Labournet

Purpose. People. Platform.

Occupational Health and Safety Act

(Act 85 of 1993)

Definitions

Section 1

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;

"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;

"Department" means the Department of Manpower;

"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 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 l (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);

"employers' organization" means an employers' organization as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

"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;

"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 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 ll;

"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);
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;

"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;

"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 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);

"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 injury or damage will occur;

"safe" means free from any hazard;

"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 l (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 l of the Standards Act, 1993 (Act No. 29 of 1993); or
b) in any specification, code or any other directive having standardization as its aim and issued by an institution or organization 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 standardization;

"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);

"user", in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed in connection with, that plant or machinery;

"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 is in the course of his employment, and a self-employed person is deemed to be at work during such time as he 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), except in so far as that Act provides otherwise;
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.

Establishment of Advisory Council for Occupational Health and Safety

Section 2

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

Functions of Council

Section 3

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, 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.

Constitution of Council

Section 4

1) The Council shall consist of 20 members, namely-
a) the chief inspector, ex officio, who shall be the chairman;
b) one officer serving in the Department;
c) the Compensation Commissioner, or his nominee;
d) one person nominated by the Minister for National Health and Welfare;
e) one person nominated by the Minister of Mineral and Energy Affairs; 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;
f) [Substituted by s. 2 of Act No. 181 of 1993]
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 knowledge of occupational safety matters;
i) one person who in the opinion of the Minister has knowledge of occupational medicine and who was recommended by the Minister for National Health and Welfare;
j) one person who in the opinion of the Minister has knowledge of occupational hygiene.
2) The members referred to in subsection (1) (b) up to and including (j) shall be appointed by the Minister.

Period of office and remuneration of members of Council

Section 5

1) The members of the Council referred to in section 4 (2) shall be appointed for a period of three years, and on such conditions as the Minister may determine with the concurrence of the Minister of State Expenditure.
2) Any person whose period of office as a member of the Council has expired shall be eligible for reappointment.
3) A member 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.

Establishment of technical committees of Council

Section 6

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 of the matter for which the committee 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 of the Council, 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.

Health and safety policy

Section 7

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.

General duties of employers to their employees

Section 8

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 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;
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 employee 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 tire requirements of this Act are complied with by every person in his employment or on premises under his 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).

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

Section 9

1) Every employer shall conduct his 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.
2) Every self-employed person shall conduct his 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.

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

Section 10

1) Any person who designs, manufactures, imports, sells or supplies any article for use at work shall ensure, as far as is reasonably practicable, that the article is safe and without risks to health when properly used and that it complies with all 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.

Listed work

Section 11

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 shall 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 subsection (1) may at any time be amended or withdrawn by like notice.

General duties of employers regarding listed work

Section 12

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.
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.

Duty to inform

Section 13

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

a) as far as is reasonably practicable, cause every employee to be made conversant with the hazards to his health and safety attached to any work which he has to perform, any article or substance which he has to produce, process, use, handle, store or transport and any plant or machinery which he 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 has been notified by an inspector, and of any application for exemption made by him in terms of section 40; and
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.

General duties of employees at work

Section 14

Every employee shall at work-

a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;
b) as regards any duty or requirement imposed on his employer or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;
c) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;
d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and
(e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his 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 shall report the incident as soon as practicable thereafter.

Duty not to interfere with, damage or misuse things

Section 15

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.]

Chief executive officer charged with certain duties

Section 16

1) Every chief executive officer shall as far as is reasonably practicable ensure that the duties of his employer as contemplated in this Act, are properly discharged.
2) Without derogating from his responsibility or liability in terms of subsection (1), a chief executive officer may assign any duty contemplated in the said subsection, to any person under his control, which person shall act subject to the control and directions of the chief executive officer.
3) The provisions of subsection (1) shall not, subject to the provisions of section 37, relieve an employer of any responsibility 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.

Health and safety representatives

Section 17

1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his 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 employees recognized by him 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 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. [Sub-s. (2) substituted by s. 4 of Act No. 181 of 1993.]
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 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.

