

Occupational Health and Safety Act 85 of 1993 (OHSA)

Topic: Health and Safety

IN A CALABASH

Introduction

The Occupational Health and Safety Act (OSHA) provides minimum health and safety standards in respect of workplaces, which are aimed at protecting the health and safety of persons who may be present in a workplace, who use plant and machinery, who provide physical and manual labour or who may simply be visiting the workplace.

Objectives of the Act

The OHSA prescribes certain health and safety standards in respect of a workplace which have to be complied with by all employers and employees.

The OHSA has a number of regulations which specifically relate to different workspace aspects and activities within a workspace, such as the operation of machinery and equipment, the use of boilers and gas bottles, environmental and working conditions, noise control, general safety laws and specific safety laws which set minimum safety standards and controls.

Application of the Act and its implication to Tourism

The OHSA applies to all employers and each and every employee, contractor or visitor who enters, works, operates and/or interacts in a working environment, regardless of where the workplace is located within South Africa.

The OHSA applies to all entities, including public entities, private entities and the State, regardless of size or function.

Summary of the provisions of the Act

Whilst the main part of the OHS Act sets out the general obligations which have to be performed, the relevant regulations set out more detailed obligations and responsibilities which pertain to general safety and the operation of machinery and equipment. These more general obligations are detailed below.

The legal duties of the employer

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 employees and others.

Health and safety policy

An employer must draft and implement a health and safety policy which will apply across its business and which must be signed by the employer (CEO or owner). The policy must address health and safety issues in the entity's workplace. Often the policy will address environmental issues as well and, for this reason, will be referred to as a safety, health and environmental policy (SHE Policy).

The employer and the health and safety functionary must ensure that the policy is displayed in prominent areas around the workplace and that it is complied with.

Personal protective equipment (PPE)

All employees working in dangerous workspaces must be provided with adequate protection equipment known as PPE. 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 PPE be used.

The employer cannot make its employees pay for PPE unless the employee has lost or damaged the PPE.

Risk assessments

The employer must conduct a risk assessment to ascertain what risks and hazards are present in a workspace and then take measures to protect his or her workers' health and safety against these identified or anticipated hazards.

Legal duties of the employer and the safety staff

The employer must set up and establish a health and safety function. The person who comprises or manages this function will be mainly responsible for overseeing compliance by the employer, employees and contractors with the OHS Act.

Education and training

It is of vital importance that management and all employees are thoroughly educated and trained to understand their roles, duties, functions, rights and powers to manage occupational health and safety within the workplace.

This should be done through various forms of training and on-the-job exercises, tailored to meet the various employees' requirements and levels within the workforce.

A health, safety and environmental induction training program should be provided to all new employees, visitors or contractors entering the workplace. Refresher training on all aspects under the OHSWA should also be carried out on a regular basis.

Specific duties of employees and contractors

It is the duty of the employee or any contractor on site 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, which is considered a serious contravention. Many people have been injured and even killed owing to horseplay in the workplace;
- co-operate with the employer, where the OHSWA imposes a duty or requirement on the worker to do so;
- give information to an inspector from the Department of Labour, when requested.
- carry out any lawful instruction which the employer or authorised person prescribes and lays down with regard to health and safety;
- comply with the rules, standards, codes and procedures that the employer gives him or her.
- wear the prescribed safety clothing or use the prescribed safety equipment and PPE where it is required;
- report unsafe or unhealthy conditions to the employer or health and safety representative or functionary as soon as possible;
- if he or she is involved in an incident that may influence or affect 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.

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 or functionaries 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 or functionaries of any application for exemption made or of any exemption granted to him or her in terms of the OHSWA.

The employer and any affected employee must, as soon as possible, inform the health and safety representatives or functionaries of the occurrence of an incident in the workplace.

General duties of manufacturers and others regarding articles and substances for use at work

The design and manufacture of articles at work must be monitored to ensure that the final product is in accordance with the design and that it is safe when used properly. The safe working instructions for the articles or substances must also be continuously monitored and must be checked to ensure that they are effective.

