

JUNHE SPECIAL REPORT



April 30, 2021

Environmental Protection

Environmental Protection Series (XIX) - Safety Management Agreements Ensure the Safety of Enterprises

Introduction:

In recent years, safety accidents have increased in frequency during production processes. It is urgent that people-oriented safety production is promoted. On April 28, 2020, the State Council Information Office held a press conference regarding the “Three-year Action Plan for National Work Safety Special Remediation”. The main purpose of this plan is to strengthen the supervision of work safety and eliminate safety hazards. In this context, enterprises should attach great importance to safety production management, especially the safety management of tenants and contractors in locations where the problems usually occur. As part of the management of tenants and contractors, a safety management agreement plays a vital role in the enterprise’s management. This article focuses on the necessity of a safety management agreement and the relevant key points for drafting such an agreement.

I. Why is it necessary to have a safety production management agreement?

Under the “Safety production Law”, there are two scenarios in which relevant parties must sign a safety management agreement, namely: (1) When two or more entities are engaged in production and business activities in the same operating area, which may endanger the safety production of the other party or parties; (2) When

contracting out or renting out production and operation projects or sites to another entity or entities. From the perspective of safety production management, signing a safety management agreement can clarify the responsibilities of all parties, help control safety production risks and reduce the possibility of accidents. If an enterprise is expected to sign a safety management agreement but fails to do so, it may be ordered to make corrections within a certain time limit and may be fined less than RMB 50,000, and the managers and other employees who are directly responsible may also be fined; if it fails to make corrections within the time limit, the enterprise may be ordered to suspend production and business for rectification. Such penalties may also lead to a credit crisis, which will make the enterprise disadvantaged in any bidding and lead to problems in terms of customer relationship management.

II. What is a safety management agreement?

Although there is no specific definition of a safety production management agreement under the current legal framework, it will be helpful to understand the concept of a safety management agreement in terms of its purpose. We understand that the main purpose of a safety production management agreement is to clearly define the duties and responsibilities with respect to the safety production management between the lessor and the lessee as well as between the

principal and its contractor, so as to be able to reduce risks by the timely identification and rectification of any safety issues. Based on our previous experience in drafting and negotiation, in general, a safety production management agreement should at least include provisions regarding safety investments and capital guarantees, safety production management staffing, safety facilities and operating conditions, hidden danger investigation and management, safety education and training, accident emergency rescue, safety inspection and response, and responsibility sharing.

III. How to draft a safety production management agreement

Enterprises should firstly check applicable national and local laws and regulations and normative documents. They should understand the obligations and responsibilities of safety production between the lessor and lessee as well as the principal and its contractors under the above-mentioned applicable laws and identify the scope of the statutory duty of supervision and management duty on the part of the lessors and the issuers. According to the structural sequence (such as the structure discussed under the second item above), the enterprise should reasonably divide the obligations and responsibilities of safety production considering the specific projects, the parties involved, the delivered/undelivered scope of the site and the specific scenarios (especially those involving more complicated scenarios such as cross-working) so as to clarify the responsibilities and liabilities of each party. If you need to draft and negotiate production or safety management agreements (or environmental, health and safety management agreements), you can contact your

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IV. Conclusion and suggestions

A safety management agreement is essential for the safety management of enterprises, their tenants and contractors. The environmental, health and safety management of enterprises' tenants and contractors can achieve better performances only if there are a series of rules and regulations (such as a selection and assessment system for the contractors and suppliers, and a compliance system of environment, health and safety (EHS)), operating procedures, educational training, and a culture of safety. For some high-risk entities including contractors and suppliers, companies may also consider conducting an EHS compliance review before hiring. If you have any requests regarding safety production management agreements, supplier EHS compliance or EHS training, please contact us by email: ecoenvpro@junhe.com.

JunHe's EHS Team: JunHe LLP, with over 930 professionals, is one of China's largest full-service law firms with an international reputation for providing high quality legal services. As one of the pioneers in the practice area of environment, health and safety production ("EHS") in China, JunHe's EHS team provides multinational enterprises with a full range of EHS legal services. These include industrial project development, the incorporation of joint ventures, M&A transactions, daily commercial operations, EHS related audit and compliance, government investigations, administrative punishments and reconsiderations, and litigations.

