



## Preliminary discussion document

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Amendments sourced independently.

Manually updated on 10-Mar-15

compliments of [www.safetyhealthtraining.com](http://www.safetyhealthtraining.com)

### REPUBLIC OF SOUTH AFRICA

#### **No. 85 of 1993: Occupational Health and Safety Act**

as amended by  
Occupational Health and Safety Amendment Act, No. 181 of 1993

#### **ACT**

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.

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(English Text Signed By The State President)  
(Assented To 23 June, 1993)

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BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-



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**REPUBLIC OF SOUTH AFRICA**

**OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in  
Government Gazette No.      of      ) (The English text is the official text of the Bill)*  
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**(MINISTER OF LABOUR)**

**[B - 2014]**



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### GENERAL EXPLANATORY NOTE:

[            ]      Words in **bold type** in square brackets indicate omissions from existing enactments.  
\_\_\_\_\_      Words underlined in solid line indicate insertions in existing enactments.

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### BILL

To amend the Occupational Health and Safety Act, 1993, so as to delete, substitute and insert certain definitions; to effect certain technical corrections;  
to make further provision in respect of 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; to further regulate 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 further regulate the constitution of an advisory council for occupational health and safety;  
and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—



## ARRANGEMENT OF SECTIONS

1. Definitions
2. Functions of Council
3. "[Constitution] **Composition of Council**
4. Period of office and remuneration of members of Council
5. Establishment of technical committees of
- 6.
7. Health and safety policy
8. General duties of employers to their employees
9. General duties of employers and self-employed persons to persons other than their employees
10. General duties of manufacturers and others regarding articles and substances for use at work
11. Listed work
12. General duties of employers regarding listed work
13. Duty to inform  
Without derogating from any specific duty imposed on an employer by this Act, every employer shall-
14. General duties of employees at work  
Every employee shall at work-
15. Duty not to interfere with, damage or misuse things  
No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety. *[S. 15 substituted by s. 3 of Act No. 181 of 1993.]*
16. Chief executive officer charged with certain duties
17. Health and safety representatives
18. Functions of health and safety representatives
19. Health and safety committees
20. Functions of health and safety committees
21. General prohibitions
22. Sale of certain articles prohibited  
Subject to the provisions of section 10 (4), if any requirement (including any health and safety standard) in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner whatsoever such article, substance, plant, machinery or health and safety equipment unless it complies with that requirement.
23. Certain deductions prohibited
24. Report to inspector regarding certain incidents
25. Report to chief inspector regarding occupational disease  
[Any] A medical practitioner who examines or treats a person for a disease described in the [Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or any other disease which [he] the medical practitioner believes arose out of that person's employment, shall within the prescribed period and *in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly. [S. 25 substituted by s. 7 of Act No. 181 of 1993.]*
26. Victimisation forbidden
27. Designation and functions of chief inspector
28. Designation of inspectors by Minister
29. Functions of inspectors
30. Special powers of inspectors
31. Investigations
32. Formal
33. Joint inquiries
34. Obstruction of investigation or inquiry or presiding inspector or failure to render assistance  
No person shall, in relation to any investigation or inquiry held in terms of section 31 or 32-
35. Appeal against decision of inspector



36. Disclosure of information

No person shall disclose any information concerning the affairs of any other person obtained by him in carrying out his functions in terms of this Act, except-

37. Acts or omissions by employees or mandataries

38. Offences, penalties and special orders of court

39. Proof of certain facts

40. Exemptions

41. This Act not affected by agreements

[Subject to the provisions of sections 10 (4) and 37 (2), a] A provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement of this Act or before or after the imposition of any such condition, as the case may be.”

42. Delegation and assignment of functions

43. Regulations

44. Incorporation of health and safety standards in regulations

45. Serving of [notices] notice

Unless another method is prescribed, a notice under this Act shall be served-

46. Jurisdiction of magistrates' courts

(1) Notwithstanding anything to the contrary contained in any law [—

(a) a magistrate's court shall have jurisdiction to impose any penalty or to make any order provided for in this Act[;]

**[(b) no magistrate's court shall be competent to pronounce upon the validity of any regulation made under this Act.]**

**(2) The Labour Court or High Court has exclusive jurisdiction to determine a particular dispute about the interpretation or application of any provision of this Act, except where this Act provides otherwise.**

**(3) The Labour Court has no jurisdiction in respect of offences in terms of this Act.”**

47.

48. State bound

This Act shall bind the State.

49. Conflict of provisions

In so far as any provision of the Explosives Act, 1956 (Act No. 26 of 1956), is repugnant to a provision of this Act the provisions of this Act shall apply.

50. Repeal of laws

The Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), the Machinery and Occupational Safety Amendment Act, 1989 (Act No. 40 of 1989), and the Machinery and Occupational Safety Amendment Act, 1991 (Act No. 97 of 1991), are hereby repealed.

51. Short title and commencement



## 1. Definitions

(1) In this Act, unless the context otherwise indicates-

**"accident"** means an accident arising out of and in the course of an employee's employment and resulting in a personal injury, illness or the death of the employee;(xxiv)

**"approved inspection authority"** means an inspection authority approved by the chief inspector: Provided that an inspection authority approved by the chief inspector with respect to any particular service shall be an approved inspection authority with respect to that service only; **"approved inspection authority" means an accredited organisation, approved by the chief inspector as an inspection authority with respect to any particular service in terms of the provision of this Act"**

**"biological monitoring"** means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhaled air in order to detect and quantify the exposure to or absorption of any substance or organism by persons;

**"building"** includes-

- (a) any structure attached to the soil;
- (b) any building or such structure or part thereof which is in the process of being erected; or
- (c) any prefabricated building or structure not attached to the soil;

**"chief executive officer"**, in relation to a body corporate or an enterprise conducted by the State, means the person who is responsible for the overall management and control of the business of such body corporate or enterprise;

**"chief inspector"** means the officer designated under section 27 as chief inspector, and includes any officer acting as chief inspector;

**"Council"** means the Advisory Council for Occupational Health and Safety established by section 2;

**"danger"** means anything which may cause injury or damage to persons or property;

**"danger"** means anything which may cause injury **adverse health effects** or damage to persons or property;

**"Department"** means the Department of **Labour**;

**"employee"** means, **[, subject to the provisions of subsection (2),]** any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration **[or and]** who or who works under the direction or supervision of an employer **[or any other person]"**

**"employer"** means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him, but excludes a labour broker as defined in section I (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);

**"'employer' means any person, institution or organisation, including government who employs and provides work to an employee, and supervises, remunerates or tacitly or expressly undertakes to remunerate such employee for services rendered by such employee.**

**"employers' organization"** means an employers' organization as defined in section **[1] 213** of the Labour Relations Act, **[1956 (Act No. 28 of 1956)] 1995 (Act No 66 of 1995)"**



"**employment**" or "employed" means employment or employed as an employee;

"**explosives**" means any substance or article as listed in Class 1: Explosives in the South African Bureau of Standards Code of Practice for the Identification and Classification of Dangerous Substances and Goods, SABS 0228;

"**hazard**" means a source of or exposure to danger;

"**hazardous substance**" means a toxic, harmful, erosive, corrosive irritant or an asphyxiate substance or a mixture of such substances which creates a hazard to health"

"**health and safety committee**" means a committee established under section 19;

"**health and safety equipment**" means any article or part thereof which is manufactured, provided or installed in the interest of the health or safety of any person;

"**health and safety representative**" means a person designated in terms of section 17 (1);

"**health and safety standard**" means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act;

"**healthy**" means free from illness or injury attributable to occupational causes;

"**incident**" means an **incident** occurrence as contemplated in section 24 (1);

"**industrial court**" means the industrial court referred to in section 17 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

"**inspection authority**" means any person who with the aid of specialized knowledge or equipment or after such investigations, tests, sampling or analyses as he may consider necessary, and whether for reward or otherwise, renders a service by making special findings, purporting to be objective findings, as to-

- (a) the health of any person;
- (b) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or
- (c) the question of whether any particular standard has been or is being complied with, with respect to any work, article, substance, plant or machinery, or with respect to work or a condition prevalent on or in any premises, or with respect to any other matter, and by issuing a certificate, stating such findings, to the person to whom the service is rendered;

"**inspector**" means a person designated under section 28;

"**listed work**" means any work **declared to be listed work under section 11** which poses a risk to health and safety which requires specific precautionary measures to be implemented"

"**local authority**" means-

- (a) any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);



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- (b) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- (c) any other institution or body or the holder of any office declared by the Minister by notice in the Gazette to be a local authority for the purposes of this Act;

"**local authority**" means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)"

"**machinery**" means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;

"**major hazard installation**" means an installation-

- (a) where more than the prescribed quantity of any substance is or may be kept, whether permanently or temporarily; or
- (b) where any substance is produced, processed, used, handled or stored in such a form and quantity that it has the potential to cause a major incident;

"**major incident**" means an occurrence of catastrophic proportions, resulting from the use of plant or machinery, or from activities at a workplace;

"**mandatary**" includes an agent, a contractor or a subcontractor for work, but without derogating from his status in his own right as an employer or a user;

"**medical surveillance**" means a planned programme or periodic examination (which may include clinical examinations, biological monitoring or medical tests) of employees by an occupational health practitioner or, in prescribed cases, by an occupational medicine practitioner;

"**Minister**" means the Minister of **[Manpower]** **[Labour]**;

"**occupational disease**" means occupational disease as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)"

"**occupational health standard**" means a standard, which, if applied for the purposes of this Act, will promote the occupational health of employees or the health of any other person in terms of this Act"

"**occupational health**" includes occupational hygiene, occupational medicine and biological monitoring;

"**occupational health practitioner**" means an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council as referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), or the South African Nursing Council as referred to in the Nursing Act, 1978 (Act No. 50 of 1978);

"**occupational hygiene**" means the anticipation, recognition, evaluation and control of conditions arising in or from the workplace, which may cause illness or adverse health effects to persons;





"**occupational hygienist**" means a person who is registered with a body recognised by the chief inspector and who has the knowledge, training, skills, experience and the required qualification in the field of occupational hygiene techniques, to assess and evaluate levels of health and safety hazards that an employee is or may be exposed to at work"

"**occupational medicine**" means the prevention, diagnosis and treatment of illness, injury and adverse health effects associated with a particular type of work;

"**occupational medicine practitioner**" means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), who holds a qualification in occupational medicine or an equivalent qualification which qualification or equivalent is recognized as such by the South African Medical and Dental Council referred to in the said Act;

"**office**" means an office as defined in section 1 (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

"**officer**" means an officer or employee as defined in section 1 (1) of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994)"

"**organism**" means any biological entity which is capable of causing illness to persons;

"**plant**" includes fixtures, fittings, implements, equipment, tools and appliances, and anything which is used for any purpose in connection with such plant;

"**premises**" includes any building, vehicle, vessel, train or aircraft; "prescribed" means prescribed by regulation;

"**properly used**" means used with reasonable care, and with due regard to any information, instruction or advice supplied by the designer, manufacturer, importer, seller or supplier;

"**reasonably practicable**" means practicable having regard to-

- (a) the severity and scope of the hazard or risk concerned;
- (b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;
- (c) the availability and suitability of means to remove or mitigate that hazard or risk; and
- (d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom;

"**regulation**" means a regulation made under section 43;

"**remuneration**" means any payment in money or in kind or both in money and in kind, made or owing to any person in pursuance of such person's employment;

"**risk**" means the probability that personal injury, illness or the death of the employee or any other person or damage to property will occur"

"**risk assessment**" means, the process of evaluating the risks to an employee's health and safety from workplace hazards and is a systematic assessment of all aspects of work that considers:



- (a) a complete hazard identification;
- (b) identification of all who may be affected by the hazard;
- (c) how the person is affected;
- (d) the analysis and evaluation of the risks; and
- (e) prioritisation of risks;

**'risk management'** means the identification and mitigation of risks by the application of appropriate control measures"

**"safe"** means free from any hazard;

**" 'safety management system' or 'health and safety management system' means, a co-ordinated, comprehensive set of interrelated or interacting elements to establish occupational health and safety policy and objectives in order to optimally manage health and safety.**

**'safety standard'** means any standard, which, if applied for the purposes of this Act, will promote the safety of employees or any other person in terms of this Act;

**'SANAS'** means the South African National Accreditation System;

**'self-employed'** means an individual who earns income through conducting profitable operations from a trade or business, which that individual operates directly.

