The researchers created a second circle applicable to each search stage for the extraction, analysis and synthesis, representation, and communication of data (Figure 2). This procedure allowed the mapping of the texts based on a matrix divided into objectives, approach to analysis, findings, and most relevant conclusions. From this internal processing, questions or answers were generated to compare the previous results, which facilitated the discussion of the researchers and the triangulation concerning the mainstream literature. As a result, the database

was strengthened with the inclusion of new data sources and a critical assessment of them. In this way, the process in concentric circles allowed the development of the researchers' arguments and the representation of the data in various relational matrices.

RESULTS AND DISCUSSION

Below is a summary of the main findings, which are analyzed in the internal and external dimensions so that they can be compared according to sources included in the study's database and concerning the international literature. In addition to this discussion, the representation of the themes is presented based on the codes and categories that were organized and linked in them.

Legal framework

The legal framework provides the basis on which institutions build and determine the scope and nature of political participation (Ahirwar & Tripathi, 2021; Ramos et al., 2020; Sorensen et al., 2021). The legal framework of an election, and especially issues related to its integrity, are often found in several interrelated regulatory provisions and laws (Figure 5). The pension scheme comprises the Solidarity Medium Premium Regime with Defined Benefits and the Individual Savings Regime with Solidarity. It is one through which members or their beneficiaries obtain an old-age, disability, or survivors' pension or compensation, previously defined (Posada Lopez et al., 2023).

According to the Colombian legal system, the primary health care system (PHCS) is conceived as an instrument with intersectoral scope aimed at uniting all the factors involved in providing a quality service according to established standards. Therefore, the system is implemented as a strategy that links health promotion and disease prevention processes, diagnosis and treatment of pathologies, and the implementation of comprehensive rehabilitation services for different conditions. PHCS in Colombia, according to the sources, is characterized by the following traits (Betancurth-Loaiza et al., 2022; De Bortoli Cassiani et al., 2024):

- It is a strategy that contemplates three integrated and interdependent components: intersectoral reach, inclusion, and participation from citizens and the communities, as well as health services.
- It adjusts to the context of the country in order to respond accordingly to its political, social, and economic circumstances.
- It has a broad focus in which every individual, group, or community must be represented and cared for.
- It focuses on social justice and sustainability, aimed at promoting individual and social well-being and the enjoyment of the constitutionally conceived guarantees for a dignified life.
- It establishes a sectoral provision of services and supports the coordinated action of social agents whose mission concerns environmental, social, and health issues.
- Emphasizes health promotion.

Occupational risks are better defined as work accidents and occupational diseases (Law 1562 of 2012) (Ley 1562 de 2012). The General Occupational Risk System outlines these potential hazards as the set of public and private entities, standards, and procedures designed to prevent, protect, and care for workers from the effects of diseases and accidents that may occur to them on any occasion or as a consequence of the work they carry out (Roncancio et al., 2020).