Employee has a duty not to interfere with or misuse things

A system must be introduced to ensure that action is taken against an employee, contractor or other person who interferes, damages or misuses things issued in the interest of health and safety. This means that persons must be informed of what they may or may not do and that control must be exercised over persons entering the premises.

Health and safety functionaries or representatives

Every employer who has more than 20 employees in his employment at any workplace must designate in writing, for a specified period, health and safety representatives for that workplace or for different sections of the workplace.

Before this appointment procedure is finalised, an employer must consult with its labour force and reach agreement on the persons who are eligible for appointment as health and safety representatives. Only those employees employed in a full-time capacity and who are acquainted with conditions and activities at that workplace shall be eligible for designation as health and safety representatives.

In shops and offices there must be at least one health and safety representative for every 100 or fewer employees and, in the case of all other workplaces, at least one health and safety representative for every 50 employees or less.

Health and safety committees

In instances where two or more health and safety representatives are appointed, the employer has a duty to establish a health and safety committee made up of competent persons. The employer decides how many members the committee will comprise. However, the following conditions apply

- if one health and safety committee has been established in respect of a workplace, all the health and safety representatives for that workplace shall be members of the committee;
- if two or more health and safety committees have been established in respect of a workplace, each health and safety representative for that workplace shall be a member of at least one of those committees; and
- the number of persons nominated by an employer on any health and safety committee must not exceed the number of health and safety representatives on that committee.

A health and safety committee must hold meetings as often as necessary but at least once every three months. The committee decides when and where the meetings will be held.

The SHE committees are constituted to ensure and monitor compliance levels with the OHS Act and will, where applicable, make recommendations and highlight areas which have to be improved upon or where attention is required.

Copy of OHS Act extracts displayed

Copies of certain sections and/or extracts of the OHS Act should be displayed in prominent areas within the workplace.

Acts or omissions by employees or mandataries

Training must be carried out to ensure that all employees, contractors and persons understand the implications of the provisions of the OHS Act.

There is an important section in the Act which states that where an employer or entity uses the services of a non-employee, such as a service provider or contractor, that service provider and contractor will be deemed to be an employee of the employer for the duration of the contract whilst such contractor or service provider is working or is present on the employer's site or workplace. If anything goes wrong and the service provider or contractor or its employees or workers are injured or killed whilst on the employer's site or workplace, in the absence of an agreement, the employer will be responsible for those injured persons and liable to compensate them for any loss or damage as a result of the accident or incident. To prevent this risk, it is recommended that all employers conclude a contract with all service providers and contractors before they enter the employer's workplace. This contract must specifically place the duty to comply on the contractor and stipulates that, in the event of non-compliance, the contractor will be liable and not the employer. This contract is known as a section 37(2) agreement.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Offences, penalties and special orders of court

Any person who does not comply with the OHS Act will be found guilty of an offence and will be liable on conviction, be liable to a fine of up to R50 000 or to imprisonment for a period of up to one year or to both a fine and imprisonment.

Employer liability

Any employer who does or omits to do anything in a workplace which results in injury to an employee or anyone else will be found guilty of an offence liable to a fine of up to R100 000 or to imprisonment for a period of up to two years or to both a fine and imprisonment.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

In order to demonstrate compliance with the Act, the following physical controls need to be in place:

- A safe and secure workplace free from hazard or risk;
- Risk assessments, SHE policy;
- Safety and health training and inductions for all employees and contractors;
- Display of the Act in prominent places in the workplace;
- PPE provided to workers or employees; and
- S37(2) agreement in place.

FURTHER INFORMATION

Regulator

Department of Labour

Website

www.labour.gov.za

Forms

<http://www.labour.gov.za/documents/forms/occupational-health-and-safety/occupational-health-and-safety-forms-and-sample-documents>