**"sell"** includes-

- (a) offer or display for sale or import into the Republic for sale; or
- (b) exchange, donate, lease or offer or display for leasing;

**"shop"** means a shop as defined in section I (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

**"standard"** means any provision occurring-

- (a) in a specification, compulsory specification, code of practice or standard method as defined in section 1 [(16)] of the Standards Act, [1993 (Act No. 3 of 1993(17))] 2008 (Act No. 8 of 2008); or
- (b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardisation: **Provided that, anything that is required to conform to this Act shall first be subjected to the required tests by SANAS accredited to do such tests to ensure conformance to a particular standard"**

**"substance"** includes any solid, liquid, vapour, gas or aerosol, or combination thereof;

**"this Act"** includes any regulation;

**"trade union"** means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);



" **trade union**" means a trade union as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995)"

"**user**", in **[in relation to plant or machinery]**, means a person who uses **the premises, articles, substances,** plant or machinery, for his **or her** own benefit or **[who]** has the **exclusive** right of control over the use of **the premises, articles, substances,** plant or machinery but does not include a lessor of, or any person employed in connection with that **premises, articles, substances,** plant or machinery.

" **volunteer**" means a person, who willingly provides a service to an institution or organisation, including a government body or organisation, or a non-governmental organisation without being remunerated for services rendered.

"**work**" means work as an employee or as a self-employed person and for such purpose an employee is deemed to be at work during the time that he **or she** is in the course of his **or her** employment, and a self-employed person is deemed to be at work during such time as he **or she** devotes to work as a self-employed person;

"**workplace**" means any premises or place where a person performs work in the course of **[his]** employment.

- (2) The Minister may by notice in the Gazette declare that a person belonging to a category of persons specified in the notice shall for the purposes of this Act or any provision thereof be deemed to be an employee, and thereupon any person vested and charged with the control and supervision of the said person shall for the said purposes be deemed to be the employer of such person.
- (3) This Act shall not apply in respect of-
  - (a) a mine, a mining area or any works as defined in the **[Minerals Act, 1991 (Act No. 50 of 1991)]** **Mines Health and Safety Act, 1996 (Act No. 29 of 1996)**, except in so far as that Act provides otherwise" and
  - (b) any load line ship (including a ship holding a load line exemption certificate), fishing boat, sealing boat and whaling boat as defined in section 2 (1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), or any floating crane, whether or not such ship, boat or crane is in or out of the water within any harbour in the Republic or within the territorial waters thereof, (Date of commencement of para. (b) to be proclaimed.) or in respect of any person present on or in any such mine, mining area, works, ship, boat or crane.
  - (c) **aircraft as indicated in section 2 of the Civil Aviation Act, 2009 (Act No. 13 of 2009); and**
  - (d) **(d) any nuclear installation as defined in the Nuclear Energy Act, 1993, (Act No. 131 of 1993);".**

## 2. Establishment of Advisory Council for Occupational Health and Safety

There is hereby established an Advisory Council for Occupational Health and Safety.

## 3. Functions of Council

- (1) The Council shall-
  - (a) advise the Minister with regard to-



- (i) matters of policy arising out of or in connection with the application of the provisions of this Act;
  - (ii) any matter relating to occupational health and safety;
  - (b) perform the functions assigned to it by this Act or referred to it by the Minister.
- (2) The Council may-
- (a) with a view to the performance of its functions, do such research and conduct such investigations as it may deem necessary;
  - (b) make rules relating to the calling of meetings of the Council, the determining of a quorum for and the procedure at such meetings, and generally relating to all matters which may be necessary for the effective performance of the functions of the Council or, subject to section 6, of a technical committee;
  - (c) advise the Department concerning-
    - (i) the formulation and publication of standards, specifications or other forms of guidance for the purpose of assisting employers, employees and users to maintain appropriate standards of occupational health and safety;
    - (ii) the promotion of education and training in occupational health and safety; and**
    - (iii) the collection and dissemination of information on occupational health and safety.
- (3) The Council may for the purposes of the performance of any of its functions, with the approval of the Minister, and with the concurrence of the Minister of **[State Expenditure] Finance**, enter into an agreement for the performance of a particular act or particular work or for the rendering of a particular service, on such conditions and at such remuneration as may be agreed upon, with anybody who in the opinion of the Council is fit to perform such act or work or to render such service.

**(4) Subject to the laws governing the Public Service, the Minister shall provide the Council with such personnel as he may deem necessary for the effective performance of the functions of the Council, and such persons shall perform their functions subject to the control and directions of the chief inspector.**

"(4) **(a) The chief inspector shall, with the approval of the Minister, appoint an officer or employee of the Department in terms of the Public Service Act, 1994(Proclamation No. 103 of 1994), to assist the Council and its sub-committees in the performance of the Council's functions.**

**(b) The remuneration, allowances, benefits and other terms and conditions of employment of personnel appointed under subsection (1) shall be determined in terms of the Public Service Act, 1994."**

#### 4. **[Constitution] Composition of Council**

- (1) The Council shall consist of **[20] 23** members, namely-
- (a) the chief inspector, **[ex officio, who shall be the chairman]; the Chairperson;**
  - (b) **[one officer serving in] three persons nominated by** the Department;



- (c) the **Workmen's** Compensation Commissioner, or his **or her** nominee;
  - (d) one person nominated by the Minister **for National** of Health **and Welfare**;
  - (e) one person nominated by the Minister of **Mineral and Energy** **Mineral Resources**;
  - (f) six persons to represent the interests of employers from a list of the names of persons nominated by employers' organizations or federations of employers' organizations;
  - (g) six persons to represent the interests of employees from a list of the names of persons nominated by trade unions or federations of trade unions; *[Para. (g) substituted by s. 2 of Act No. 181 of 1993.]*
  - (h) one person who in the opinion of the Minister has **extensive** knowledge of occupational safety matters;
  - (i) one person who in the opinion of the Minister has **extensive** knowledge of occupational medicine and **was** **is** recommended by the Minister **for National Health and Welfare** of Health;
  - (j) one person who in the opinion of the Minister has **extensive** knowledge of occupational hygiene.
- (2) The members referred to in subsection (1) **[(b) up to and including (j)]** shall be appointed in writing by the Minister."

#### 5. Period of office and remuneration of members of Council

- (1) The members of the Council referred to in section 4 (2) shall be appointed for a period of **three** **five** years, and on such conditions as the Minister may determine with the concurrence of the Minister of **State Expenditure** **Finance**;
- (2) Any person whose period of office as a member of the Council has expired shall be eligible for reappointment.  
**A member of the Council whose term of office has expired shall be eligible for reappointment for a further term, but not exceeding two terms.**
- (3) A member referred referred to in section 4 (1) **[(f), (g), (h), (i) or (j)]** who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of **State Expenditure** **Finance**.

#### 6. Establishment of technical committees of Council **and sectoral advisory forums**

- (1) The Council may **with the approval of the Minister** establish one or more technical committees to advise the Council on any matter regarding the performance by the Council of its functions.
- (2) A member of a technical committee shall be appointed by the Council by **reason of his knowledge** **virtue of his or her knowledge and experience** for the matter for which the committee **was** **is** established, and such a member need not be a member of the Council.
- (3) A meeting of a technical committee shall be held at such time and place as may be determined by the **chairman** **chairperson** of the **Council** **technical committee** and in accordance with rules approved by the Council.



- (4) A member of a technical committee who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of **[State Expenditure] Finance**.
- (5) **A person may not be nominated to serve on more than two technical committees at a given time.**
- (6) **A sectoral advisory forum may be established by the chief inspector to advise the chief inspector on matters relating to any regulation made under section 43."**

## 7. Health and safety policy

- (1) The chief inspector may direct-
  - (a) any employer in writing; and
  - (b) any category of employers by notice in the Gazette, 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 arrangements for carrying out and reviewing that policy.
- (2) Any direction under subsection (1) shall be accompanied by guidelines concerning the contents of the policy concerned.
- (3) An employer shall prominently display a copy of the policy referred to in subsection (1), signed by the chief executive officer, in the workplace where his employees normally report for service.

### **"Health and safety management system**

**(1) The chief inspector may direct an employer or group of employers in writing to develop and implement a health and safety management system.**

**(2) A directive under subsection (1) shall be accompanied by guidelines concerning the contents of the health and safety management system concerned."**

## 8. General duties of employers to their employees

- (1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his **or her** employees.
- (2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular-
  - (a) the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;
  - (b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
  - (c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;
  - (d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far





as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;

- "(a) **conducting a workplace specific risk assessment and thereafter developing and implementing a risk management plan in writing, in respect of every risk identified;**
- (b) **ensuring that the workplace specific risk assessment is conducted, by a person or persons who are competent to pronounce on all the risks associated with that workplace;**
- (c) **ensuring that the workplace specific risk management plan is in place and is available at the workplace when requested by an inspector;**
- (d) **ensuring that no work is undertaken unless the control measures contained in the risk management plan are complied with;**
- (e) providing **[such] information, instructions, training and supervision** as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of **[his]** employees;
- (f) **[as far as is reasonably practicable, not permitting any] ensuring that no** employee **is permitted** to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
- (g) taking all necessary measures to ensure that the requirements of this Act are complied with by every **[person] employee** in **his or her** employment or **by any person** on premises under **his or her** control where plant or machinery is used;
- (h) enforcing such measures as may be necessary in the interest of health and safety;
- (i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; **[and]**
- (j) causing all employees to be informed regarding the scope of their authority **[as contemplated in section 37 (1) (b)].; and "**
- (k) **ensuring communication of the relevant components of the risk management plan to every employee."**

## 9. General duties of employers and self-employed persons to persons other than their employees

- (1) Every employer shall conduct **[his] an** undertaking in such a manner **[as]** to ensure **[,as far as is reasonably practicable that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety]** **that the risk posed by identified hazards to persons other than those in the direct employ of the organisation who may be directly affected by the organisation's activities are not thereby exposed to hazards to their health or safety and the risk is managed in line with the risk management plan contemplated in section 8(2)(a).**
- (2) Every self-employed person shall conduct **[his] an** undertaking in such a manner as to ensure **[, as far as is reasonably practicable that he and other persons who may be directly**



affected by his activities are not thereby exposed to hazards to their health or safety] that the risks posed by identified hazards to that self employed person and any other persons who may be directly affected by the activities of the work performed on that premises, are managed in line with the specific risk management plan as contemplated in section 12(1).y.