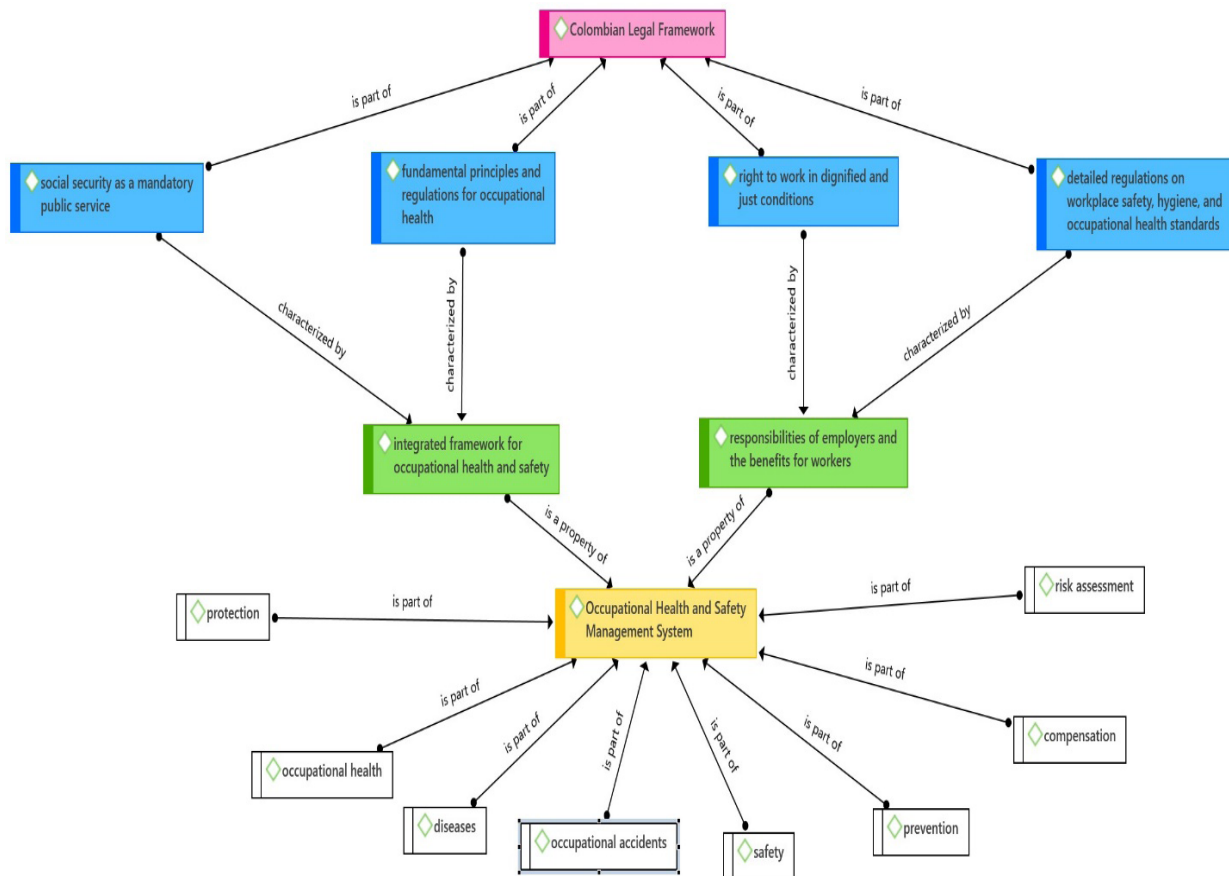
Another crucial regulation is Decree Law 4107 of 2011, which determines, among other functions of the Ministry of Health and Social Protection, that of formulating policy, directing, guiding, adopting, and evaluating the execution of plans, programs, and projects of the National Government in matters of public health and labor risks (Decreto 4107 de 2011). Furthermore, this regulation establishes guarantees for the promotion and the articulation of the actions of the State, society, the family, the individual, and the other people responsible for executing the occupational risk activities carried out by the Ministry. These activities, among others, correspond to the insurance or affiliation to the General Occupational Risk System with Human Talent in Safety and Health at Work and with public health in terms of protecting the country's working population (Severiche Sierra et al., 2021).

Finally, Resolution 1841 of 2013 was taken into consideration because it not only defines Health and the Workplace as a dimension within the framework of the Ten-Year Public Health Plan but also considers the set of sectoral and trans-sectoral policies and interventions that seek the well-being and protection of the health of workers (Resolución 1841 de 2013). The main objectives of this norm are:

- The promotion of healthy ways.
- Guarantee conditions and lifestyles in the workplace.
- The maintenance of the physical, mental, and social well-being of people in all occupations.
- The promotion of interventions that positively modify the situations and conditions of interest for the health of workers in the formal and informal sectors of the economy.

In order to offer a better understanding of the coding and categorization, figure represent main issues and relation observed in this theme.

Figure 3.
Theme 1. Legal framework



Source: own elaboration

Patrimonial responsibility

Responsibility is generally defined as the obligation to repair the damage caused, deducing from it; therefore, if there is no damage, there is no responsibility. Now, given that in any employment relationship, there are two parties, the employer and the workers, the responsibilities of both must be distinguished. Firstly, the employer derives precisely from his power to indicate to the worker the way, time, and place to carry out the work and his power to sanction anyone who does not do it in the indicated manner. Consequently, if the person has these powers, he must also be responsible for the risks that may arise in the production process, especially those that affect the safety and health of workers (Dennerlein et al., 2020; Suárez-Albanchez et al., 2021).

