



**BASIC SAFETY &
TRAINING SOLUTIONS**



Email: basicsafetyolutions@outlook.com
Web: <https://basicsafetyandtraining.Solutions>
WhatsApp: 083 232 0322



Email: sheqpower@gmail.com
Tel: 079 222 8650

Legal Liabilities OHS Act



Occupational Health and safety Training Manual

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LEGAL LIABILITIES

1. Introduction

Workers in general are of the opinion that the only penalties that could be imposed on them are the ones discussed in Section 38 of the Occupational Health and Safety Act (Act 85 of 1993). They are completely unaware of the close relation between statute and common law which could be enforced by courts.

Notes:





2. The Constitution of South African 1996

Our constitution is regarded as one of the most effective constitutions in the world today. The constitution enshrines the rights of South African Citizens to be subjected to fair labour practices and the freedom to engage in trades and occupations that may be regulated by law.

Notes:





3. Law

3.1 Statute Law

A **statute** is a formal, written law of a country or state, written and enacted by its legislative authority, perhaps to then be ratified by the highest executive in the government (President), and finally published in the Government Gazette. Typically, statutes command, prohibit, or declare policy. Statutes are sometimes referred to as legislation or "black letter law."

Statute law is also referred to as Legislation. Examples of this are the OHS Act 1993, COIDA Act of 1993 and the Labour Relations Act of 1995. Legislation typically consists of:

3.1.1 Acts of Parliament

These are acts signed by the President. The 50 Sections of the OHS Act (Act 85 of 1993) is an example of an Act of Parliament.

3.1.2 Regulation passed by Ministers

The Regulations that forms part of the OHS Act is examples of these. The Minister responsible for these regulations usually appoints committees comprising of knowledgeable stakeholders to assist him to formulate the regulations.

3.1.3 Subordinate Legislation

These usually consist of Municipal Ordinances and by-laws and are the responsibility of local authorities and regulating bodies.



3.2 Common Law

In **common law** legal systems, the law is created and/or refined by judges: a decision in the case currently pending depends on decisions in previous cases and affects the law to be applied in future cases.

When there is no authoritative statement of the law, common law judges have the authority and duty to "make" law by creating precedent. The body of precedent is called "**common law**" and it binds future decisions. Ideally, when parties disagree on what the law is, a common law court looks to historic decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as *stare decisis*).

If, however, the court finds that the current dispute is fundamentally distinct from all previous cases, it will decide as a "matter of first impression." Thereafter, the new decision becomes precedent, and will bind future courts under the principle of *stare decisis*.

3.3 Customary Law

Customary law (unofficial law) exists where:

- a) a certain legal practice is observed and
- b) the relevant actors consider it to be law.

Most customary laws deal with standards of community that have been long-established in a given locale. However the term can also apply to areas of international law where certain standards have been nearly universal in their acceptance as correct bases of action - for example, laws against piracy or slavery. In many, though not all instances, customary laws will have supportive court rulings and case law that has evolved over time to give additional weight to their rule as law and also to demonstrate the trajectory of evolution (if any) in the interpretation of such law by relevant courts.



4. Legal Liability

In law a legal liability is a situation in which a person is liable, such in situations of wrong doing concerning property or reputation and is therefore responsible to pay compensation for any damage incurred; Legal liability may either be:

4.1 Civil liability

This is that branch of law dealing with disputes between individuals and/or organisations, in which compensation may be awarded to the victim. For instance, if a car crash victim claims damages against the driver for loss or injury sustained in an accident, this will be a civil law case.

4.2 Criminal liability

The term “*criminal law*”, sometimes called “*penal law*”, refers to any of various bodies of rules in different jurisdictions whose common characteristic is the potential for unique and often severe impositions as punishment for failure to comply. Criminal punishment, depending on the offence and jurisdiction, may include execution, loss of liberty, government supervision (parole or probation), or fines. Criminal law typically is enforced by the government, unlike the civil law, which may be enforced by private parties.

4.3 Vicarious liability

This liability under Common Law implies that a person or an employer can be held responsible for the misconduct of a person or employees under his or her control. Examples thereof could be when an under aged child damages property, or where employees strike and damage private property. In such cases it is likely that the parent and the employer respectively will be held liable for the misconduct.

In terms of the OHS Act, 1993, there is not really vicarious liability in its fullest sense.



The closest it comes thereto is in Section 37 where employers could be held liable for misconduct of employees or mandatories, but that is subject to certain conditions, which are as follows:

- a) The misconduct was without the permission of, or connivance of the employer.
- b) The misconduct was not within the scope of authority of the employee or mandatory (only applicable in the case where no written agreements have been made).
- c) All reasonable steps were taken by the employer to prevent the misconduct.

In other words, the employer cannot be held liable if the misconduct was done under the above-mentioned conditions.

4.4 Strict liability

This is where a person could be held liable without any fault or negligence on his or her side. This is a liability that is very seldom imposed on a person.