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

- (1) Any person who designs, manufactures, imports, sells **leases** or supplies any article for use at work shall ensure, **[as far as is reasonably practicable,]** that **—**
  - (a)** the article is safe and without risks to **occupational** health **and safety** when properly used;
  - (b)** the article is accompanied by the instructions which include precautionary measures **to be adhered to** and
  - (c)** **[that]** it complies with all the prescribed requirements."
- (2) Any person who erects or installs any article for use at work on or in any premises shall ensure, as far as is reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used.
- (3) Any person who manufactures, imports, sells or supplies any substance for use at work shall-
  - (a) ensure, as far as is reasonably practicable, that the substance is safe and without risks to health when properly used; and
  - (b) take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work, the risks to health and safety associated with such substance, the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such substance.
- (4) Where a person designs, manufactures, imports, sells or supplies an article or substance for or to another person and that other person undertakes in writing to take specified steps sufficient to ensure, as far as is reasonably practicable, that the article or substance will comply with all prescribed requirements and will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the firstmentioned person from the duty imposed upon him by this section to such an extent as may be reasonable having regard to the terms of the undertaking.

#### 11. Listed work

- (1) The Minister may, subject to the provisions of subsections (2) and (3), by notice in the Gazette declare any work, under the conditions or circumstances specified in the notice, to be listed work.
- (2)
  - (a) Before the Minister declares any work to be listed work, he **or she** shall, **after consultation with the Council** cause to be published in the Gazette a draft of his proposed notice and at the same time invite interested persons to submit to him in writing within a specified period, comments and representations in connection with the proposed notice.
  - (b) A period of not less than three months shall elapse between the publication of the draft notice and the notice under subsection (1).
- (3) The provisions of subsection (2) shall not apply-
  - (a) if the Minister in pursuance of comments and representations received in terms of subsection (2) (a), decides to publish the notice referred to in subsection (1) in an





amended form; and

- (b) to any declaration in terms of subsection (1) in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

- (4) A notice **under** **referred to in** subsection (1) may at any time be amended or withdrawn by like notice.

## 12. General duties of employers regarding listed work

- (1) Subject to such arrangements as may be prescribed, every employer whose employees undertake listed work or are liable to be exposed to the hazards emanating from listed work, shall, after consultation with the health and safety committee established for that workplace-
  - (a) identify the hazards and evaluate the risks associated with such work constituting a hazard to the health of such employees, and the steps that need to be taken to comply with the provisions of this Act;
  - (b) as far as is reasonably practicable, prevent the exposure of such employees to the hazards concerned or, where prevention is not reasonably practicable, minimize such exposure; and
  - (c) having regard to the nature of the risks associated with such work and the level of exposure of such employees to the hazards, carry out an occupational hygiene programme and biological monitoring, and subject such employees to medical surveillance.

**(a) An employer shall conduct a risk assessment in relation to such listed work and develop and implement a risk management plan in respect of the risks identified for that work.**

**(b) A risk assessment conducted for that workplace, shall be conducted by a person or persons who are competent to pronounce on all the risks associated with that work and where the risk is complex in nature, a risk assessment shall be conducted by specialists who are competent to pronounce on all the risks associated with that particular work.**

**(c) The employer shall ensure that a workplace specific risk management plan is in place and is available at the workplace when requested by an inspector**

**(d) An employer may not permit any listed work to be undertaken unless the control measures contained in the risk management plan are complied with."**

- (2) Every employer contemplated in subsection (1) shall keep the health and safety representatives designated for their workplaces or sections of the workplaces, informed of the actions taken under subsection (1) in their respective workplaces or sections thereof and of the results of such actions: Provided that individual results of biological monitoring and medical surveillance relating to the work of the employee, shall only with the written consent of such employee be made available to any person other than an inspector, the employer or the employee concerned.

## 13. Duty to inform

Without derogating from any specific duty imposed on an employer by this Act, every employer shall-



- (a) [as far as is reasonably practicable, cause] ensure every employee [to be made] is conversant with the [hazards] risks to his or her health and safety attached to
  - (i) any work which [he] that employee has to perform;
  - (ii) any article or substance which he or she has to produce, process, use, handle, store or transport; and
  - (iii) any plant or machinery which he or she is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;
- (b) inform the health and safety representatives concerned beforehand of inspections, investigations or formal inquiries of which [he] the employer has been notified by an inspector, and of any application for exemption made by him or her in terms of section 40."
- (c) inform a health and safety representative as soon as reasonably practicable of the occurrence of an incident in the workplace or section of the workplace for which such representative has been designated.

#### 14. General duties of employees at work

Every employee shall at work-

- (a) take reasonable for the employee's own health and safety [of himself] and of other persons who may be affected by his or her acts or omissions;
- (b) as regards any duty or requirement imposed on his or her employer or any other person by this Act, co-operate with [such] the employer or other person to enable that duty or requirement to be performed or complied with;
- (c) [carry out any] execute a lawful order given to him or her, and obey the health and safety rules and procedures laid down by his or her employer or by [anyone] a person authorised thereto by his employer, in the interest of health or safety;
- (d) [if any situation which is unsafe or unhealthy comes to his attention] when he or she becomes aware of an unsafe or unhealthy situation, as soon as practicable report such situation to his or her employer or to the health and safety representative for his or her workplace or section thereof, as the case may be, who shall report it to the employer; and
- (e) [if] where he or she is involved in any incident which may affect his or her health or which has caused an injury to himself or herself, report such incident to his or her employer or to anyone authorized thereto by the employer, or to his or her health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he or she shall report the incident as soon as it is reasonably practicable thereafter.

#### 15. Duty not to interfere with, damage or misuse things

No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety. [S. 15 substituted by s. 3 of Act No. 181 of 1993.]

#### 16. Chief executive officer charged with certain duties

- (1) [Every] A chief executive officer shall [as far as is reasonably practicable] ensure that the duties of his or her employer as contemplated in this Act, are properly discharged.  
[1A] The chief executive officer shall develop, implement and continuously review the health and safety management system as the employer may be directed in terms of section 7(1);



- (2) Without derogating from his **or her** responsibility or liability in terms of subsection (1) **and (1A)**, a chief executive officer may **assign in writing, delegate** any duty contemplated in the said **subsection** **subsections**, to any person under his **or her** control, which person shall act subject to the control and directions of the chief executive officer, **in the interest of occupational health and safety.**  
**"(2A) A person so delegated in terms of subsection (2) may not further delegate the duty to any other person.** and
- (3) The provisions of subsection (1) shall not, **subject to the provisions of section 37**, relieve an employer of any responsibility, **accountability** or liability under this Act.
- (4) For the purpose of subsection (1), the head of department of any department of State shall be deemed to be the chief executive officer of that department.

#### 17. Health and safety representatives

- (1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his **or her** employment at any workplace, shall, within four months after the commencement of this Act or after commencing business, or from such time as the number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof.
- (2) An employer and the representatives of his **or her** employees recognized by **him** **such employer** or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to a person mutually agreed upon, whose decision shall be final: Provided that if such consultation fails, the matter shall be referred for arbitration to **a person mutually agreed upon, whose decision shall be final: Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final.** **the Commission for Conciliation, Mediation and Arbitration.**
- (3) Arbitration in terms of subsection (2) shall not be subject to the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), and a failure of the consultation contemplated in that subsection shall not be deemed to be a dispute in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956): Provided that the Minister may prescribe the manner of arbitration and the remuneration of the arbitrator designated by the President of the Industrial Court. *[Sub-s. (3) substituted by s. 4 of Act No. 181 of 1993.]*
- (4) Only those employees employed in a full-time capacity at a specific workplace and who are acquainted with conditions and activities at that workplace or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that workplace or section.
- (5) The number of health and safety representatives for a workplace or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other workplaces at least one health and safety representative for every 50 employees or part thereof: Provided that those employees performing work at a workplace other than that where they ordinarily report for duty, shall be deemed to be working at the workplace where they so report for duty.
- (6) If an inspector is of the opinion that the number of health and safety representatives for any workplace or section thereof, including a workplace or section with 20 or fewer employees, is inadequate, **he** **the inspector** may by notice in writing direct the employer to designate



such number of employees as the inspector may determine as health and safety representatives for that workplace or section thereof in accordance with the arrangements and procedures referred to in subsection (2).

- (7) All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.

## 18. Functions of health and safety representatives

- (1) A health and safety representative may perform the following functions in respect of the workplace or section of the workplace for which he has been designated, namely-
- (a) review the effectiveness of health and safety measures;
  - (b) identify potential hazards and potential major incidents at the workplace;
  - (c) in collaboration with **[his] the** employer, examine the causes of incidents at the workplace;
  - (d) investigate complaints by **[any] an** employee relating to that employee's health or safety at work;
  - (e) make representations to the employer or a health and safety committee on matters arising from paragraphs (a), (b), (c) or (d), or where such representations are unsuccessful, to an inspector;
  - (f) make representations to the employer on general matters affecting the health or safety of **[the employees] an employee** at the workplace;
  - (g) inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace with a view to, the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of **[his] any** intention to carry out such an inspection to the employer, who may be present during the inspection;
  - (h) participate in consultations with inspectors at the workplace and accompany inspectors on inspections of the workplace;
  - (i) receive information from inspectors as contemplated in section 36**[;]** and **where such information is not made available within 14 days of the inspection the information will be requested from the chief inspector**;
  - (j) **[in his capacity as a health and safety representative]** attend meetings of the health and safety committee **[of which he is] as** a member, in connection with any of the above functions **[.] and"**;
  - (k) **report on instances of non compliance with this Act to the employer or health and safety committee.**
- (2) A health and safety representative shall, in respect of the workplace or section of the workplace for which he **or she** has been designated be entitled to-
- (a) visit the site of an incident **or where an employee was directed to leave the workplace** at all reasonable times and attend **[any] an** inspection in loco;  
**"(aA) attend regular meetings with the employees at the workplace to:**



- (i) address health and safety in the workplace;
- (ii) provide feedback information to the employees they represent;
- (iii) discuss reports by the health and safety representatives on the performance of their functions; and
- (iv) receive mandates from employees to be presented when attending the health and safety committee meetings;

(b) attend **[any]** **an** investigation or formal inquiry held in terms of this Act;

**(bA) attend a special meeting with employees they represent after an incident in order to—**

- (i) provide information on the incident;**
- (ii) inform employees regarding arrangements for undertaking the investigation of the incident;**
- (iii) gather information from employees relevant to the incident.**

(c) in so far as it is reasonably necessary for performing **[his]** **the** functions **of a health and safety representative**, inspect any document which the employer is required to keep in terms of this Act;

(d) accompany an inspector on any inspection;

(e) with the approval of the employer **[(which approval shall not be unreasonably withheld)]**, be accompanied by a technical adviser, on any inspection; and

(f) participate in any internal health or safety audit. *[Sub-s. (2) substituted by s. 5 of Act No. 181 of 1993.]*

(g) **(g) request and have access to inspect any document which the employer is required to keep in terms of this Act and where the document is not made available within 14 days of the inspection the information may be requested from the chief inspector subject to section 36;**

(h) **(h) report on instances of non compliance with this Act to the employer or health and safety committee.** and

(3) An employer shall provide such facilities, assistance and training as a health and safety representative may reasonably require and as have been agreed upon for the carrying out of his functions.