Secondly, the responsibility of workers derives from failure to fulfill their obligations as workers. Therefore, they must observe the adopted legal and regulatory measures of industrial safety and hygiene, as well as follow the training on safety and hygiene provided by the employer (Higueta-Gutiérrez et al., 2020; Insfran-Rivarola et al., 2020).

According to the sources and the main literature, safety and hygiene issues have become a priority in the European Union due to relative positions or social policies and the internal market. Many professionals will have to face numerous issues regarding occupational risk prevention in their activities without having received specific

training in this matter (Ledo et al., 2020). Therefore, the need for this training is no longer exclusive to those who are going to perform prevention functions in companies, but there are greater demands and responsibilities; they must reach all elements of the company and especially the technicians involved on the production line (Jubayer et al., 2020)

Industrial hygiene within companies is of great importance because many industrial processes and operations produce or use compounds that can harm workers' health. Consequently, it is a field focused on the environmental stressors or elements that arise in the workplace, which can cause illness, deterioration in health, and essential well-being among workers (Abdullah et al., 2021). For this reason, within organizations, it is important to have an industrial hygienist who will ensure the prevention, evaluation, and control of different incidents and apply laws that aim to provide workers with safe and stable conditions. Industrial hygiene and safety at work are fundamental elements in order to ensure that the principles in which it is stated become part of their daily work or activity so that the working conditions are known and taken into account from the design and implementation phase of the project (Afolabi, 2022).

As was remarked in the literature, hygiene and safety at work should be critical points for any organization. It is part of the organization's social responsibility to take care of employees, protect them from risks, and ensure a healthy environment. Among the needs that the employer must satisfy during a worker's working life are the needs for physical and emotional security (Rasool et al., 2021).

The law requires employers to provide working conditions that do not physically or morally harm their employees. For this reason, companies must pay special attention to three aspects that have an essential impact on the issue: compliance with legislation, the safety of their personnel, and care for the environment. Regarding safety in the workplace, the staff plays a critical role in achieving these goals (Neves, 2020).

For this reason, it is necessary that a "safety and risk prevention culture" be transmitted throughout the company, which leads to achieving high levels of productivity and consequent efficiency in its total management. A hygiene and safety program must be conceived as part of the company and not as something that must be carried out additionally. This program is a set of activities that allow workers and the company to be kept with the least possible exposure to the dangers of the work environment (López-Santamaría et al., 2021).

The costs related to sick leave, disability retirement, and replacement of injured or dead employees are much greater than those allocated to maintaining a Health and Safety program. Furthermore, the risks and illnesses that can be attributed to work can negatively affect employees' morale, creating demotivation and dissatisfaction. The Human Resources department is responsible for coordinating communication and security training programs (Cañón Benavides, 2023).

Nonetheless, its success will depend on the actions of the directors and supervisors and the conduct that the employees adopt. Security is a staff function, but its compliance is the entire organization's responsibility. Internalizing the value of hygiene and safety at work depends on a systematic task where policies and procedures are reinforced every day. That is why the commitment must begin with high-level management, who must know the priority place this issue deserves. Senior management can demonstrate its commitment through different actions such as:

