

Legal Compliance in the Workplace

Are you or your employees at risk?

According to 2017 calculations by the International Labour Organization (ILO), 2.78 million fatal accidents occur at work annually. This means that almost 7 700 persons die of work-related diseases or injuries daily.

Additionally, there are some 374 million non-fatal work-related injuries and illnesses each year, many of these resulting in extended absences from work, lost production and unnecessary medical expenses.

It is the responsibility of every business to ensure that they comply with occupational health and safety legislation and as such, to implement measures designed to reduce or remove any hazards or risks that could result in injury, illness or death in the workplace.

ISO 45001 (Occupational health and safety management systems) stipulates – *“An organization is responsible for the occupational health and safety of workers and others who can be affected by its activities. This responsibility includes promoting and protecting their physical and mental health. The adoption of an OH&S management system is intended to enable an organization to provide safe and healthy workplaces, prevent work-related injury and ill health, and continually improve its OH&S performance.”*

Legal Compliance, by its very definition, relates to the measures which companies and organisations take to ensure that they comply with relevant South African legislation. Company owners, specifically the CEO, are responsible and accountable for ensuring compliance and have a legal liability defined by law. Transgression of these laws could result in severe financial penalties or even incarceration.

The Department of Labour are actively inspecting business throughout the country and their inspections are intended to determine whether companies are complying with legislation such as the Occupational Health and Safety Act – including regulations, the Basic Conditions of Employment Act, the Employment Equity Act as well as the Compensation for Occupational Injuries and Diseases Act.

Ask yourself the following questions:

1. Are you registered with the Compensation Fund?
2. Are you registered with the Unemployment Insurance Fund?
3. Do you have a copy of the Occupational Health and Safety Act and the relevant Regulations on the premises and are the Act and the Regulations available to the workers if they want to read it?
4. Do you display the Summary of the Basic Conditions of Employment Act?
5. Do you display the Summary of the Employment Equity Act?
6. Have you conducted risk assessments and identified potential hazards in the business?
7. Have you implemented safety measures to mitigate the hazards and risks that you have identified?
8. Are you and your workers trained to recognise health and safety problems?
9. Are moving parts like drive belts and chains guarded?
10. Are chemicals used safely and stored in a safe place?
11. Are emergency exits clearly marked and easily accessible?
12. Are fire extinguishers accessible and serviced regularly?
13. Are flammable materials stored and used correctly, for instance not near fires?
14. Do you have fully equipped first aid boxes on the premises?
15. Are all electrical wires insulated and proper plugs used in your workplace?
16. Do you report injuries at work to the Department of Labour?
17. Do you have clean and hygienic toilets and washing facilities provided for males and females?

18. Do you have an attendance register at your workplace?
19. Did the employer and workers consult one another with regards to the nomination or election, the period of office, the functions and appointment of Health and Safety Representatives?
20. For workplaces such as shops and offices: was at least one Health and Safety Representative appointed for every 100 workers or part thereof?
21. For other workplaces, such as factories: was at least one Health and Safety Representative appointed for every 50 workers or part thereof?
22. Are the appointed Health and Safety Representative full-time workers and do they know the circumstances and conditions of the workplace for which they have been appointed?
23. Are all activities regarding the appointment, functions and training of Health and Safety Representatives performed during normal working hours?
24. Were all Health and Safety Representatives appointed in writing?
25. Are all appointed Health and Safety Representatives empowered to:
 - Conduct health and safety audits?
 - Identify potential dangers?
 - Investigate incidents?
 - Make recommendations regarding health and safety?
 - Conduct inspections?
 - Attend health and safety committee meetings?
26. Has at least one Health and Safety Committee been functioning for each workplace where the employer had to appoint two or more Health and Safety Representatives?
27. Do all Health and Safety Committees function as follows:
 - Hold meetings as often as necessary but at least once every three months?
 - Make recommendations to the employer regarding health and safety matters?
 - Discuss incidents?
 - Keep record of all recommendations made?
 - Is each Health and Safety Representative a member of at least one Committee?
 - The number of people nominated by the employer to serve on a Committee does not exceed the number of Health and Safety Representatives serving on the same Committee?
 - The Committee determines the proceedings, time and place of the meetings?
 - The chairperson was elected by the Committee?

These are just some of the questions that will be asked of you in the event of a 'Department of Labour Inspection.

Occupational Health and Safety Act (OHAS Act)

The Occupational Health and Safety Act is commonly seen as the foundation of legal compliance and makes very clear and strict references to the requirements assigned to both employers and employees. The act is however geared more towards the employer and as such the onus rests upon the employer to do everything they can to ensure compliance. The Act is prescriptive but remains self regulating.

The OHAS Act is made up of various sections, each dealing with various requirements with regards to health and safety in the workplace. In addition, there are regulations that augment the sections of the Act. Added to that there are standards applicable to various aspects of health and safety in the workplace.

The objectives of the OHS Act are relatively clear and concise but have far reaching implications.

The objectives of the act are as follows:

- To provide for the health and safety of persons at work
- To provide 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.

Chief Executive Officer charged with certain duties.

Section 16 of the Act assigns accountability and responsibility for compliance with the Act directly to the CEO. For the purposes of the Act, the CEO is deemed to be the person that is in overall control of the business. It does allow for delegation by means of appointments but does not remove accountability from the CEO.

Furthermore, under section 37 of the Act, the CEO could be held liable due to the actions or lack thereof of the employees. Section 37 of the Act stipulates that whenever an employee does or omits to do any act, which would be an offence for the employer of such employee to do or omit to do, the CEO would be seen as the accountable person.

General Duties of Employers to their Employees.