(4) A health and safety representative shall not incur any civil liability by reason of the fact only that he **or she** failed to do anything which he **or she** may do or is required to do in terms of this Act.

## 19. Health and safety committees

(1) **An employer shall in respect of each workplace where two or more health and safety representatives have been designated, establish one or more health and safety committees and, at every meeting of such a committee as contemplated in subsection (4), consult with the committee with a view to initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.**

**A workplace with one or more health and safety representatives designated shall establish one or more health and safety committee."**



- (2) A health and safety committee consist of **[such] the** number of members **[as the employer may from time to time determine]** in accordance with a collective agreement, where one exists or as may be determined by the employer and employees or the employee representatives, for the efficient and effective operation of the health and safety management system." Provided that-
- (a) 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;
  - (b) 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
  - (c) the number of persons nominated by an employer on any health and safety committee established in terms of this section shall not exceed the number of health and safety representatives on that committee.
- (3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by **[him] that employer**, while the health and safety representatives shall be members of the committee for the period of their designation **[terms of section 17 (1)] in accordance with their collective agreement, only where one exists or as shall be determined between employer and employees."**
- (4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every **[three] two** months months, at a time and place determined by the committee: Provided that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him **or her**: Provided further that, if more than 10 per cent of the employees at a specific workplace has handed a written request to an inspector, the inspector may by written notice direct that such a meeting be held.
- (5) The procedure at meetings of a health and safety committee shall be determined by the committee.
- (6) (a) A health and safety committee may co-opt one or more persons by reason of his **or her** or their particular knowledge of health or safety matters as an advisory member or as advisory members of the committee.
- (b) An advisory member shall not be entitled to vote on any matter before the committee.
- (7) If an inspector is of the opinion that the number of health and safety committees established for any particular workplace is inadequate, e **or she** may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine.

## 20. Functions of health and safety committees

- (1) A health and safety committee-
- (a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace or any section thereof for which such committee has been established **or to the representative trade union, in which event** —
    - (i) **the inspector shall attend to the matter in terms of section 29; or**
    - (ii) **the representative trade union may declare a dispute in accordance with the collective agreement where one exists;**





- (b) shall discuss any incident at the workplace or section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report on the incident to an inspector; **[and]**
  - (c) **[shall perform such other functions as may be prescribed.] shall identify all occupational health and safety regulations that are relevant to the workplace activities or substances.**
  - (d) shall ensure that the relevant information, training assessment, monitoring and recording provisions are in place;**
  - (e) shall make recommendation for inclusion in a workplace the health and safety management system and safe work procedures;**
  - (f) shall review the training and information provided to employees regarding any hazardous substance or condition as spelt out in the regulations; and**
  - (g) shall perform such other functions as may be prescribed or agreed to in a collective agreement, where such agreement exists, and**
- (2) A health and safety committee shall keep record of each recommendation made to an employer in terms of subsection (1) (a) and of any report made to an inspector in terms of subsection (1) (b).
  - (3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he **or she** failed to do anything which it or he **or she** may or is required to do in terms of this Act.
  - (4) An employer shall take the prescribed steps to ensure that a health and safety committee complies with the provisions of section 19 (4) and performs the duties assigned to it by subsections (1) and (2).

## 21. General prohibitions

- (1) The Minister may by notice in the Gazette declare-
  - (a) that no employer shall require or permit any employee belonging to a category of employees specified in the notice to perform work on or in any premises on or in which an activity specified in the notice is carried out which in the opinion of the Minister is an activity which threatens or is likely to threaten the health or safety of an employee belonging to that category of employees, or that no employer shall require or permit any such employee to perform any work on or in such premises otherwise than on the conditions specified in the notice;
  - (b) that no employer shall require or permit any employee to perform any work in connection with the carrying out of a process specified in the notice which in the opinion of the Minister is a process which threatens or is likely to threaten the health or safety of an employee, or that no employer shall require or permit an employee to perform any work in connection with the carrying out of such a process otherwise than on the conditions specified in the notice; and
  - (c) that no employer shall require or permit any employee, otherwise than on the conditions specified in the notice, to perform any work on or in any premises where an article or substance specified in the notice is produced, processed, used, handled, stored or transported which in the opinion of the Minister is an article or substance which threatens or is likely to threaten the health or safety of an employee.



- (2) (a) The Minister shall before he **or she** publishes a notice under subsection (1), **consult with the Council and** cause a draft of **[his] the** proposed notice to be published in the *Gazette* and at the same time invite interested persons to submit to him **or her** in writing, within a specified period, comments and representations in connection with the proposed notice.  
(b) The provisions of paragraph (a) shall not apply if the Minister, in pursuance of comments and representations received, decides to publish the notice referred to in subsection (1) in an amended form.
- (3) A notice **[under] referred to in** subsection may at any time be amended or withdrawn by like notice.
- (4) A notice shall not be issued under subsection (1) or (3) unless Minister **[for National Health and Welfare] of Health** and the Council have been consulted.
- (5) **A notice issued or deemed to have been issued under section 13 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), and which was in force immediately prior to the commencement of this Act, shall be deemed to have been issued under this section.**

## 22. Sale of certain articles prohibited

Subject to the provisions of section 10 (4), if any requirement (including any health and safety standard) in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner whatsoever such article, substance, plant, machinery or health and safety equipment unless it complies with that requirement.

## 23. Certain deductions prohibited

No employer shall in respect of anything which **[he] the employer** is in terms of this Act required to provide or to do, in the interest of the health or safety of an employee, make **[any] a** deduction from **[any] an** employee's remuneration or require or permit **[any] an** employee to make **[any] a** payment to **[him or any other] another** person.

## 24. Report to inspector regarding certain incidents

- (1) Each incident occurring at work or arising out of or in connection with the activities of persons at work, or in connection with the use of plant or machinery, in which, or in consequence of which-
  - (a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that **[he] the person** is likely either to die or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which **[he] the person** was employed or is usually employed;
  - (b) **[a major incident occurred;] in the course of an employee's employment, an incident occurred which resulted in personal injury, illness or death of the employee:** or
  - (c) the health or safety of any person was endangered and where-
    - (i) a **[dangerous] hazardous** substance **or biological agent** was spilled **or released**;
    - (ii) the uncontrolled release of any substance under pressure took place;
    - (iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or





- (iv) machinery ran out of control, shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be.
- (2) In the event of an incident in which a person died, or was injured to such an extent that he is likely to die, or suffered the loss of a limb or part of a limb, no person shall without the consent of an inspector disturb the site at which the incident occurred or remove any article or substance involved in the incident therefrom: Provided that such action may be taken as is necessary to prevent a further incident, to remove the injured or dead, or to rescue persons from danger.
- (3) The provisions of subsections (1) and (2) shall not apply in respect of-
- (a) a traffic accident on a public road;
  - (b) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; or
  - (c) any incident which is to be investigated under section **12 of the Aviation Act, 1962 (Act No. 74 of 1962)** **39 of the Civil Aviation Act, 2009 (Act No. 13 of 2009)**.
- (4) A member of the South African Police **Service** to whom an incident was reported in terms of **subsection (3) (b) this Act** shall forthwith notify an inspector thereof.
- (5) **(a) The employer or user or self employed person shall provide the Department with a copy of incident statistics annually, on the first day of March of each year.**  
**(b) The incident statistics referred to in paragraph (a) shall be provided in the prescribed format.**  
**(c) The incident statistics shall include statistics for Contractors that occurred while working on the employer premises: Provided that, the contractors are required to provide incident statistics to the Department as well."**
25. **Report to chief inspector regarding occupational disease**  
**[Any] A** medical practitioner who examines or treats a person for a disease described in the **[Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)**, or any other disease which **[he] the medical practitioner** believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly. *[S. 25 substituted by s. 7 of Act No. 181 of 1993.]*
26. **Victimisation forbidden**
- (1) No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee has given information to the Minister or to any other person charged with the administration of a provision of this Act which in terms of this Act he is required to give or which relates to the terms, conditions or circumstances of his employment or to those of any other employee of his employer, or has complied with a lawful prohibition, requirement, request or direction of an inspector, or has given evidence before a court of law or the industrial court, or has done anything which he may or is required to do in terms of this Act or has refused to do anything which he is prohibited from doing in terms of this Act.
- (2) No employer shall unfairly dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by



reason of the information that the employer has obtained regarding the results contemplated in section 12 (2) or by reason of a report made to the employer in terms of section 25. [Sub-s. (2) added by s. 8 of Act No. 181 of 1993.]

(1) An employer may not discriminate against an employee for exercising a right conferred in terms of this Act.

(2) No person shall do, or threaten to do, anything that —

(a) requires an employee not to exercise a right conferred in terms of this Act;

(b) prevents an employee from exercising a right conferred in terms of this Act; or

(c) prejudices an employee because of a past or present—

(i) failure or refusal to do anything that an employer may not lawfully permit or require an employee to do;

(ii) disclosure of information that the employee is lawfully entitled or required to give to another person; or

(iii) exercise of a right conferred in terms of this Act.

(3) No employer shall favour, or promise to favour, an employee in exchange for the employee not to exercise a right conferred in terms of this Act."

## 27. Designation and functions of chief inspector

(1) The Minister shall designate an officer serving in the Department as chief inspector for the purposes of this Act.

(2) The chief inspector shall perform [his] any functions prescribed subject to the control and supervision of the Director-General of the Department and may perform any function assigned to an inspector by this Act.

(3) (a) The chief inspector may delegate any power conferred upon him or her by this Act, excluding a power referred to in section 35 (1) or delegated to him under section 42, to any other officer or authorize any such officer to perform any duty assigned to him by this Act.

(b) No delegation of a power under paragraph (a) shall prevent the exercise of such power by the chief inspector [himself]."

(4) Whenever the chief inspector is absent or unable to perform his or her functions as chief inspector or whenever the designation of a chief inspector is pending, the Minister may designate any other officer serving in the Department to act as chief inspector during the chief inspector's absence or incapacity or until a chief inspector is designated.

(5) Any person who immediately prior to the commencement of this Act was designated as chief inspector under section 19 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as chief inspector under subsection (1) of this section.