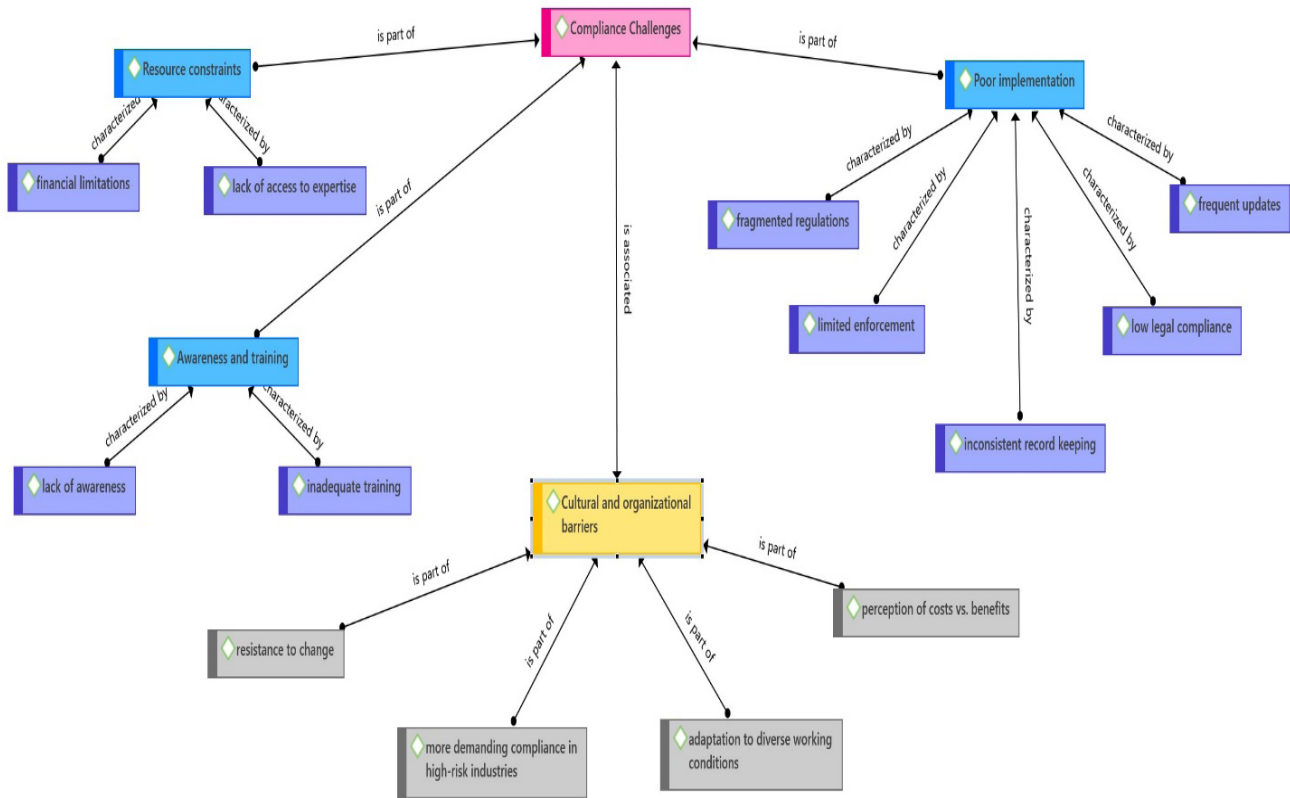
- personal and routine interest in safety activities.
- giving it great importance in company meetings.
- providing those responsible for its planning with the necessary resources.
- ensuring that the work environment at the organization is adequate, including the topic of safety in the training.

Without this commitment, any attempt to reduce unsafe acts by workers will have little result (Albújar-Verona et al., 2022). The first-line Supervisor is a key link in the chain. Their work is vital in the induction of new staff. This consideration must include a detailed explanation of everything the worker must do, including the area's dangers, the safety measures, and the procedure to follow in case of risks or incidents. The criterion for induction into the position is applied precisely to that person who has been transferred and who, regardless of how long he or she has been within the organization, is as new as the person who has just joined. It is essential to remember that experience dramatically reduces risks, and training, in many cases, can replace experience, which is why safety training can substantially reduce risks (Santana Londoño et al., 2023).

The Supervisor must fulfill an educational role, transmitting the guidelines clearly and encouraging employees to

follow the stipulated procedures. The key to keeping risks at a low level is “prevention.” One of the aspects that make this up is the existence of procedures. These allow people to know the prevention, protection, and security measures to minimize each operation’s risks. The key to prevention is preventive observation, which allows organizations to focus on what is wrong and all the consequences that this can bring (Espinosa et al., 2022). Accordingly, figure 4 presents a matrix representation of compliance challenges and patrimonial responsibility theme.

Figure 4.
Theme 2. Compliance challenges and patrimonial responsibility



Source: own elaboration

Procedure

This process consists of recognizing, evaluating, and controlling the possibilities of damage to workers’ health in developing their activities and, in addition, establishing associations between the risk of exposure and health effects and integrating an action plan that will contain suggestions and guidelines for improving the work environment for better control of health risks. For this reason, workers’ exposure to the maximum and minimum average concentrations of aromatic solvents in the work area must be quantitatively estimated (Viegas et al., 2020).

