

What Every Worker and Employer Should Know About

Health and Safety in the Workplace Information provided by the Department of Labour

This guide was written in the interest of the health and safety of workers in South Africa. It is not intended as a substitute for the Occupational Health and Safety Act, 1993. It is intended to explain the Act in simple, non-legal terms to all the role players in the South African occupational health and safety field. To this end the role of the occupational health and safety (OHS) inspectors of the Department of Labour is explained. The duties and rights of workers, as extended to them in the Act, are set out. The roles and responsibilities of employers, manufacturers, designers, importers, suppliers and sellers, in ensuring the health and safety of workers are highlighted. And finally, the functions of health and safety representatives and committees are clarified.

1. Introduction

The Occupational Health and Safety Act, 1993, requires the employer to bring about and maintain, as far as reasonably practicable, a work environment that is safe and without risk to the health of the workers. This means that **the employer must ensure that the workplace is free of hazardous substances, such as benzene, chlorine and micro organisms, articles, equipment, processes, etc. that may cause injury, damage or disease. Where this is not possible, the employer must inform workers of these dangers, how they may be prevented, and how to work safely, and provide other protective measures for a safe workplace.**

However, it is not expected of the employer to take sole responsibility for health and safety. The Act is based on the principle that dangers in the workplace must be addressed by communication and cooperation between the workers and the employer. The workers and the employer must share the responsibility for health and safety in the workplace. Both parties must pro-actively identify dangers and develop control measures to make the workplace safe.

In this way, the employer and the workers are involved in a system where health and safety representatives may inspect the workplace regularly and then report to a health and safety committee, who in turn may submit recommendations to the employer. To ensure that this system works, every worker must know his or her rights and duties as contained in the Act.

2. The Act and RegulationsThe Act, known as the Occupational Health and Safety Act of 1993 (Act 85 of 1993) consists of 50 sections promulgated by Parliament. The purpose of the Act is to provide for the health and safety of persons at work or in connection with the use of plant and machinery. It further provides for the protection of persons other than persons at work from hazards arising out of or in connection with the activities of persons at work.

Various regulations, on specific topics, are incorporated into the Act from time to time by the Minister of Labour. The Act or Regulations can be purchased from the Government Printer in

Gazette form or bound form from various publishers.

3. Department of Labour

Chief Directorate of Occupational Health and Safety

The Occupational Health and Safety Act is administered by the Chief Directorate of Occupational Health and Safety of the Department of Labour. In order to ensure the health and safety of workers, provincial offices have been established in all the provinces. To this end, occupational health and safety inspectors from these provincial offices carry out inspections and investigations at workplaces.

Inspections

Inspections are usually planned on the basis of accident statistics, the presence of hazardous substances, such as the use of benzene in laundries, or the use of dangerous machinery in the workplace. Unplanned inspections, on the other hand, usually arise from requests or complaints by workers, employers, or members of the public. These complaints or requests are treated confidentially.

Powers of inspectors

If an inspector finds dangerous or adverse conditions at the workplace, he or she may set requirements to the employer in the following ways:

- Prohibition notice

In the case of threatening danger, an inspector may prohibit a particular action, process, or the use of a machine or equipment, by means of a prohibition notice. No person may disregard the contents of such a notice and compliance must take place with immediate effect.

- Contravention notice

If a provision of a regulation is contravened, the inspector may serve a contravention notice on the workers or the employer. A contravention of the Act can result in immediate prosecution, but in the case of a contravention of a regulation, the employer may be given the opportunity to correct the contravention within a time limit specified in the notice which is usually 60 days.

- Improvement notice

Where the health and safety measures which the employer has instituted, do not satisfactorily protect the health and safety of the workers, the inspector may require the employer to bring about more effective measures. An improvement notice which prescribes the corrective measures is then served on the employer.

Other powers

To enable the inspector to carry out his or her duties, he or she may enter any workplace or premises where machinery or hazardous substances are being used and question or serve a summons on persons to appear before him or her. The inspector may request that any documents be submitted to him or her, investigate and make copies of the documents, and demand an explanation about any entries in such documents. The inspector may also inspect any condition or article and take samples of it, and seize any article that may serve as evidence.

Note:

The above mentioned powers of inspectors are not absolute. Any person who disagrees with any decision taken by an inspector, may appeal against that decision by writing to the Chief Inspector, Occupational Health and Safety, Department of Labour, Private Bag X117, Pretoria, 0001.

4. General duties of employers towards workers

What must the employer do to ensure that the work environment is safe and without risk to the health of his or her workers?