## 28. Designation of inspectors by Minister

(1) The Minister may designate permanently or temporarily any person as an inspector to perform, subject to the control and directions of the chief inspector, any or all of the functions assigned to an inspector by this Act.

(2) [Each] An inspector designated [under] in terms of subsection (1) shall be furnished with a [certificate] card signed by or on behalf of the Minister [and stating] stipulating that [he] the bearer of the card has been designated as an inspector [: Provided that if his designation as inspector is limited to any particular function or functions, his certificate shall state such limitation].

(2A) The card shall include—



- (a) the name;
- (b) a unique number;
- (c) an identity number;
- (d) a photo of the bearer; and
- (e) a designation.

- (3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of [any] a person affected thereby, the inspector shall on demand by such person, produce to [him] that person the [certificate] card referred to in subsection (2). and
- (4) **Any officer who immediately prior to the commencement of this Act was designated as an inspector under section 20 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as an inspector under subsection (1) of this section.**

## 29. Functions of inspectors

- (1) An inspector may, for the purposes of this Act-
  - (a) without previous notice, at all reasonable times, enter [any] the premises which [are] is occupied or used by an employer or on or in which an employee performs any work or any plant or machinery is used, or which [he] the inspector suspects to be such premises;
  - (b) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;
  - (c) require from any person who has control over or custody of a book, record or other document on or in those premises, produce to [him] the inspector forthwith, or at such time and place as may be determined by [him] the inspector, such book, record or other document;
  - (d) examine any such book, record or other document or make a copy thereof or an extract therefrom;
  - (e) require from such a person an explanation of any entry in such book, record or other document;
  - (f) inspect any article, substance, plant or machinery which is or was on or in those premises, or any work performed on or in those premises or any condition prevalent on or in those premises or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
  - (g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in [his] the opinion of the inspector may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;
  - (h) direct any employer, employee or user, including any former employer, employee or user, to appear before [him] the inspector at such time and place as may be determined by [him] the inspector and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;



- (i) [perform any other function as may be prescribed] issue an administrative fine in terms of section 37(A) as indicated by Schedule 2; and;
  - (j) when so required, take photographs or make audio-visual recordings of any workplace, anything or any person within the workplace which may be relevant to an inspection or an investigation being conducted by the inspector.
- (2) [(a)] An interpreter, a member of the South African Police Services or any other assistant may, when required by an inspector, accompany [him when he performs] the inspector to perform his or her functions under this Act[.], where the assistance is reasonably required.
- [(b)] For the purposes of this Act an inspector's assistant shall, while he acts under the instructions of an inspector, be deemed to be an inspector.]";
- (3) a member of the South African Police or any other assistant may, when required by an inspector, accompany him when he performs his functions under this Act.**
- (3) When an inspector enters any premises under subsection (1) the employer occupying or using those premises and each employee performing any work thereon or therein and any user of plant or machinery thereon or therein, shall at all times provide such facilities as are reasonably required [by the inspector] to enable [him] the inspector and [his] the inspector's assistant, [(if any)] to perform effectively and [safely his or their] in a safe and healthy manner their functions under this Act.
- (4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (f) or (g), [he] the inspector shall issue a receipt to the owner or person in control thereof [.]  
Provided that the inspector shall as soon as reasonably possible or at the conclusion of any proceedings in terms of this Act, return whatever he or she has seized.
- (5) Subject to section 40, when an inspector has undertaken an inspection, the inspector shall provide a copy of the inspection report or copies of any notice and correspondence that was issued during the inspection to—  
(a) the employer, the health and safety representatives and the representative trade union for that workplace; and  
(b) in the case of construction site, the construction client, principal contractor: any other contractor on site, if applicable and all persons in paragraph (a)."

### 30. Special powers of inspectors

- (1) (a) Whenever an employer performs an act or requires or permits an act to be performed, or proposes to perform an act or to require or permit an act to be performed, which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person, the inspector may in writing prohibit that employer from continuing or commencing with the performance of that act or from requiring or permitting that act to be continued or commenced with, as the case may be.
- (b) Whenever a user of plant or machinery uses or proposes to use any plant or machinery, in a manner or in circumstances which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person who works with such plant or machinery or who is or may come within the vicinity thereof, the inspector may in writing prohibit that user from continuing or commencing with the use of such plant or machinery or in that manner or those circumstances, as the case may be.
- (c) An inspector may in writing prohibit an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be



exposed in the course of [his] employment for a longer period than a period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the employee belonging to that category of employees, as the case may be.

- (d) A prohibition imposed under paragraph (a), (b) or (c) may at any time be revoked by an inspector in writing if arrangements to the satisfaction of the inspector have been made to dispose of the threat which gave rise to the imposition of the prohibition.
- (2) In order to enforce a prohibition imposed under subsection (1) (a) or (b), an inspector may block, bar, barricade or fence off that part of the workplace, plant or machinery to which the prohibition applies, and no person shall interfere with or remove such blocking, bar, barricade or fence.
- (3) Whenever an inspector is of the opinion that the health or safety of any person at a workplace or in the course of [his] that person's employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of such person's health or safety, the inspector may in writing direct that employer or user to take such steps as are specified in the direction within a specified period.
- (4) Whenever an inspector is of the opinion that an employer or a user has failed to comply with a [provision of a] regulation applicable to him or her the inspector may in writing direct that employer or user to take, within a period specified in the direction, such steps as in the inspector's opinion are necessary to comply with the said [provision] regulation, and are specified in the direction.
- (5) A period contemplated in subsection (3) or (4) may at any time be extended for a specified period by an inspector by notice in writing to the person concerned.
- (6) An employer or user shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees concerned.

### 31. Investigations

- (1) An inspector [may] shall investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of [any] a person [in order to determine whether it is necessary to hold a formal investigation in terms of section 32].

(1A) For the purposes of an investigation referred to in subsection (1), an inspector may subpoena any person to—

(a) appear before the inspector concerned on a day and at a place specified in the subpoena; and

(b) give evidence or to produce any book, document or item which in the opinion of the inspector has a bearing on the subject of the investigation.

- (2) After completing the investigation in terms of subsection (1), the presiding inspector shall submit a written report thereon, together with all relevant sworn statements, documents and information gathered [by him,] during the investigation to the [attorney-general within whose area of jurisdiction such incident occurred and he shall at the same time submit a copy of the report, statements and documents to the chief inspector] provincial control inspector within whose area of jurisdiction such incident occurred, who will, after consultation with the chief inspector, submit the report to the National Prosecution Authority..



- (3) Upon receipt of a report referred to in subsection (2), the **attorney-general** **National Prosecuting Authority** shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959) **or** **and** the Criminal Procedure Act, 1977 (Act No. 51 of 1977) **as the case may be**.
- (4) An inspector **holding** **conducting** an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2).

32. **Formal **inquiries** inquiry:**

- (1) The chief inspector may, and **he** shall when so requested by a person producing prima facie evidence of an offence, **direct an** **appoint a presiding** inspector to conduct a formal inquiry into any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the chief inspector could have resulted, in the injury, illness or death of any person.
- (2) For the purposes of an inquiry referred to in subsection (1), **an** **a presiding** inspector may subpoena any person to appear **before him on a day and** at a **predetermined** place **on a day** specified in the subpoena and to give evidence or to produce any book, document or thing which in the opinion of the inspector has a bearing on the subject of the inquiry.
- (3) Save as is otherwise provided in this section, the law governing criminal trials in magistrates' courts shall mutatis mutandis apply to obtaining the attendance of witnesses at an inquiry under this section, the administering of an oath or affirmation to them, their examination, the payment of witness fees to them and the production by them of books, documents and things.
- (4) Any inquiry under this section shall be held in public: Provided that the presiding inspector may exclude from the place where the inquiry is held, **any** **a** person whose presence is, in **his** **the** opinion **of the presiding inspector**, undesirable or not in the public interest.
- (5) (a) The presiding inspector may designate any person to lead evidence and to examine any witness giving evidence at a formal inquiry.  
(b) Any person who has an interest in the issue of the formal inquiry may personally or by representative, advocate or attorney put such questions to a witness at the inquiry to such extent as the presiding inspector may allow.  
(c) The following persons shall have an interest as referred to in paragraph (b), namely-
  - (i) any person who was injured or suffered damage as a result of the incident forming the subject of the inquiry;
  - (ii) the employer or user, as the case may be, involved in the incident;
  - (iii) any person in respect of whom in the opinion of the presiding inspector it can reasonably be inferred from the evidence that he could be held responsible for the incident;
  - (iv) a trade union recognized by the employer concerned or any trade union of which a person referred to in subparagraph (i) or (iii) is a member;
  - (v) any owner or occupier of any premises where the said incident occurred;
  - (vi) any other person who, at the discretion of the presiding inspector, can prove such interest.





- (6) (a) An inquiry may, if it is necessary or expedient, be adjourned at any time by the presiding inspector.
- (b) An inquiry adjourned under paragraph (a) may at any stage be continued by an inspector other than the inspector before whom the inquiry commenced, and may after an adjournment again be continued by the inspector before whom the inquiry commenced.
- (7) An affidavit made by any person in connection with the incident in respect of which the inquiry is held, shall at the discretion of the presiding inspector upon production, be admissible as proof of the facts stated therein, and the presiding inspector may, **[at his discretion,] if so required,** subpoena the person who made such an affidavit to give oral evidence at the inquiry or may submit written interrogatories to **[him] that person** for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence at the inquiry: Provided that the presiding inspector shall afford any person present at the inquiry the opportunity to refute the facts stated in such document, evidence or reply.
- (8) (a) Whenever in the course of any inquiry it appears to the presiding inspector that the examination of a witness is necessary and that the attendance of such witness cannot be procured without a measure of delay, expense or inconvenience which in the circumstances would be unreasonable, the presiding inspector may dispense with such attendance and may appoint a person to be a commissioner to take the evidence of such witness, whether within or outside the Republic, in regard to such matters or facts as the presiding inspector may indicate.
- (b) Any person referred to in subsection (5) (b) may in person or through a representative, advocate or attorney appear before such commissioner in order to examine the said witness.
- (c) The evidence recorded in terms of this subsection shall be admissible in evidence at the inquiry.
- (9) At the conclusion of an inquiry under this section, the presiding inspector shall compile a written report thereon.
- (10) The evidence given at any inquiry under this section shall be recorded and a copy thereof shall be submitted by the presiding inspector together with his **or her** report to the chief inspector, and in the case of an incident in which or as a result of which any person died or was seriously injured or became ill, the **presiding** inspector shall submit a copy of the said evidence and the report to the **[attorney-general within whose area of jurisdiction such incident occurred] chief inspector.**
- “(10A) The chief inspector shall submit the report to the National Prosecuting Authority within whose area of jurisdiction such incident occurred, within 90 days of the conclusion of the inquiry;”**
- (11) Nothing contained in this section shall be construed as preventing the institution of criminal proceedings against any person or as preventing any person authorized thereto from issuing a warrant for the arrest of or arresting any person, whether or not an inquiry has already commenced.
- (12) Upon receipt of a report referred to in subsection (10), the **[attorney-general] National Prosecution Authority** shall deal therewith in accordance with the provisions of the Inquests Act, 1959 (Act No. 58 of 1959), or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the case may be.”
- (13) An inspector presiding at any formal inquiry shall not incur any civil liability by virtue of anything contained in the report compiled in terms of subsection (9).