Prevent occupational risks due to production activities; therefore, production that does not consider safety and hygiene measures is not good. Good production must satisfy the conditions of the three essential elements: safety, productivity, and quality of the products. Otherwise, they contribute to reducing their partners and customers (Pulido-Rojano et al., 2020).

When discussing diagnosis, we identify the problems that occur based on a thorough study. To develop a sound diagnosis system, organizations must follow a series of steps, which allows a description of the process through which the objectives and methods are established to evaluate and assess the necessary actions subsequently.

In such a way, it begins with a Diagnosis of the situation, which aims to use accident statistics, management audits, hazard identification, risk evaluation, risk maps, and job evaluation methods. The objectives are defined from this since the starting situation is already known.

Risk prevention includes the systematized analysis of each job, determining its characteristics, objectives, the way it is carried out, and the standards that must be observed when carrying it out. In such a way, since the risk is a consequence of a poor functional situation of the system, the causes must be identified and then influenced through

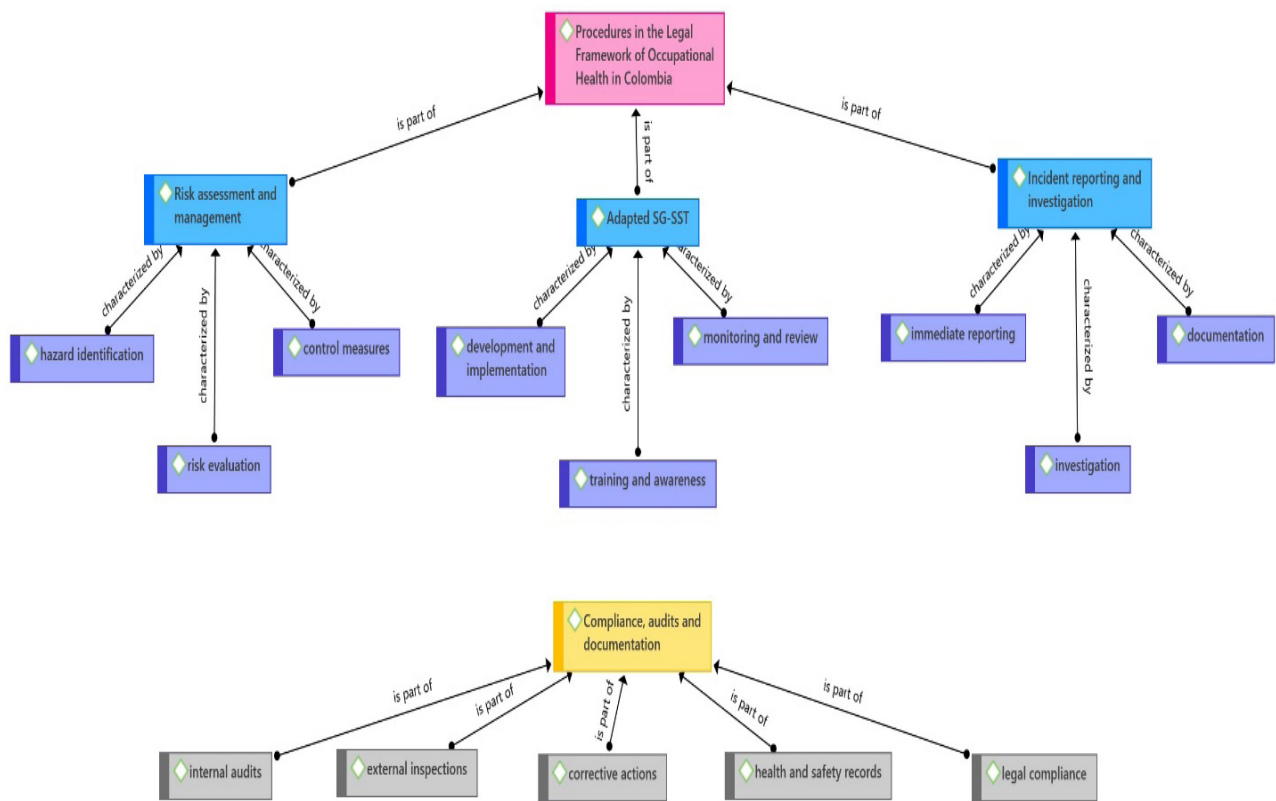
preventive measures that allow for preventing the disturbance of the elements, improving safety in the operation of the system. and improve their interrelation (Bracho-Paz & Quintero-Medina, 2020).

