

1. Title of the Act

Occupational Health and Safety Act 85 of 1993

2. Last amendment date

2005

3. Date of summary

May 2005

4. Purpose

To provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety; and to provide for matters connected therewith.

5. Overview

The Occupational Health and Safety Act 85 of 1993 requires the employer to bring about and maintain, as far as is "reasonably practicable" a work environment that is safe and without risk to the health of the worker. This means that the employer must ensure that the workplace is free of substances, articles, equipment, processes, etc. that will or may cause injury, damage or disease. Where this is not possible, the employer must inform workers of these dangers, how to avoid them and how to work safely.

The scope of this Act is appropriately wide: it covers private industry, as well as the public sector; the agricultural sector, as well as domestic workers in private households and indeed also persons who are exposed to hazards even though this may not occur in the context of employment. In addition, the Minister may declare that a person or category of persons specified by him shall, for the purposes of the Act or a portion of the Act, be deemed to be an employee.

Exclusions from the Act are as follows:

- A mine, a mining area or any works as defined in the Minerals Act 50 of 1991, except insofar as the Act provides otherwise;
- Certain vessels are defined in the Merchant Shipping Act 57 of 1951;
- The minister may grant exemptions from any or all the provisions of the Act; and
- Labour brokers are not considered to be employers in terms of this Act.

The Minister's Advisory Council for Occupational Health and Safety

The Advisory Council for Occupational Health and Safety consists of 20 members, with the Chief Inspector acting as chairman. Employers' and employees' interests are also represented at the Council.

5.1 Function Of The Council

- Advise the Minister on matters of policy arising out of the application of the Act;
- Advise the Minister on matters relating to occupational health and safety;
- Do research and conduct investigations;

- Advise the Department on the formulation and publication of standards, specifications and other forms of guidance in order to assist employers and employees;
- Advise the Department on the promotion of education and training in occupational health and safety;
- Advise the department on the collection and dissemination of information on occupational health and safety;
- The Council may establish technical committees;
- Advise the Department on any matter regarding the performance of its functions.

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 co-operation between the worker and the employer. The worker 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, both the employer and the worker are involved in a system where health and safety representatives may inspect the workplace regularly and then report to a health and safety committee, which in turn may make recommendations to the employer.

5.2 General Duties Of Employers Towards Workers

The employer must provide and maintain all the equipment that is necessary to do work and all the systems according to which work must be done.

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, would 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, storing or transportation of articles or substances, in other words, anything with which workers may come into contact.

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

- find out what hazard is present when any work is being done, anything 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, 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 make certain 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; and
- see to it that the work being done and the equipment being used, is under the general supervision of a worker who has been trained to understand the hazard

concerned and such a worker must ensure that the precautionary measures are implemented and maintained.

5.3 The Worker Has A Right To Be Informed

The employer must see to it that every worker is informed about 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 beforehand when an inspector notifies him or her of inspections and investigations, and also of any application for exemption made or of any exemption granted to him or her under the Act. Exemption means exempted from certain provisions of the Act, regulations, notices or instructions issued under the Act.

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

5.4 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 playing in the workplace, and therefore, it is considered a serious contravention;
- where the Act imposes a duty or requirement on the worker, co-operate 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 gives him or her;
- meet the rules and procedures that the employer or authorised person prescribes with regard to health and safety;
- 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; and
- if he or she is involved in an incident that might influence his or her health or cause an injury, report that incident to the employer, an authorised person or the health and safety representative as soon as possible, but by no later than the end of the shift.

Manufacturers supplying articles or substances to employers have the duty and must ensure that articles provided by them are safe and without risk to health when properly used. Information regarding the use of any article or substances must be made available to employers and persons who erect or install articles to be used at work must ensure that these are safe, without risk to health when properly used.