### 33. Joint inquiries

- (1) The provisions of section 32 shall not affect the provisions of any law requiring and regulating inquests or other inquiries in case of death resulting from other than natural causes, and in respect of each incident referred to in that section in which or in consequence of which any person has died there shall be held, in addition to an inquiry under the said section, such inquest or inquiry as is required by any such law, but an inquiry under the said section and an inquest held by a judicial officer under the Inquests Act, 1959 (Act No. 58 of 1959), may be held jointly.
- (2) At such a joint inquiry and inquest the judicial officer shall preside and thereupon the provisions of the Inquests Act, 1959, shall apply, but the inspector and the judicial officer shall each make the report required of them by section 32 (9) and that Act, respectively.

### 34. Obstruction of investigation or inquiry or presiding inspector or failure to render assistance

No person shall, in relation to any investigation or inquiry held in terms of section 31 or 32-

- (a) without reasonable justification, fail to comply with **[any]** a lawful direction, subpoena, request or order issued or given by the **[inspector or]** presiding inspector;
- (b) refuse or fail to answer **[to the best of his knowledge]** any question lawfully put to him **or her** by or with the concurrence of the **[inspector or]** presiding inspector: Provided that no person shall be obliged to answer any question whereby he **or she** may incriminate himself **or herself**;
- (c) in any manner whatsoever advise, encourage, incite, order or persuade any person who has been directed, subpoenaed, requested or ordered to do something by the presiding inspector, not to comply with such direction, subpoena, request or order or in any manner prevent **[him]** **any person** from doing so;
- (d) refuse or fail, when required thereto by the presiding inspector, to furnish **[him or her]** **the presiding inspector** with the means or to render **[him or her]** the necessary assistance for holding such inquiry;
- (e) refuse or fail, when required thereto by the **[inspector or]** presiding inspector, to attend **a meeting, an investigation or** an inquiry; **[or]"**;
- (f) intentionally insult the **[inspector or]** presiding inspector or **[his]** **an** assistant or intentionally interrupt the proceedings thereof **], or**.
- (g) **refuse or fail, when required thereto by the inspector or presiding inspector, to provide any information or produce a book, item, document or item which is within a person's possession or control."** or

### 35. Appeal against decision of inspector

- (1) **[Any]** **A** person aggrieved by **[any]** **a** decision taken by an inspector **in relation to a notice of and a directive served**, under a provision of this Act, **may appeal against such decision to the chief inspector [and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken].**
- (2) **[Any]** **A** person who wishes to appeal in terms of subsection (1), shall within **[60]** **14** days after **the delivery of** the inspector's decision **[was made known]**, lodge **[such]** an appeal with the chief inspector in writing, setting out **clearly** the grounds on which **[it]** **the appeal** is **[made]**





based.

(2A) The chief inspector shall, after considering the grounds of the appeal and the inspector's reasons for the decision, —

(a) confirm, set aside or vary the decision; or

(b) substitute the decision with any other decision deemed appropriate under the circumstances;

(3) Any person aggrieved by a decision taken by the chief inspector under subsection (1) or in the exercise of any power under this Act, may appeal against such decision to the industrial court, and the industrial court shall inquire into and consider the matter forming the subject of the appeal and confirm, set aside or vary the decision or substitute for such decision any other decision which the chief inspector in the opinion of the industrial court ought to have taken.

(4) Any person who wishes to appeal in terms of subsection (3), shall within 60 days after the chief inspector's decision was given, lodge such appeal with the registrar of the industrial court in accordance with the rules of the industrial court.

(5) An appeal under subsection (1) or (3) in connection with a prohibition imposed under section 30 (1) (a) or (b) shall not suspend the operation of such prohibition.

#### **35A. Right to review decision of chief inspector**

(1) A person aggrieved by a decision taken by the chief inspector under section 35 or in the exercise of any power under this Act, may apply for such decision to be reviewed, by the High Court.

(2) The High Court may confirm, set aside or vary the decision or substitute the decision with another decision.

(3) A person who wishes to review a decision referred to in subsection (1), shall, within 60 days after the delivery of the chief inspector's decision, lodge the application with the registrar of the High Court in accordance with the rules of the High Court."

#### **35B. Appeal does not suspend decision of chief inspector**

(1) An appeal or review under section 35 (1) or 35A (1), in connection with a prohibition imposed under section 30(1)(a); (b) or (c) does not suspend the operation of such prohibition.

(2) Despite subsection (1), the High Court may suspend the operation of the decision being appealed against, pending the determination of the matter, if there are reasonable grounds for doing so.

#### **36. Disclosure of information**

No person shall disclose any information concerning the affairs of any other person obtained by him in carrying out his functions in terms of this Act, except—

(a) to the extent to which it may be necessary for the proper administration of a provision of this Act;



(b) for the purposes of the administration of justice; or

at the request of a health and safety

(1) Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), whenever an inspector performs any function in terms of section 31 or the presiding inspector conducts an inquiry in terms of section 32 and is required by the provision of this Act to supply information or report to a health and safety representative, health and safety committee or third party, the inspector or presiding inspector—

(a) shall not disclose information that is private or personal information relating to an employee, unless the employee consents in writing to the disclosure of the information; and

(b) is not required to supply any information that is—

(i) legally privileged; and

(ii) confidential and, if disclosed, may cause substantial harm to an employee or the employer.

(2) No person shall disclose any information concerning the affairs of [any other] another person obtained [by him] in carrying out [his] specified functions in terms of this Act, except—

(a) [to the extent to which it may be necessary for the proper administration of a provision of this Act] if the information is disclosed in compliance with the provisions of any law;

(b) for the purposes of the administration of justice; [or]

(c) at the request of a health and safety representative or a health and safety committee entitled thereto [.] where such request is made in writing, clearly specifying the reasons for the request;

(d) where the information is disclosed to enable a person to perform any function in terms of this Act; or

(e) where the person is ordered to disclose the information by a court.

### 37. Acts or omissions by employees or mandataries

(1) Whenever an employee does or omits to do any act which it would be an offence in terms of this Act for the employer of such employee or a user to do or omit to do, then, unless it is proved that-

(a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;

(b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and

(c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user [himself] shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect hereof; and the fact that he or she issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he or she took all reasonable steps to prevent the act or omission.



- (2) The provisions of subsection (1) shall mutatis mutandis apply in the case of a mandatory of any employer or user, except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the mandatory with the provisions of this Act.
- (3) Whenever any employee or mandatory of any employer or user does or omits to do an act which it would be an offence in terms of this Act for the employer or any such user to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer or user.
- (4) Whenever any employee or mandatory of the State commits or omits to do an act which would be an offence in terms of this Act, had he been the employee or mandatory of an employer other than the State and had such employer committed or omitted to do that act, he shall be liable to be convicted and sentenced in respect thereof as if he were such an employer.
- (5) Any employee or mandatory referred to in subsection (3) may be so convicted and sentenced in addition to the employer or user.
- (6) Whenever the employee or mandatory of an employer is convicted of an offence consisting of a contravention of section 23, the court shall, when making an order under section 38 (4), make such an order against the employer and not against such employee or mandatory.

#### **37A. Administrative fines**

- (1) If a person commits a breach of this Act, the inspector may by written notice to that person impose an administrative fine in accordance with Schedule 2.
- (2) An administrative fine may, instead of a criminal prosecution, be imposed on a person who becomes liable to prosecution for any breach of this Act.
- (3) An inspector shall serve a copy of the written notice contemplated on subsection (2) on the employer, self-employed person or person who conducts a business or undertaking concerned.
- (4) The amount of the fine stipulated in the notice referred to in subsection (2) may not exceed the amount—
  - (a) prescribed for the offence; and
  - (b) which a court would presumably have imposed in the circumstances.
- (5) An administrative fine imposed in terms of subsection (1) shall be paid to the Director-General of the Department of Labour on or before a date stated in the notice referred to in that subsection.
- (6) Sections 56, 57 and 57A of the Criminal Procedure Act, 1977(Act No. 51 of 1977) apply, subject to such modifications as the context may require, to the written notice referred to in this section.”

#### **37B. Criminal liability**



(1) An employer, chief executive officer, manager, agent or employee commits an offence by contravening or failing to comply with a provision of this Act, thereby causing a person's—

- (a) death;
- (b) permanent disablement; or
- (c) illness.

(2) The chief executive officer, manager, agent or employer of the employee commits an offence by performing or omitting to perform an act, if the act or omission falls within the scope of the authority or employment of the employer or employee concerned.

### **37C. Hindering of administration of justice**

(1) A person who—

- (a) hinders or obstructs an inspector in the performance of the inspector's functions;
- (b) refuses or fails to comply with any requirement or request made by an inspector in the performance of the inspector's functions;
- (c) persuades an inspector to accept a bribe; or
- (d) assaults or swears or victimises an inspector in the performance of the inspector's functions, commits an offence.

(2) No person may prevent an inspector from entering the premises where work is being performed, during normal working hours.

### **37D. Furnishing false information**

A person who wilfully furnishes a record, information, application or other document or makes a statement, which is false in any material respect, under this Act, commits an offence.

### **37E. Failure to attend meeting, inspection, investigation, inquiry when directed or summoned**

(1) A person who, having been directed or summoned to attend a meeting, inspection, investigation or inquiry given in terms of section 34, respectively—

- (a) without sufficient cause, fails—
  - (i) to appear at the time and place specified; or
  - (ii) to remain in attendance until excused by the inspector or presiding inspector at the meeting, inspection, investigation or inquiry;
- (b) attends as required, but without sufficient cause—
  - (i) fails to comply with an instruction in terms of section 31(1A); or
  - (ii) refuses to be sworn in or to make an affirmation; or
- (c) attends as required and having been sworn in or having been affirmed—
  - (i) without sufficient cause, fails to answer any question fully and to the best of that person's knowledge and ability :Provided that the person is made aware of the law relating to privilege; or



(ii) gives evidence, knowing or believing it to be false, commits an offence.

### 37F. Failure to comply with provisions of this Act

(1) A person, commits an offence, if that person, contravenes or fails to comply with, any—

(a) provision of this Act;

(b) condition of an exemption in terms of section 40(1);

(c) requirement to produce a book, item, document or thing under the person's control; and

(d) request to answer to the best of the person's knowledge and ability any question which an inspector may put to the person;

(2) A person commits an offence when the person—

(a) wilfully furnishes to an inspector information which is false or misleading;

(b) presents himself or herself as an inspector;

(c) tampers with or discourages, threatens, deceives or in any way unduly influences any person with regard to evidence to be given;

(d) fails to produce a book, item, document or thing before an inspector or presiding inspector in terms of section (31), (32), (33) or (34);

(e) prejudices or influences the proceedings or findings of an investigation or inquiry in terms of sections (31) or (32);

(f) tampers with or misuses any health and safety equipment installed or provided to any person by an employer or user;

(g) fails to use any safety equipment at a workplace or in the course of employment or in connection with the use of plant or machinery, which was provided by an employer or such a user; and

(h) willfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the health or safety of any person."