The employer must provide and maintain all the equipment that is necessary to do the work, and all the systems according to which work must be done, in a condition that will not affect the health and safety of workers. Before personal protective equipment may be used, the employer must first try to remove or reduce any danger to the health and safety of his workers.

Only when this is not practicable, should personal protective equipment be used. The employer must take measures to protect his or her workers' health and safety against hazards that may result from the production, processing, use, handling, storage or transportation of articles or substances, in other words, anything that workers may come into contact with at work.

To ensure that these duties are complied with, the employer must:

- identify potential hazards which may be present while work is being done, something is being produced, processed, used, stored or transported, and any equipment is being used
- establish the precautionary measures that are necessary to protect his or her workers against the identified hazards and provide the means to implement these precautionary measures
- provide the necessary information, instructions, training and supervision while keeping the extent of workers' competence in mind. In other words, what they may do and may not do

- not permit anyone to carry on with any task unless the necessary precautionary measures have been taken
- take steps to ensure that every person under his or her control complies with the requirements of the Act
- enforce the necessary control measures in the interest of health and safety
- see to it that the work being done and the equipment used, is under the general supervision of a worker who has been trained to understand the hazards associated with the work
- such a worker must ensure that the precautionary measures are implemented and maintained.

5. All workers have the right to be informed

The employer must see to it that every worker is informed and clearly understands the health and safety hazards of any work being done, anything being produced, processed, used, stored, handled or transported, and any equipment or machinery being used. The employer must then provide information about precautionary measures against these hazards.

The employer must inform health and safety representatives when an inspector notifies him or her of inspections and investigations, to be conducted at the premises. The employer must also inform health and safety representatives of any application for exemption made, or of any exemption granted to him or her in terms of the Act. Exemption means being exempted from certain provisions of the Act, regulations, notices or instructions issued under the Act.

The employer must, as soon as possible, inform the health and safety representatives of the occurrence of an incident in the workplace. An incident is an event that occurs at the workplace where a person is killed, injured or becomes ill. It is also the spillage of a hazardous chemical substance, for example, when a tank leaks formaldehyde (a chemical product used in industry) due to a faulty valve, or where machinery runs out of control, without killing or injuring anyone.

6. General duties of manufacturers, designers, importers, sellers or suppliers regarding the use of articles and substances at work

Articles

Manufacturers, designers, importers, sellers and suppliers must ensure that:

- their articles are safe and without risk to health and comply with all prescribed requirements
- when a structure or an article is installed on any premises, it must be done in such a way that neither an unsafe situation nor a health risk is created.

Substances

Manufacturers, designers, importers, sellers and suppliers of any substances must ensure that:

- such substances are safe and without risk to health when it is used properly
- information is available on the –
 - use of the substance at work
 - health and safety risk associated with the substance
 - conditions that are necessary to ensure that the substance will be safe and without risk to health when properly used
 - procedures in case of an accident.

If a person to whom an article or substance has been sold or supplied, undertakes in writing to take specified steps to ensure that the article or substance will meet all the prescribed requirements, and will be safe and without risk to health, the duties of the importer, designer, seller, supplier or manufacturer will subsequently shift to the person who undertakes to take such steps.

7. General duties of the worker

It is the duty of the worker to:

- take care of his or her own health and safety, as well as that of other persons who may be affected by his or her actions or negligence to act. This includes playing at work. Many people have been injured and even killed owing to horseplay in the workplace, and that is considered a serious contravention
- where the Act imposes a duty or requirements on the worker to cooperate with the employer
- give information to an inspector from the Department of Labour if he or she should require it
- carry out any lawful instruction which the employer or authorised person prescribes with regard to health and safety

- comply with the rules and procedures that the employer gives him/her
- wear the prescribed safety clothing or use the prescribed safety equipment where it is required
- report unsafe or unhealthy conditions to the employer or health and safety representative as soon as possible
- if he or she is involved in an incident that may influence his or her health or cause an injury, report that incident to the employer, and authorised person or the health and safety representative as soon as possible, but no later than by the end of the shift.

8. Rights of the worker

The Occupational Health and Safety Act has extended workers' rights to include the following:

The right to information

The worker must have access to –

- the Occupational Health and Safety Act and regulations
- health and safety rules and procedures of the workplace
- health and safety standards which the employer must keep at the workplace.

The worker may request the employer to inform him or her about –

- health and safety hazards in the workplace
- the precautionary measures which must be taken
- the procedures that must be followed if a worker is exposed to substances hazardous to health.

The worker may request that his or her private medical practitioner investigate his or her medical and exposure records. If the worker is a health and safety representative, he or she may investigate and comment in writing on exposure assessments and monitoring reports.