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君合专题研究报告



2021年4月30日

环境健康与安全专题系列（十九）

— 安全生产管理协议，为企业安全保驾护航

导言：近年来，安全生产事故频发，各地出现了多例重大、典型的安全生产事故，以人为本的安全生产理念亟待在企业乃至全社会落地生根。2020年4月28日，国务院新闻办公室举行《全国安全生产专项整治三年行动计划》新闻发布会，主旨是加强安全生产监管，力争从源头消除安全隐患。在此背景下，企业应当重视安全生产管理，尤其是安全生产管理中容易出问题的有关承租方及承包方的安全管理。安全生产管理协议作为企业对承租方及承包方管理必不可缺的一环，对企业的安全生产管理起着至关重要的作用。本文将重点介绍安全生产管理协议的必要性及相关起草要点，希望对企业安全生产管理有所助益。

一、为何有必要签署安全生产管理协议？

《安全生产法》规定有如下两种情形，相关方必须签订安全生产管理协议，即：（1）两个以上生产经营单位在同一作业区域内进行生产经营活动，可能危及对方生产安全的；（2）生产经营项目、场所发包或者出租给其他单位的。从安全生产管理的角度，签署安全生产管理协议能够明确各方的职责，有助于控制安全生产风险和降低事故发生的可能性。

如企业应签订而未签订安全生产管理协议的，将可能被责令限期改正，处五万元以下的罚款，而其直接负责的主管人员和其他直接责任人员也可能面临罚款；逾期未改正的，将可能被责令停产停业整顿。该等处罚也可能导致企业信用危机，从而在招投标和客户关系管理中面临不利

处境。

二、什么是安全生产管理协议？

尽管目前法律框架下对安全生产管理协议没有具体的定义，但从其目的的角度去理解有助于我们了解安全生产管理协议的内涵。我们理解，安全生产管理协议的主要的目的在于明确界定出租方与承租方、发包方与承包方之间的安全生产管理职责，从而能够及时发现和督促整改安全问题，降低安全管理风险。根据我们以往起草和谈判安全生产管理协议的经验，一般而言，安全生产管理协议应至少包含安全投入和资金保障、安全生产管理人员配备、安全设施和作业条件、隐患排查与治理、安全教育与培训、事故应急救援、安全检查与应对、责任分担条款等方面的约定。

三、如何起草安全生产管理协议？

企业应查找并确定适用的全国性的法律法规以及所在地的地方性法规和规范性文件，了解上述适用法规和规范性文件对于出租关系和发包关系下安全生产相关义务和责任规定，确定出租方和发包方法定监督管理义务的范畴；按照结构顺序（例如我们在以上第二点项下约定的结构）合理划分安全生产的义务和职责，结合具体的项目、涉及的相关方、已交付/未交付的场地范围，落实到特定的场景（尤其是交叉作业等较为复杂的场景），以做到职责明确，各司其职，并且各项责任的承担界定清晰。

如您需要起草和谈判与相关方的安全生产管

理协议（或环境健康与安全管理协议），可与您的环境与安全律师或顾问联系。

四、 结语与建议

如上文讨论，安全生产管理协议对企业承租方及其承包方安全管理至关重要。除此以外，企业承租方及承包方环境健康与安全管理也需要结合一系列规章制度（如承包商、供应商的遴选制度和考核制度、环境、健康与安全（EHS）合规制度）、操作规程、教育培训、安全文化建设等，方能更好地产生绩效。对于一些高风险的承包商、供应商等主体，企业也可以考虑在聘用前进行

EHS 合规审核，以此进行遴选。如您有关于安全生产管理协议、供应商 EHS 合规审核或 EHS 培训方面的需求，欢迎邮件联系我们：
ecoenvpro@junhe.com。

关于君合 EHS 法律团队：君合是国际公认的、提供优质法律服务的中国大型综合律师事务所之一，拥有逾 800 人的专业团队。作为中国环境、健康及安全生产法律业务领域的先驱之一，君合 EHS 团队为跨国公司客户在环境、健康及安全领域提供全方位的法律服务，涵盖项目开发和设立合资公司，并购交易，企业日常运营，EHS 合规审核，政府调查，行政处罚、复议和诉讼等。

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