The Act greatly enhances the right of participation of health and safety representatives in health and safety matters. Although the Act still follows a largely penal approach to health and safety enforcement, it is encouraging that the legislature has taken a step towards realizing that worker empowerment and participation in these matters are crucial to improved health and safety at the workplace

Health and safety representatives

An employer who has more than 20 employees in his employment must appoint (after consultation with his workforce or their representatives) in writing one or more of his fulltime employees as health and safety representatives for the workplace or different sections thereof. In shops and offices one health and safety representative for every 100 employees must be appointed, while in other workplaces one representative for every 50 employees is to be appointed, An inspector may direct that an employer who employs fewer than 20 employees also appoint a health and safety representative. Such appointments must be made within four months after the commencement of the Act, within four months after the employer commences business or within four months from such time as the number of employees exceeds 20, as the case may be.

Before an employer makes such an appointment he must consult in good faith with the representatives of his employees recognized by him, or, where there are no such representatives, with his employees regarding the arrangements and procedures for the nomination or election, terms of office and subsequent designation of health and safety representatives.

If the employer and his employees cannot agree during their consultations on the appointment of the health and safety representatives, the matter must either be referred to private arbitration or, if the parties cannot agree on an arbitrator within 14 days, they must give notice to the President of the Industrial Court who, in consultation with the chief inspector, shall designate an arbitrator.

Health and safety representatives receive training and perform their functions and duties during ordinary working hours. The employer must provide facilities, assistance and training as may be reasonably required to such representatives. A health and safety representative does not incur any civil liability by reason of the fact only that he failed to do anything which he may do or is required to do in terms of the Act.

5.5 Function Of Health And Safety Representatives

- Review the effectiveness of health and safety measures;
- Identify potential hazards and incidents;
- In collaboration with his employer, examine the causes of incidents;
- Investigate complaints by employees relating to health and safety;
- Make representations regarding his review,
- Identification or investigation to the employer, committee or inspector;
- Inspect the workplace, articles, substances, machinery and safety equipment;
- Consult with and accompany inspectors on inspection;
- Attend meetings of health and safety committees;
- May attend an inspection of an incident;
- May attend any investigation or formal enquiry and inspect document kept by the safety audit.

Health and safety committees

An employer who has appointed two or more health and safety representatives must establish one or more health and safety committee(s) on initiating, developing, maintaining and reviewing measures to ensure the health and safety of all employees.

If only one committee is established, all the health and safety representatives must be members of the committee. If more than one committee is established each representative must be a member of at least one committee. The persons nominated by the employer to be members of the committees must be designated in writing, but the committee may co-opt any person as an advisory member (with no voting powers) by reason of his knowledge of health and safety matters.

A committee must meet at least once in three months, but an inspector may direct that a committee holds a meeting at a place and time determined by him. If more than 10% of the employees in a workplace has handed a written request to an inspector that a meeting be held, the inspector may by written notice direct that such meeting be held.

FUNCTIONS OF COMMITTEES

- May make recommendations to the employer or an inspector regarding health and safety matters;
- Shall discuss any incident in which a person was injured, became ill or died and may in writing report on the incident to and inspector;
- Shall keep record of all recommendations made to the employer and reports made to and inspector.

Inspectors

The minister appoints inspectors and a certificate is furnished to each inspector as proof of his appointment, which must be produced on demand.

Inspectors have varied functions and duties. These functions and duties include the general functions to ensure that the provisions of the Act are complied with, special powers relating to health and safety and functions with regard to incidents at the workplace. These functions and duties may be summarized as follows:

GENERAL FUNCTIONS

- May, without prior notice, enter any premises;
- May question any person on the premises;
- May require the production of books, records or other documents;
- May require an explanation of any entry in such books, records or documents;
- May seize any such book, record or document which may serve as evidence at a trial of a person charged with an offence under this Act;
- Inspect any article, substance, plant or machinery on the premises;
- May remove for examination or analysis any article, substance, plant or machinery or any part thereof;
- May direct any employer, employee or user to appear before him in order to answer his question;
- May be accompanied by an interpreter or member of the SAPS when performing his duties.