### 38. Offences, penalties and special orders of court "**Penalties**

(1) Any person convicted of an offence in terms of a section indicated in Schedule 1, may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in the Schedule 1.

(2) A person convicted of an offence in terms of this Act for which no penalty is otherwise or expressly determined, may be sentenced to a fine of R100 000 or to imprisonment for a period not exceeding one year, or to both."

(a) contravenes or fails to comply with a provision of section 7, 8, 9, 10 (1), (2) or (3), 12, 13, 14, 15, 16 (1) or (2), 17 (1), (2) or (5), 18 (3), 19 (1), 20 (2) or (4), 22, 23, 24 (1) or (2), 25, 26, 29 (3), 30 (2) or (6), 34 or 36;

(b) contravenes or fails to comply with a direction or notice under section 17 (6), 19 (4) or (7), 21 (1) or 30 (1) (a), (b) or (c) or (3), (4) or (6);

(c) contravenes or fails to comply with a condition of an exemption under section 40 (1);



## Preliminary discussion document

Original Act downloaded from [www.labour.gov.za](http://www.labour.gov.za)

Amendments sourced independently.

Manually updated on 10-Mar-15

compliments of [www.safetyhealthtraining.com](http://www.safetyhealthtraining.com)

- (d) in any record, application, statement or other document referred to in this Act wilfully furnishes information or makes a statement which is false in any material respect;
- (e) hinders or obstructs an inspector in the performance of his functions; refuses or fails to comply to the best of his ability with any requirement or request made by an inspector in the performance of his functions;
- (f) deleted
- (g) refuses or fails to answer to the best of his ability any question which an inspector in the performance of his functions has put to him;
- (h) wilfully furnishes to an inspector information which is false or misleading;
- (i) gives himself out as an inspector;
- (j) having been subpoenaed under section 32 to appear before an inspector, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend on the day and at the place specified in the subpoena, or fails to remain in attendance until the inspector has excused him from further attendance;
- (k) having been called under section 32, without sufficient cause (the onus of proof whereof shall rest upon him)-
  - (i) refuses to appear before the inspector;
  - (ii) refuses to be sworn or to make affirmation as a witness after he has been directed to do so;
  - (iii) refuses to answer, or fails to answer to the best of his knowledge and belief, any question put to him; or
  - (iv) refuses to comply with a requirement to produce a book, document or thing specified in the subpoena or which he has with him;
- (l) tampers with or discourages, threatens, deceives or in any way unduly influences any person with regard to evidence to be given or with regard to a book, document or thing to be produced by such a person before an inspector under section 32;
- (m) prejudices, influences or anticipates the proceedings or findings of an inquiry under section 32 or 33;
- (n) tampers with or misuses any safety equipment installed or provided to any person by an employer or user;
- (o) fails to use any safety equipment at a workplace or in the course of his employment or in connection with the use of plant or machinery, which was provided to him by an employer or such a user;
- (p) wilfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the health or safety of any person, shall be guilty of an offence and on conviction be liable to a fine not exceeding R50000 or to imprisonment for a period not exceeding one year or



**to both such fine and such imprisonment.**

- (3) **Any employer who does or omits to do an act, thereby causing any person to be injured at a workplace, or, in the case of a person employed by him, to be injured at any place in the course of his employment, or any user who does or omits to do an act in connection with the use of plant or machinery, thereby causing any person to be injured, shall be guilty of an offence if that employer or user, as the case may be, would in respect of that act or omission have been guilty of the offence of culpable homicide had that act or omission caused the death of the said person, irrespective of whether or not the injury could have led to the death of such person, and on conviction be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.**
- (4) **Whenever a person is convicted of an offence consisting of a failure to comply with a provision of this Act or of any direction or notice issued thereunder, the court convicting him may, in addition to any punishment imposed on him in respect of that offence, issue an order requiring him to comply with the said provision within a period determined by the court.**
- (5) **Whenever an employer is convicted of an offence consisting of a contravention of a provision of section 23, the court convicting him shall inquire into and determine the amount which contrary to the said provision was deducted from the remuneration of the employee concerned or recovered from him and shall then act with respect to the said amount mutatis mutandis in accordance with sections 28 and 29 of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983), as if such amount is an amount underpaid within the meaning of those sections.**

### 39. Proof of certain facts

- (1) Whenever in any legal proceedings in terms of this Act it is proved that **[any] a** person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee **in terms of section 83A of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).**
- (2) In the absence of satisfactory proof of age, the age of **[any] a** person shall, in any legal proceedings in terms of this Act, be presumed to be that stated as an opinion by an inspector to be **[in his opinion]** the probable age of the person; but any person having an interest who is dissatisfied with that statement of opinion may, at **[his own] that person's** expense, require that the person whose age is in question appear before and be examined by a district surgeon, and a statement contained in a certificate by a district surgeon who examined that person as to what in **[his] the district surgeon's** opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be conclusive proof of the age of that person.
- (3) In any legal proceedings in terms of this Act, **[any] a** statement or entry contained in any book or document kept by any employer or user or by **[his] the** employee or mandatory, or found on or in any premises occupied or used by that employer or user, and any copy or reproduction of any such statement or entry, shall be admissible in evidence against **[him] such person** as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer or user or by any employee or mandatory of that employer or user within the scope of **[his] such person's** authority.
- (4) Whenever in any legal proceedings in terms of this Act it is proved that any untrue statement or entry is contained in any record kept by **[any] a** person, **he or she** shall be presumed, until the contrary is proved, wilfully to have falsified that record.
- (5) (a) Whenever at the trial of **[any] a** person charged with a contravention of section 22 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and





safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that [such] the article, substance, plant, machinery or health and safety equipment did not at the time of the sale or marketing thereof comply with the said requirements.

(b) At any trial any document purporting to be a certificate or statement by an approved inspection authority and in which it is alleged that the article, substance, plant, machinery or health and safety equipment forming the subject of the charge complies with the requirements prescribed in respect thereof or with any particular standard, shall on its mere production at that trial by or on behalf of the accused be accepted as prima facie proof of the facts stated therein.

- (6) Notwithstanding the provisions of section [31 or 33(3)] 28 of the Standards Act, [1993 (Act No. 29 of 1993)] 2008 (Act No. 8 of 2008), whenever in any legal proceedings in terms of this Act the question arises whether any document contains the text of a health and safety standard incorporated in the regulations under section 44, any document purporting to be a statement by a person who in that statement alleges that [he] the person is an inspector and that a particular document contains the said text, shall on its mere production at those proceedings by any person be *prima facie* proof of the facts stated therein.
- (7) The records to be kept by a health and safety committee in terms of section 20 (2), including any document purporting to be certified by an inspector as a true extract from any such records, shall on [their] the mere production at any legal proceedings by any person be admissible as evidence of the fact that a recommendation or report recorded in such records was made by a health and safety committee to an employer or inspector concerned.

#### 40. Exemptions

- (1) The Minister may, for such period and on such conditions as may be determined by him or her exempt [any] an employer or user or [any] a category of employers or users, generally or with respect to [any] a particular employee or category of employees or users or with respect to any matter, from [any of or all the provisions] a provision of this Act or [the] a provision of a notice or direction issued under this Act.
- (2) The period for which exemption may be granted under subsection (1) may commence on a date earlier than the date on which exemption is granted, but not earlier than the date on which application for such exemption was made to the Minister.
- (3) An exemption under subsection (1) shall-
- (a) in the case of the exemption of a particular employer or user, be granted by issuing to [such] the employer or user a certificate of exemption in which [his] the employer's name and the scope, period and conditions of the exemption are specified;
  - (b) in the case of the exemption of a category of employers or of a category of such users, be granted by the publication in the Gazette of a notice in which that category of employers or users is described and the scope, period and conditions of the exemption are specified: Provided that the Minister may grant exemption-
    - (i) to an organisation of employers or an organisation of users in accordance with the requirements of either paragraph (a) or paragraph (b)
    - (ii) from [any] a health and safety standard incorporated in the regulations under section 44, in any manner which [he] the Minister may deem expedient.





- (4) A certificate of exemption contemplated in subsection (3) (a) and a notice contemplated in subsection (3) (b) may at any time be amended or withdrawn by the Minister.
- (5) An exemption under subsection (1) shall lapse-
  - (a) upon termination of the period for which it was granted;
  - (b) upon withdrawal of the relevant certificate or notice under subsection (4).
- (6) **Any exemption granted under section 32 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), to the extent to which it grants exemption from the operation of a provision similar to a provision in respect of which exemption may be granted under subsection (1) of this section, which exemption has at the commencement of this Act not lapsed as contemplated in subsection (5) of the said section 32, shall be deemed to have been granted under this section.**

**An application for exemption shall be finalised within 30 days.**

**41. This Act not affected by agreements**

**[Subject to the provisions of sections 10 (4) and 37 (2), a]** A provision of this Act or a condition specified in any notice or direction issued thereunder or subject to which exemption was granted to any person under section 40, shall not be affected by any condition of any agreement, whether such agreement was entered into before or after the commencement of this Act or before or after the imposition of any such condition, as the case may be.”.

**42. Delegation and assignment of functions**

- (1) The Minister Minister may delegate any power conferred **[upon him]** **to the Minister** by or under this Act, except the power contemplated in section 43, to an officer.
- (2) A delegation under subsection (1) shall not prevent the exercise of the relevant power by the Minister **[himself]**.
- (3) The Minister may authorize any provincial administration or local authority to perform any function referred to in this Act.
- (4) An **[authorization]****authorisation** under subsection (3) shall not prevent the performance of the relevant function by the Minister, the chief inspector or an inspector, as the case may be.