Functions of health and safety representatives

Section 18

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 employer, examine the causes of incidents at the workplace;
d) investigate complaints by any 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 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 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
j) in his capacity as a health and safety representative attend meetings of the health and safety committee of which he is a member, in connection with any of the above functions.
2) A health and safety representative shall, in respect of the workplace or section of the workplace for which he has been designated be entitled to-
a) visit the site of an incident at all reasonable times and attend any inspection in loco;
b) attend any investigation or formal inquiry held in terms of this Act;
c) in so far as it is reasonably necessary for performing his functions, 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.]
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 failed to do anything which he may do or is required to do in terms of this Act.

Health and safety committees

Section 19

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.
2) A health and safety committee shall consist of such number of members as the employer may from time to time determine: 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, while the health and safety representatives shall be members of the committee for the period of their designation in terms of section 17 (1).
4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every three 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: Provided further that, if more than 10 per cent of the employees at a specific workplace have 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 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, he may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine.

Functions of health and safety committees

Section 20

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;
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.
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 failed to do anything which it or he 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).

General prohibitions

Section 21

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 publishes a notice under subsection (1), cause a draft of his proposed notice to be published in the Gazette 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) 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 subsection (1) may at any time be amended or withdrawn by like notice.
4) A notice shall not be issued under subsection (1) or (3) unless the Minister for National Health and Welfare 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.

Sale of certain articles prohibited

Section 22

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.

Certain deductions prohibited

Section 23

No employer shall in respect of anything which he 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 deduction from any employee's remuneration or require or permit any employee to make any payment to him or any other person. [S. 23 substituted by s. 6 of Act No. 181 of 1993.]

Report to inspector regarding certain incidents

Section 24

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 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 was employed or is usually employed;
b) a major incident occurred; or
c) the health or safety of any person was endangered and where-
i) a dangerous substance was spilled;
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 accident which is to be investigated under section 12 of the Aviation Act, 1962 (Act No. 74 of 1962).
4) A member of the South African Police to whom an incident was reported in terms of subsection (3) (b), shall forthwith notify an inspector thereof.

Report to chief inspector regarding occupational disease

Section 25

Any 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), or any other disease which he 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.]

Victimization forbidden

Section 26

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.]

Designation and functions of chief inspector

Section 27

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 functions 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 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 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.

Designation of inspectors by Minister

Section 28

1) The Minister may designate 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 inspector designated under subsection (1) shall be furnished with a certificate signed by or on behalf of the Minister and stating that he 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.
3) Whenever an inspector designated under subsection (1) performs a function under this Act in the presence of any person affected thereby the inspector shall on demand by such person produce to him the certificate referred to in subsection (2).
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.

Functions of inspectors

Section 29

1) An inspector may, for the purposes of this Act-
a) without previous notice, at all reasonable times, enter any premises which are 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 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, to produce to him forthwith, or at such time and place as may be determined by him, 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 opinion 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 at such time and place as may be determined by him 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.
2) a) An interpreter, 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.
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) 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 and his assistant (if any) to perform effectively and safely his or 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 shall issue a receipt to the owner or person in control thereof.

Special powers of inspectors

Section 30

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 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, 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, and are specified in the direction.
5) A period contemplated in subsection (3) or (4) may at any time be extended by an inspector by notice in writing to the person concerned.
6) An employer 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.

Investigations

Section 31

1) An inspector may 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 person in order to determine whether it is necessary to hold a formal investigation in terms of section 32.
2) After completing the investigation in terms of subsection (1) the inspector shall submit a written report thereon, together with all relevant statements, documents and information gathered by him, 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.
3) Upon receipt of a report referred to in subsection (2), the attorney-general 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.
4) An inspector holding an investigation shall not incur any civil liability by virtue of anything contained in the report referred to in subsection (2).

Formal inquiries

Section 32

1) The chief inspector may, and he shall when so requested by a person producing prima facie evidence of an offence, direct an 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 inspector may subpoena any person to appear before him on a day and at a place 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 person whose presence is, in his opinion, 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, subpoena the person who made such an affidavit to give oral evidence at the inquiry or may submit written interrogatories to him 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 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 inspector shall submit a copy of the said evidence and the report to the attorney-general within whose area of jurisdiction such incident occurred.
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 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).