SPECIAL POWERS

- May in writing prohibit an employer from commencing or continuing with the performance of any act which may threaten the health and safety of any person;
- May in writing prohibit a user of plant or machinery from commencing or continuing with the use of such plant or machinery which may threaten the health and safety of any person;
- In these two instances an inspector may barricade or fence off that part of the workplace to which the prohibition applies;
- May in writing prohibit an employer from requiring or permitting an employee belonging to a certain category to be exposed for longer than a specified period to any article, substance, organism or condition which may threaten the health and safety of such employee;
- Any of the above prohibitions may be revoked by the inspector if arrangements to the satisfaction of the inspector have been made to dispose of the threat;
- May specify steps in writing to an employer or user to be taken in the interest of health and safety;

INVESTIGATIONS

- May investigate an incident which has resulted in injury, illness or death;
- May conduct a formal enquiry into the incident;
- May, for the purposes of the enquiry, subpoena any person to appear before him and to give evidence;
- May designate any person to lead evidence and to examine any witness;
- Any interested person may personally, or with legal representation, question any witness at the enquiry;
- After completion of the investigation he must submit a report to the Attorney General and a copy of the report to the Chief Inspector.

In terms of section 7 the Chief Inspector may direct any employer or class of employers to prepare a written policy concerning the protection of the health and safety of his employees at work, including a description of his organization and the arrangement for carrying out and reviewing the policy. Such direction must be accompanied by guidelines concerning the content of the policy. The policy must then be displayed at a place where employees normally have access.

In terms of section 35 any person who is aggrieved by the decision of an inspector may appeal in writing, and within 60 days, against such a decision to the Chief Inspector, who must consider the appeal and either confirm it or set it aside. A further right of appeal lies against the decision of the Chief Inspector to the Labour court. The appeal to the Labour Court must be made in writing and within 60 days of the decision of the Chief Inspector.

OFFENCES, PENALTIES AND SPECIAL ORDERS OF COURT

Section 38 of the Act contemplates the minimum penalties for the following: -

- For committing a reckless act in the Workplace a fine of R 50000 and a years imprisonment.

- Omissions by employers which lead to Disabling Injuries a fine of R 100000 and a years imprisonment.
- Omissions by employers, which lead to one fatality a Fine of R 100000 and a 2-year prison sentence.

REGULATIONS

Section 43(2)(3) contemplates the process the Minister makes regulations using the Advisory Council.

Layout of the Regulations

General

- General Administrative Regulations
- General Safety Regulations
- Major Hazard Installation Regulations
- Regulations for Hazardous Biological Agents
- Explosive Regulations
- Construction Regulations

Health

- Asbestos Regulations
- Diving Regulations
- Environmental Regulations for the Workplace
- Facilities Regulations
- Hazardous Chemical Substances Regulations
- Lead Regulations
- Noise Induced Hearing Loss Regulations

Mechanical

- Driven Machinery Regulations
- General Machinery Regulations
- Lift, Escalator and Passenger Regulations
- Regulations Concerning the Government Certificate of Competency
- Vessels under Pressure Regulations

Electrical

- Electrical Installation Regulations
- Electrical Machinery Regulations

Incorporation of Standards

Section 43 contemplates the incorporation of Health & Safety Standards into the Regulations and are as follows.

Construction Regulations

- Regulation 14 The SABS 085 “ The Code of Practice for the Design, Erection, Use and Inspection of Access Scaffolding”
- Regulation 15 The SABS EN 1808 “ Safety Requirements on Suspended access Equipment – Design Calculations, stability criteria, construction – tests”
- Regulation 15 The SABS “ Safety Requirements Suspended access Equipment – Design Calculations, stability criteria construction – tests”

Driven Machinery Regulations

- Regulation 15 SABS 0147 “ Refrigeration and Air – Conditioning Regulations”
- Regulation 16(1)(a) SABS 0148 “ The Installation and operation of cable cranes and aerial rope ways”
- Regulation 18 GNR 145 of 18 February 2005 NATIONAL CODE OF PRACTICE – For the Evaluation of Training Providers for Lifting Machine Operators.