The right to participate in inspections

If the worker is a health and safety representative, he or she may accompany a health and safety

inspector from the Department of Labour during an inspection of the workplace and answer any questions the inspector may ask.

The right to comment on legislation and make representations

The worker may comment or make representations on any regulation or safety standard published under the Occupational Health and Safety Act.

The right not to be victimised

An employer may not dismiss a worker from his service, reduce a worker's salary or reduce a worker's service conditions because –

- the worker supplied information, which is required of him or her in terms of the Act, to someone who is charged with the administration of the Occupational Health and Safety Act
- the worker complied with a lawful notice, (e.g. a prohibition, contravention notice, etc.)
- the worker did something which in terms of the Act should have been done
- the worker did not do something which in terms of the Act is prohibited
- the worker has given evidence before the Industrial Court or a court of law on matters regarding health and safety.

The right to appeal

The worker may appeal against the decision of an inspector. Appeals must be referred in writing to the Chief Inspector, Occupational Health and Safety, Department of Labour, Private Bag X117, Pretoria, 0001.

9. Duty not to interfere with or misuse objects

No-one may interfere with or misuse any object that has been provided in the interest of health and safety. A person may, for example, not remove a safety guard from a machine and use the machine or allow anybody else to use it without such a guard.

10. Health and safety representatives

What are health and safety representatives?

They are full-time workers nominated or elected and designated in writing by the employer after the employer and workers consulted one another and reached an agreement about who will be health and safety representatives. Further they must at least be familiar with the circumstances and conditions at that part of the workplace for which they are designated. Agreement must also be reached on the period of office and functions of the health and safety representative and must be settled amongst the employer and the workers.

How many health and safety representatives must be designated?

A representative must be designated for every workplace consisting of 20 or more workers. Therefore, where only 19 workers are employed, it is not necessary to designate a representative. In the case of shops and offices, one representative must be designated for every 100 workers or part thereof. For example, one representative must be designated in the case of 21 to 100 workers. But two representatives must be designated where 101 to 200 workers are employed, etc.

In the case of other workplaces, one representative must be designated for every 50 workers or part thereof. For example, one representative must be designated in the case of 21 to 50 workers. But two representatives must be designated where 51 to 100 workers are employed.

Depending on circumstances, an inspector may require the designation of more representatives, even in the case where the number of workers is less than 20. For example, the layout of a plant may be of such a nature that the designation of only one representative for 50 workers is insufficient. The inspector may then require the designation of more representatives. However, if the employer and workers so agree, more than the prescribed number of representatives may be designated.

When must health and safety representatives be designated?

Within four months after the commencement of the employer's business. An employer with more than 20 workers, whose business is operative for less than four months, does not have to designate representatives. In the case where, for example, seasonal workers are employed on farms, causing the number of workers to exceed 20 for a period less than four months, the designation of representatives is also not necessary.

When must health and safety representatives perform their activities?

All activities regarding the designation, function and training of representatives must be performed

during normal working hours.

What may health and safety representatives do?

Health and safety representatives are entitled to do the following:

Health and safety audits

Representatives may check the effectiveness of health and safety measures by means of health and safety audits.

Identify potential dangers

Representatives may identify potential dangers in the workplace and report them to the health and safety committee or the employer.

Investigate incidents

Representatives may together with the employer investigate incidents, investigate complaints from workers regarding health and safety matters, and report about it in writing.

Make representations

Representatives may make representations regarding the safety of the workplace to the employer or the health and safety committee or, where the representations are unsuccessful, to an inspector.

Inspections

As far as inspections are concerned, representatives may –

- inspect the workplace after notifying the employer of the inspection
- participate in discussions with inspectors at the workplace and accompany inspectors on inspections
- inspect documents
- with the consent of his/her employer, be accompanied by a technical advisor during an

inspection.

Attend committee meetings

Representatives may attend health and safety committee meetings.

11. Health and safety committees

What is the purpose of health and safety committees?

Members meet in order to initiate, promote, maintain and review measures of ensuring the health and safety of workers.

When must health and safety committees be established?

At least one committee must be established when two or more representatives are designated.

How many members does a health and safety committee comprise?

The employer determines the number of committee members, based on the following:

- if only one committee has been established for a workplace, all the representatives must be members of that committee
- if two or more committees have been established for a workplace, each representative must be a member of at least one of those committees.

Therefore, every representative must be a member of a committee. The employer may also nominate other persons to represent him or her on a committee but such nominees may not be more than the number of representatives designated on that committee.

If, however, an inspector is of the opinion that the number of committees in a workplace is inadequate, he or she may determine the establishment of additional committees.