Joint inquiries

Section 33

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.

Obstruction of investigation or inquiry or presiding inspector or failure to render assistance

Section 34

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 lawful direction, subpoena, request or order issued or given by the presiding inspector;
b) refuse or fail to answer to the best of his knowledge any question lawfully put to him by or with the concurrence of the presiding inspector: Provided that no person shall be obliged to answer any question whereby he may incriminate himself;
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 from doing so;
d) refuse or fail, when required thereto by the presiding inspector, to furnish him with the means or to render him the necessary assistance for holding such inquiry;
e) refuse or fail, when required thereto by the presiding inspector, to attend an inquiry; or
f) intentionally insult the presiding inspector or his assistant or intentionally interrupt the proceedings thereof.

Appeal against decision of inspector

Section 35

1) Any person aggrieved by any decision taken by an inspector 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 person who wishes to appeal in terms of subsection (1), shall within 60 days after the inspector's decision was made known, lodge such an appeal with the chief inspector in writing, setting out the grounds on which it is made.
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.

Disclosure of information

Section 35

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
c) at the request of a health and safety representative or a health and safety committee entitled thereto.

Acts or omissions by employees or mandataries

Section 37

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 issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he 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 mandatary 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 mandatary with the provisions of this Act.
3) Whenever any employee or mandatary 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 mandatary 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 mandatary 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 mandatary referred to in subsection (3) may be so convicted and sentenced in addition to the employer or user.
6) Whenever the employee or mandatary 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 mandatary.

Offences, penalties and special orders of court

Section 38

1) Any person who-
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);
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.
2) 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.
3) 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**
4) 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.

Proof of certain facts

Section 39

1) Whenever in any legal proceedings in terms of this Act it is proved that any person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee.
2) In the absence of satisfactory proof of age, the age of any person shall, in any legal proceedings in terms of this Act, be presumed to be that stated 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 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 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 statement or entry contained in any book or document kept by any employer or user or by his employee or mandatary, 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 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 mandatary of that employer or user within the scope of his 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 person, he shall be presumed, until the contrary is proved, wilfully to have falsified that record.
5) (a) Whenever at the trial of any 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 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 (3) of the Standards Act, 1993 (Act No. 29 of 1993), 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 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 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.

Exemptions

Section 40

1) The Minister may, for such period and on such conditions as may be determined by him, exempt any employer or user or any category of employers or users, generally or with respect to any particular employee or category of employees or users or with respect to any matter, from any of or all the provisions of this Act or the provisions 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 employer or user a certificate of exemption in which his 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 organization of employers or an organization of users in accordance with the requirements of either paragraph (a) or paragraph (b);
ii) from any health and safety standard incorporated in the regulations under section 44, in any manner which he 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.

This Act not affected by agreements

Section 41

Subject to the provisions of sections 10 (4) and 37 (2), 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.

Delegation and assignment of functions

Section 42

1) The Minister may delegate any power conferred upon him 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 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.

Regulations

Section 43

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 and safety equipment;
iii) the training, safety equipment or facilities to be provided by employers or users, the persons to whom and the circumstances in which they are to be provided and the application thereof;
iv) the health or safety measures to be taken by employers or users;
v) the occupational hygiene measures to be taken by employers or users;
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;
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.

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 and the Minister for National Health and Welfare, respectively.
3) In making regulations the Minister may apply any method of differentiation that he 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, 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.
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.

Incorporation of health and safety standards in regulations

Section 44

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.
2) No health and safety standard shall be incorporated in the regulations except after consultation with the Council.
3) Any health and safety standard 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.

Serving of notices

Section 45

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.

Jurisdiction of magistrates' courts

Section 46

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.

State bound

Section 47

This Act shall bind the State.

Conflict of provisions

Section 48

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.

Repeal of laws

Section 49

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.

Short title and commencement

Section 50

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.

087 758 0000
www.labournet.com