Vessels Under Pressure Regulations

- 115 National and International Standards Appertaining to Vessels Under Pressure

OVERVIEW OF THE CONSTRUCTION REGULATIONS (CR)

These have be in force since July 2003

Definitions and Related Regulations

- Agent - CR 4(5)(6)
- angle of repose – CR 11(3)(b)(i)
- batch plant – CR 18
- client – CR 4
- competent person – CR – nearly all regulations
- construction work - CR 2,3
- construction vehicle - CR 21
- contractor – CR 5
- design – CR 4(1)(e)
- designer – CR 9,10,11,15
- ergonomics CR 7
- excavation work CR 11
- explosive power tools CR 19
- fall prevention equipment CR 8
- fall arrest equipment CR 8
- fall protection plan CR 8
- hazard identification CR 7
- health and safety file CR 5
- health and safety plan CR 4,5
- health and safety specification CR 4,5
- material hoist CR 17
- medical certificate of fitness CR 8,21
- method statement CR 7,9,10,11,12
- mobile plant CR 21
- National Building Regulations

- person day CR 2
- Professional engineer or Professional Certified Engineer. CR 9,10,11
- Principal contractor CR 5,6
- Professional Technologist CR 9,10,11
- Provincial Director CR 3
- risk assessment CR 7
- roof apex height CR 8
- SABS 085 CR 14
- SABS 0400
- SABS EN 1808 CR 15
- SABS 1903 CR 15
- scaffold CR 14
- shoring CR 11
- shoring system CR 11
- structure CR 9,10,11,14, 15,18
- suspended scaffold CR 15

Scope of Implications

Scope of Application Regulation 2

- not applicable to a single storey building

Notification of Construction Work Regulation 3

- Principal Contractor to inform Provincial Director of the Department of Labour of the Intention to Commence Construction Work in Writing
- To be signed by the Client

Duties of the Client Construction Regulation 4

- Appoints Design Team
- May Appoint an Agent
- Prepares Health & Safety Specification including a risk assessment
- Negotiates the Cost of Health & Safety with prospective Principal Contractors
- Reviews the Health and Safety Plans of Prospective Principal Contractors
- Appoints Principal Contractor in writing ensuring he has all the necessary resources and has a letter of good standing with the Compensation Commissioner.
- Ensures that the Principal Contractor and his Contractors are informed that any changes contain Health & Safety Information.
- Audit the Principal Contractor at least Monthly

The Duties of the Principal Contractor Regulation 5

- Notifies Department of Labour
- Prepares Health and Safety Plan for the Clients
- Provides Health & Safety Specification for Prospective Contractors.
- Appoints in Writing Contractors after reviewing their Health & Safety Plans and ensuring that they have the necessary resources and a letter of good standing with the Compensation Commissioner

- Audit Contractor at least Monthly

Supervision of Construction Work Construction Regulation 6

- Appointments of 6(1) Site Supervisors, 6(2) Assistant Site Supervisors and 6(6) Site Full time or Part time Safety Officer who may be appointed.
- These Appointments must be in Writing
- Everything must appertain to the relevant Site
- These Appointments must be made by both the Principal Contractor and Contractors.

Risk Assessment Construction Regulation 7

- Every Principal Contractor and Contractor shall before work commences is to carry out a risk assessment to be carried out and be presented as part of the Health & Safety Plan submitted to the Client and Principal Contractor as contemplated in Construction Regulations 4&5

Fall Protection Construction Regulation 8

- The Principal Contractor and Contractor must designate a competent person to prepare a Fall protection plan

Construction Vehicles and Mobile Plant Construction Regulation 21

- The regulation calls for Medical Certificates and Training by Accredited Bodies
- This also applies to Tower Cranes.

6. **Implications for affected parties**

To achieve the objectives as set out in this Act it is necessary to consolidate the bond between every employer and employee, both are bound by the effects of the “Reasonable Man Test” and have the duty to as far as “Reasonably Practical”to provide for a worker environment that is safe, healthy and free of any danger.

Liability

Liability attaches to employers and employees.

Risk and Cost

Omissions by employers which lead to disabling injuries may result in a fine of R100,000 and a year’s imprisonment. Omissions by employers which lead to one fatality may result in a fine of R100,000 and a two year prison sentence. If employees commit a reckless act in the workplace, this may result in a fine of R50,000 and a year’s imprisonment.