How often do health and safety representatives meet?

They meet whenever it is necessary, but at least once every three months. The committee determines the time and place. However, if 10% or more of the workers put a request for a meeting to the inspector, the inspector may order that such a meeting be held at a time and place which he or she determines.

Who determines the procedure at the meeting?

The members of the committee elect the chairperson and determine his or her period of office, meeting procedures, etc.

May health and safety committees consult experts for advice?

Yes, committees may co-opt persons as advisory members for their knowledge and expertise on health and safety matters. However, an advisory member does not have the right to vote.

What do health and safety committees do?

The committees only deal with health and safety matters at the workplace or sections thereof for which such committees have been established. Generally, health and safety committees have the following functions:

- **Make recommendations**

A committee must make recommendations to the employer about the health and safety of workers. Where these recommendations do not lead to solving the matter, the committee may make recommendations to an inspector.

- **Discuss incidents**

A committee must discuss any incident that leads to the injury, illness, or death of any worker and may report about it in writing to the inspector.

- **Recordkeeping**

A committee must keep record of every recommendation to the employer and every report to an inspector.

Other functions

Committee members must perform any other functions required of them by regulation.

12. Deductions

An employer may not make any deduction from a worker's remuneration with regard to anything he or she is required to do in the interest of health and safety in terms of the Act.

13. Report to the Chief Inspector regarding occupational diseases

If a medical practitioner examines or treats someone for a disease that he or she suspects arose from that worker's employment, the medical practitioner must report the case to the worker's employer and to the Chief Inspector.

14. Cooperation with the inspector

Compliance with directions, subpoenas, requests or commands

Employers and workers must comply with the directions, subpoenas, requests or orders of inspectors. In addition, no one may prevent anyone else from complying.

Answering questions

The inspector's questions should be answered, but no-one is obliged to answer a question by which he or she might incriminate him or herself. To incriminate oneself means that one is suggesting that one is responsible for a contravention.

Investigations

When the inspector so requires, he or she must be provided with the necessary means and be given the assistance he or she may need to hold an investigation. The inspector may also request that investigations be attended. No one may insult the inspector or deliberately interrupt the investigation.

15. Prosecutions

When the worker does something which in terms of the Occupational Health and Safety Act is regarded as an offence, the employer is responsible for that offence, and he or she could be found guilty and sentenced for it, unless the employer can prove that:

- he or she did not give his or her consent
- he or she took all reasonable steps to prevent it
- the worker did not act within the scope of his or her competence, in other words, that the worker did something which he or she knew he or she should not have done.

The foregoing also applies to a mandatory of an employer, for example, a subcontractor, unless the parties agree beforehand in writing on how the mandatory will comply with the provisions of the Act.

16. Assistance from an inspector

Inspectors may be contacted at the following provincial offices of the Department of Labour:

Northern Province

Provincial Director Department of Labour Private Bag X9368 PIETERSBURG 0700	Tel: (015) 290 1744 Fax: (015) 290 1670
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Mpumalanga

Provincial Director Department of Labour Private Bag X7263 WITBANK 1035	Tel: (013) 655 8700 Fax: (013) 690 2622
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Gauteng North

Provincial Director Department of Labour PO Box 393 PRETORIA 0001	Tel: (012) 309 5000 Fax: (012) 323 5449
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Gauteng South

Provincial Director Department of Labour PO Box 4560 JOHANNESBURG 2000	Tel: (011) 497 3000 Fax: (011) 834 1081
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Free State

Provincial Director Department of Labour PO Box 522 BLOEMFONTEIN 9300	Tel: (051) 505 6200 Fax: (051) 447 9353
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North West

Provincial Director Department of Labour Private Bag X2040 MMABATHO 2735	Tel: (018) 384 2033 Fax: (018) 384 2745
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KwaZulu-Natal

Provincial Director Department of Labour PO Box 940 DURBAN 4000	Tel: (031) 336 1500 Fax: (031) 307 6882
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Northern Cape

Provincial Director Department of Labour Private Bag X5012 KIMBERLEY 8300	Tel: (053) 838 1500 Fax: (053) 832 4798
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Eastern Cape

Provincial Director Department of Labour Private Bag X9005 EAST LONDON 5200	Tel: (043) 701 3000 Fax: (043) 43 9719
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Western Cape

Provincial Director Department of Labour PO Box 872 CAPE TOWN 8000	Tel: (021) 460 5911 Fax: (021) 465 7318
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Head Office address of the Chief Directorate of Occupational Health and Safety

Department of Labour Private Bag X117 Pretoria 0001	Tel: (012) 309 4774 Fax: (012) 309 4382
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