**43. Regulations**

- (1) The Minister may make regulations-
  - (a) as to any matter which in terms of this Act shall or may be prescribed;
  - (b) which in the opinion of the Minister are necessary or expedient in the interest of the health and safety of persons at work or the health and safety of persons in connection with the use of plant or machinery, or the protection of persons other than persons at work against risks to health and safety arising from or connected with the activities of persons at work, including regulations as to-
    - (i) the planning, layout, construction, use, alteration, repair, maintenance or demolition of buildings;
    - (ii) the design, manufacture, construction, installation, operation, use, handling, alteration, repair, maintenance or conveyance of plant, machinery or health



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and safety equipment;

- (iii) the training, safety equipment or facilities to be provided by [employers] an employer or [users] user, the [persons] person to whom and the circumstances in which [they are] it is to be provided and the application thereof;
- (iv) the health or safety measures to be taken by [employers] an employer or [users] user;
- (v) the occupational hygiene measures to be taken by [employers] an employer or [users] user;;
- (vi) any matter regarding the biological monitoring or medical surveillance of employees;
- (vii) the production, processing, use, handling, storage or transport of, and the exposure of employees and other persons to, hazardous articles, substances or organisms or potentially hazardous articles, substances or organisms, including specific limits, thresholds or indices of or for such exposure;
- (viii) the performance of work in hazardous or potentially hazardous conditions or circumstances;
- (ix) the emergency equipment and medicine to be held available by employers and users, the places where such equipment and medicine are to be held, the requirements with which such equipment and medicine shall comply, the inspection of such equipment and medicine, the application of first-aid and the qualifications which persons applying first-aid shall possess;
- (x) the compilation by employers of health and safety directives in respect of a workplace, the matters to be dealt with in such directives and the manner in which such directives shall be brought to the attention of employees and other persons at such a workplace;
- (xi) the registration of persons performing hazardous work or using or handling plant or machinery, the qualifications which such persons shall possess and the fees payable to the State in respect of such registration;
- (xii) the accreditation, functions, duties and activities of approved inspection authorities;
- (xiii) the consultations between an employer and employees on matters of health and safety;
- (xiv) subject to section 36, the provision of information by an employer or user to employees or the public on any matter to which this Act relates;
- (xv) the conditions under which any employer is prohibited from permitting any person to partake of food or to smoke on or in any premises where a specified activity is carried out;
- (xvi) the conditions under which the manufacture of explosives and activities incidental thereto may take place;



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- (c) as to the preventive and protective measures for major hazard installations with a view to the protection of employees and the public against the risk of major incidents;
  - (d) as to the registration of premises where employees perform any work or where plant or machinery is used and the fee payable to the State in respect of such registration;
  - (e) whereby provision is made for the continuation of any registration under this Act;
  - (f) as to the registration of plant and machinery and the fee payable to the State in respect of such registration;
  - (g) as to the establishment of one or more committees for the administration of a provision of the regulations, the constitution of such committees, the functions of such committees, the procedure to be followed at meetings of such committees, the allowances which may be paid to members of such committees from money appropriated by Parliament for such purpose and the person by whom such allowances shall be fixed;
  - (h) prescribing the records to be kept and the returns to be rendered by employers and users and the person or persons to whom such returns shall be rendered;
  - (i) as to the designation and functions of health and safety representatives and health and safety committees and the training of health and safety representatives;
  - (j) as to the activities of self-employed persons; and
  - (k) as to any other matter the regulation of which is in the opinion of the Minister necessary or desirable for the effective carrying out of the provisions of this Act.
  - (l) **the classification and labelling of hazardous chemical substances in the workplace;**
  - (m) **the consultations and negotiations to conclude collective agreements between an employer, employees and representative trade unions on matters of health and safety.**
- (2) No regulation shall be made by the Minister except after consultation with the Council, and no regulation relating to State income or expenditure or to any health matter shall be made by the Minister except after consultation **[also]** with the Minister of **[State Expenditure]** **Finance** and the Minister **[for National]** **of** Health **[and Welfare]**, respectively.
- (3) In making regulations the Minister may apply any method of differentiation that **[he]** **the Minister** may deem advisable: Provided that no differentiation on the basis of race or colour shall be made.
- (4) A regulation may in respect of any contravention thereof or failure to comply therewith, prescribe a penalty of a fine **[,]** **to a maximum of R5 000 000.00** or imprisonment for a period not exceeding **[12 months, and, in the case of a continuous offence, not exceeding an additional fine of R200 or additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days]** **five years or both**.

**[4A) The Minister may by regulation specify offences in terms of this Act in respect of which alleged offenders may pay a prescribed admission of guilt fine instead of being tried by a court for the offence]**



- (5) A regulation made under section 35 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), which was in force immediately prior to the commencement of this Act and which could have been made under this section, shall be deemed to have been made under this section.

#### 44. Incorporation of health and safety standards in regulations

- (1) The Minister may by notice in the *Gazette* incorporate in the regulations **[any health and safety standard or part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that health and safety standard or to any other particulars by which that health and safety standard is sufficiently identified]** a South African National Standard or any provision thereof that has been published in terms of section 28 of the Standards Act, 2008 (Act No. 8 of 2008) in respect of a commodity, product or service which may affect health or safety by referring to the title and number.
- (2) **[No health and safety standard shall be incorporated in the regulations except after consultation with the Council]** If the South African National Standard or a provision thereof contemplated in subsection (1) is amended, the amended South African National Standard is deemed to be incorporated.
- (2A)** Any South African National Standard or any provision thereof incorporated in terms of subsection (1) may be withdrawn.
- (3) Any **[health and safety standard]** South African National Standard or a provision incorporated in the regulations under subsection (1) shall for the purposes of this Act, in so far as it is not repugnant to any regulation made under section 43, be deemed to be a regulation, but not before the expiry of two months from the date of incorporation thereof.
- (4) **[Whenever any health and safety standard is at any time after the incorporation thereof as aforesaid, amended or substituted by the competent authority, the notice incorporating that health and safety standard shall, unless otherwise stated therein, be deemed to refer to that health and safety standard as so amended or substituted, as the case may be.]**
- (5) **[The chief inspector shall keep a register of particulars of every publication in which a health and safety standard incorporated in the regulations under subsection (1), and every amendment or substitution of any such health and safety standard, was published, and also of the place in the Republic where such publication is obtainable or otherwise available for inspection, and he shall make that register or an extract therefrom available free of charge to persons having an interest, for inspection.]**
- (6) **[The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not apply to any incorporation of a health and safety standard or of any amendment or substitution of a health and safety standard under this section.]**
- (7) **[Any safety standard which was immediately prior to the commencement of this Act incorporated under section 36 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), in the regulations made under that Act, shall be deemed to be a health and safety standard incorporated under this section.]**

#### **44A. "Approved inspection authority"**

- (1) The chief inspector may in writing approve an organisation, that has been accredited by the SANAS in terms of the Accreditation for Conformity Assessment, Calibration and Good Laboratory



Practice Act, 2006 (Act No. 19 of 2006), as an approved inspection authority for specifically defined work.

(2) An approved inspection authority referred to in subsection (1) shall have specialised knowledge and equipment to—

(a) conduct investigations, tests, sampling or analyses as the approved inspection authority may consider necessary; and

(b) make specific findings, purporting to be objective findings, as to—

(i) the health of any person;

(ii) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or

(iii) the question of whether a particular standard has been or is being complied with, with respect to any work, article, substance, plant or machinery, or with respect to work or a condition prevalent on or in any premises, or with respect to any other matter,

and by issuing a report, stating such findings, to the person to whom the service is rendered.

(3) The chief inspector may at any time request information from an approved inspection authority in a prescribed format for the purposes of the administration of this Act.

(4) An approved inspection authority may be required to operate within a prescribed guideline as may be determined by the chief inspector from time to time.

(5) An approved inspection authority shall be subjected to an annual audit by an inspector.

(6) An approved inspection authority shall, in the prescribed format, report to the chief inspector every six months on all activities relating to the approval granted and all recommendations made to the employer

(7) The chief inspector may, in writing, at any time withdraw the approval of an approved inspection authority.”

#### 45. Serving of [notices] notice

Unless another method is prescribed, a notice under this Act shall be served-

- (a) by delivering a copy thereof to the person upon whom it is to be served;
- (b) by leaving such a copy at the usual [or last known] place of residence or business of such a person; or
- (c) by sending [such] a copy by registered post to the usual [or last known] place of residence or business of such a person.

#### 46. Jurisdiction of magistrates' courts

(1) Notwithstanding anything to the contrary contained in any law [—

(a)] a magistrate's court shall have jurisdiction to impose any penalty or to make any order provided for in this Act[;].

[(b) no magistrate's court shall be competent to pronounce upon the validity of any regulation made under this Act.]

(2) The Labour Court or High Court has exclusive jurisdiction to determine a particular dispute about the interpretation or application of any provision of this Act, except where this Act provides otherwise.



(3) The Labour Court has no jurisdiction in respect of offences in terms of this Act.

**46A. "Stating of case to High Court"**

(1) If any question of law arises concerning the application of this Act, the Director-General may or at request of a party with sufficient interest in this matter, state a case for decision by the High Court

(2) The Director-General shall set out in the stated case—

(a) the facts that were found to be proved; and

(b) the view of the law which was adopted in relation to those facts.

(3) If the Director-General has any doubt as to correctness of a decision given by the High Court, regarding a question of law, concerning the application of this Act, the Director-General may submit such a decision to the Supreme Court of Appeal."

**47. State bound**

This Act shall bind the State.

**48. Conflict of provisions**

In so far as any provision of the Explosives Act, 1956 (Act No. 26 of 1956), is repugnant to a provision of this Act the provisions of this Act shall apply.

**49. Repeal of laws**

The Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), the Machinery and Occupational Safety Amendment Act, 1989 (Act No. 40 of 1989), and the Machinery and Occupational Safety Amendment Act, 1991 (Act No. 97 of 1991), are hereby repealed.

**50. Short title and commencement**

(1) This Act shall be called the Occupational Health and Safety Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of different provisions of this Act.

This Act is called the Occupational Health and Safety Amendment Act, 2014, and takes effect on a date to be determined by the President by proclamation in the Gazette.





**Insertion of Schedules 1 and 2 to Act 85 of 1993**

The principal Act is hereby amended by the insertion of the following Schedules:

**Schedule 1**

This Schedule sets out the maximum fine that may be imposed in terms of this Act for the contravention of certain provisions of this Act.

**MAXIMUM FINES OR PERIOD OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES**

<b>Column 1</b> <b>Section under which convicted</b>	<b>Column 2</b> <b>Maximum fine and period of imprisonment</b>
2B	R 1 000 000 or 3 years imprisonment
8	R 5 000 000 or 5 years imprisonment
9	R 5 000 000 or 5 years imprisonment
10	R 1 000 000 or 3 years imprisonment
12	R 1 000 000 or 3 years imprisonment
13	R 200 000 or 2 years imprisonment
14	R 1 000 000 or 3 years imprisonment
15	R 1 000 000 or 3 years imprisonment
16	R 1 000 000 or 3 years imprisonment
17 (1) ; 17 (4)	R 1 000 000 or 3 years imprisonment
18 (3)	R 1 000 000 or 3 years imprisonment
22	R 500 000 or 3 years imprisonment
30 (2)	R 500 000 or 3 years imprisonment
31(1B)	R 1 000 000 or 3 years imprisonment
34	R 5 000 000 or 5 years imprisonment
36	R 500 000 or 3 years imprisonment
37	R 5 000 000 or 5 years imprisonment
38	R 5 000 000 or 5 years imprisonment
40	R 1 000 000 or 3 years imprisonment
41	R 1 000 000 or 3 years imprisonment
42	R 1 000 000 or 3 years imprisonment

**SCHEDULE 2**

**Administrative fines**

<b>Column 1</b> <b>Section contravened</b>	<b>Column 2</b> <b>Maximum fine</b>
7	R 50 000
19 (1):	R 50 000
20 (4):	R 50 000
21:	R 50 000
24(1):(2)	R 25 000
25:	R 50 000
29(3):	R 25 000
30(6)	R50 000