Section 8 of the Act explains the specific requirements applicable to employers in relation to their responsibility towards employees, these are to;

- Provide and maintain a working environment that is safe and without risk to the health of his employees
- Systems of work, plant and machinery that are safe and without risks to health;
- Safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;
- Establish precautionary measures.

Remove, reduce and control by means of:

- Control measures.
- Safe working procedures.
- Implement precautionary measures.
- Provide training, information and supervision.
- Enforcement - all persons must comply.
- Scope of authority - inform employees.
- Plant or machinery is used under the general supervision of a person trained to understand the hazards
- And lastly –provision of personal protective equipment (PPE)

Employers have other obligations as stipulated in the Act insofar as employers must also ensure that all staff are informed of any potential hazards related to the work that they perform. They must ensure that staff are aware that they may not intentionally interfere with, misuse or damage anything that is provided for in the interests of health and safety at the workplace.

Furthermore, it is a requirement of the Act that employers undertake their business activities in such a manner that they do not adversely affect others, other than their employees that may potentially be affected by their work.

General duties of employees at work.

Section 14 of the Act outlines the requirements from Employees at work.

Every employee shall at work-

- Be responsible for the health and safety of himself and of others
- Co-operate

- Carry out any lawful order and obey rules
- Obey the health and safety rules and procedures laid down by his employer
- Report unsafe situations to a health and safety representative or to his employer
- 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
- Report not later than the end of the shift or workday
- If 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.

In order for staff to comply with the requirements of the Act, they need to be informed of them. Safety induction and training initiatives within the organization, as well as safe work procedures and toolbox talks will assist in reaching this objective. Also ensure that your staff are aware of accepted reporting mechanisms and guidelines for the organization and encourage all staff to report incidents at the workplace. Incidents are typically regarded as an event *“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 and machinery (OHAS section 24)”*

Your reporting mechanisms should encourage that staff report all incidents, even those incidents that do not result in injury, illness or damage to plant and machinery. This “near-miss” reporting is an invaluable risk management tool and if used correctly, will serve as a means of preventing any future similar occurrences which do result in injury, illness or damage. The reporting of incidents and near-misses forms an integral part of the newly released ISO 450001 safety management system.

Emergency Preparedness.

In order for the business to be prepared for emergencies arising out of the business activities or even due to unforeseen circumstances it is important to plan for different types of emergencies and to put contingencies in place.

Ensure that you have enough staff that have been trained in first aid who are readily available at the business. The employer must also ensure that suitable, appropriate and sufficient first aid supplies are available at the workplace in order for trained first aid staff to deal with emergencies. The Act does prescribe the legal minimum requirements for a first aid box in the General Safety Regulations Annexure – Section 3. These minimum requirements are merely a guideline and can and should be exceeded dependant on the inherent risks of the business.

In section 9 of the Environmental Regulations for Workplaces it discusses evacuations and emergency firefighting equipment. Many employers overlook the necessity of providing a safe and unobstructed means of escape in the event of an emergency. Task your SHE Representatives, managers and supervisors with ensuring that there are adequate means of egress from any facility in the event of a fire or similar emergency. It is always advisable to ensure that there is sufficient evacuation signage that is prominently displayed and clearly directs staff and visitors to the nearest and most appropriate emergency exit. Businesses are required to conduct and record regular emergency / fire evacuation drills. These are designed to test the effectiveness of your evacuation strategies and allow for changes and amendments to the strategies if needed. Be sure to train your staff and communicate any changes or amendments to your evacuation plans and procedures.

Most businesses do have fire extinguishers and some even have fire-hose reels installed. The question is, is the fire equipment maintained and serviced appropriately? The regulation stipulates;

*“an employer shall provide on the premises an adequate supply of **suitable fire-fighting** equipment at **strategic locations** or as may be recommended by the fire chief of the local authority concerned, and such equipment **shall be maintained in good working order**”*

Have you determined whether the fire fighting equipment at your business is suitable for the environment and the types of fires that may occur?

Are you certain that there are sufficient fire extinguishers and that they are located strategically?

Are the positions of all of your extinguishers and fire-hose reels identified by means of signs complying with the provisions of SANS 1186-1?

Are your extinguishers and fire hose reels maintained and in good working order?

Fire extinguishers and fire hose reels must be serviced annually by a competent person. In order to ensure that the technician that is servicing your fire equipment is registered you can verify this on the SAQCC website. <https://www.saqccfire.co.za/>

Furthermore, SANS 10105-1 stipulates that - *“To ensure the accessibility, reliability and usability of all extinguishers on site, a responsible person shall be nominated to inspect them at least once a month, or more frequently when circumstances so require.”*

Lastly, do any of your staff know how to operate the fire equipment that is provided in the business and do your staff know how to react in the event of a fire?

Basic fire training courses are provided by many training organisations and it is imperative that at least some of your staff know how to effectively operate a fire extinguisher in the event of a fire. These same staff can be tasked with conducting and recording monthly inspections as required by the standard.

The Way Forward

Some suggestions for working toward legal compliance would be:

- Conduct an internal audit to determine your compliance status or get a health and safety specialist to conduct the audit on your behalf.
- Draft a health and safety policy for the business. Communicate this policy and its objectives to your staff and encourage active participation from all staff in building a health and safety culture in the company.
- Conduct risk assessments and establish / implement appropriate controls and precautionary measures.
- Train staff in accordance with the risks identified.
- Nominate, train and appoint SHE Representatives
- Train and appoint first aiders.
- Train and appoint fire fighters
- Establish procedures for ensuring ongoing compliance.
- Establish reporting and incident investigation procedures.
- Provide staff with tools and training to conduct continuous risk assessment for the business.
- Conduct an evacuation drill and test the effectiveness of your evacuation strategy.
- Develop and implement a health and safety management system.
- If in doubt - **OUTSOURCE**