In this sense, the starting point for risk prevention must be creating and maintaining interest in safety at all levels of the organization. Risk is the creation or materialization of risk in an unforeseen event that interrupts or interferes with the continuity of work and may cause damage to people or property (Bracho-Paz & Quintero-Medina, 2020). About workspaces, the work environment is defined under the law as:

1. Places, premises, or sites, closed or outdoors, where people linked by an employment relationship provide services to companies, offices, farms, industrial, agricultural, and unique establishments of any nature, public or private, with the exceptions established by this Law.
2. The sociocultural and physical infrastructure circumstances that immediately surround the man-work relationship condition the quality of life of workers and their families.

Every work activity, depending on its object, is exposed to risks. In that sense, the doctrine has developed various classifications to separate them, and this element forces the employer to establish specific conditions that must prevail in the workplace to minimize such risks and thus guarantee health. The sociocultural situations, work organization, and physical infrastructure that immediately surround the relationship between men and women and work conditions affect the quality of life of workers and their families. Therefore, organizations must assess the air, aquatic, and terrestrial spaces around the company, as well as other community-associative forms of a productive or service nature that are part of them (Figure 5).

Figure 5.
Theme 3. Procedures in the Legal Framework of Occupational Health in Colombia



Source: own elaboration

In order to integrate each of the parts that constitute an organization, Security programs can be designed to achieve their purposes in two main ways. The first approach is creating an environment and psychological aptitudes that promote security because the risks can be reduced when workers consciously consider safety. The second approach is developing and maintaining a safe environment for physical work.

The organizational leader must use strategies to get to know his staff and foster an environment that facilitates their effective performance. Fulfill the corresponding functions based on the interrelationship with their subordinates

and supervisors in a team, harmonious, and communicative environment, which allows organizations to know the various sensitivities of the workers, not to delve into their lives but rather detecting the attitudes that can negatively and positively influence the company, in order to combat the former and enhance the latter (Alsawafi et al., 2021). It will also stimulate people's commitment to the institution and cultivate a work environment based on the quality of work life and harmonious interrelation in the organizational climate. An excellent organizational climate is necessary in the quality management model (Abbas, 2020; Kuenzi et al., 2020).

CONCLUSIONS

Firstly, the legislative texts consulted form the backbone of Colombia's legal framework for occupational health. As the literature shows, they establish the procedures for compliance, outline the responsibilities of employers and employees, and define the scope of patrimonial responsibility in the event of occupational health incidents. For future studies, it is paramount to understand and interpret these laws through a hermeneutic lens, which allows for a deeper appreciation of their implications and the practical measures necessary to ensure a safe and healthy work environment.

Likewise, procedures are an integral part of Colombia's legal requirements for occupational health. By adhering to these procedures, employers can ensure a safer working environment, minimize occupational risks, and fulfill their legal obligations. The conducted hermeneutic analysis of these procedures could help uncover their underlying principles and enhance their practical implementation in the workplace for academic and organizational agents.

The results show that employees must be affiliated with the occupational risk system in force in the country. In this way, they can comply with associated regulations and, above all, prevent accidents and occupational diseases. Similarly, they can strengthen the relationship with occupational risk insurers and implement a disclosure plan and monitoring with constant visits to the collection centers by seeking promotion and prevention in terms of occupational health.

By taking into account the opinions of all employees, these transparent relationships make it easier for managers to supervise lower levels of the organization. It is necessary to implement a security plan in light of current regulations. This type of program can be operated in conjunction with other cooperatives, the union with the academic sector, and the support of the state's health entities, thus establishing cooperative work with benefit. to all spin-off-style sectors.

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