An example is a civil claim laid against a motor company for an accident in which a driver died. The accident was due to faulty tyres and not the vehicle but the motor company was found liable in terms of strict liability as the argument was that the product in its entirety was purchased and not the individual parts.



5. Negligence

Negligence is the failure to exercise the care that a reasonably prudent person would exercise in like circumstances. The area of law known as negligence involves harm caused by carelessness and is not regarded as intentional harm.

5.1 Duty of care

Duty of care is a legal obligation which is imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably cause harm to others or their property. It is the first element that must be established to proceed with an action in negligence. The claimant must be able to show a duty of care imposed by law which the defendant has breached. In turn, breaching a duty may subject an individual to liability. The duty of care may be imposed by operation of law between individuals with no current direct relationship (familial or contractual or otherwise), but eventually become related in some manner, as defined by common law (meaning case law).

Duty of care may be considered a formalisation of the social contract, the implicit responsibilities held by individuals towards others within society. It is not a requirement that a duty of care be defined by law, though it will often develop through the jurisprudence of common law.

5.2 Breach (break or neglect) of duty

Once it is established that the defendant owed a duty to the plaintiff/claimant, the matter of whether or not that duty was breached must be settled. The test is both subjective and objective. The defendant who knowingly (subjective) exposes the plaintiff/claimant to a substantial risk of loss, breaches that duty.

The defendant who fails to realise the substantial risk of loss to the plaintiff/claimant, which any **reasonable person** [objective] in the same situation would clearly have realised, also breaches that duty.



Breach of duty is not limited to professionals or persons under written or oral contract; all members of society have a duty to exercise reasonable care toward others and their property. A person who engages in activities that pose an unreasonable risk toward others and their property that actually results in harm, breaches their duty of reasonable care. An example is shown in the facts of *Bolton v. Stone*, a 1951 legal case decided by the House of Lords in the UK which established that a defendant is not negligent if the damage to the plaintiff was not a reasonably foreseeable consequence of his conduct. In the case, a Miss Stone was struck on the head by a cricket ball while standing outside her house. Cricket balls were not normally hit a far enough distance to pose a danger to people standing as far away as was Miss Stone. Although she was injured, the court held that she did not have a legitimate claim because the danger was not sufficiently foreseeable.

5.3 Proving negligence

The “Reasonable” or “Ordinary” man test

Under the common law, the court may view the acts or omissions of an accused person in terms of a legal test by comparing it to the actions of a reasonable man under similar circumstances.

This test requires the behavior of the accused to be of the standard which a reasonable or ordinary man would exhibit.

A defendant will be negligent by falling under the standards of the “ordinary” or “reasonable” person in his/her situation, i.e. by doing something which the reasonable man would not do, or failing to do something which the reasonable man would do.

To prove negligence on the part of an accused employer, the following questions must be asked:



- a) Could any reasonable man in the same position as the accused, have foreseen the possibility that the actions and omissions of the accused could have caused harm?
- b) Could any reasonable man in the same position as the accused have taken positive action to prevent the harm from occurring in the first place?

Did the actions of the accused deviate in any degree from that of a reasonable man? If it does, negligence is proven.

Notes:





6. Legislation

Legislation is derived from the basic rights of citizens of the country as described in the constitution. Specific law (legislation) describes the minimum requirements that must be exercised by individuals to honour the basic rights described in the constitution.

This further means that, in the workplace, every employer must take all other reasonable measures (over and above those described by law) based on company safety rules, to enable him to comply with the reasonable person principle.

A Health and Safety Organisation must be established through which the employer will ensure that the reasonable person principle is established, implemented and maintained as well as to enable him to comply fully with the requirements set by legislation, which in this case is the Occupational Health and Safety Act.

6.1 The Act and Regulations

The Act, known as the Occupational Health and Safety Act of 1993 (Act 85 of 1993) consists of 50 sections approved by Parliament. The purpose of the Act is to provide for the health and safety of persons at work or in connection with the use of plant and machinery. It further provides for the protection of persons other than persons at work from hazards arising out of or in connection with the activities of persons at work.

Various regulations, on specific topics, are incorporated into the Act from time to time by the Minister of Labour.

The Act or Regulations can be purchased from the Government Printer in Gazette format or bound format from various publishers.



6.2 Department of Labour

6.2.1 Chief Directorate of Occupational Health and Safety

The Occupational Health and Safety Act is administered by the Chief Directorate of Occupational Health and Safety of the Department of Labour.

In order to ensure the health and safety of workers, provincial offices have been established in all the provinces. To this end, occupational health and safety inspectors from these provincial offices carry out inspections and investigations at workplaces.

a) Inspections

Inspections are usually planned on the basis of accident statistics, the presence of hazardous substances, such as the use of benzene in laundries, or the use of dangerous machinery in the workplace. Unplanned inspections, on the other hand, usually arise from requests or complaints by workers, employers, or members of the public. These complaints or requests are treated confidentially.

☆ Powers of inspectors

If an inspector finds dangerous or adverse conditions at the workplace, he or she may enforce minimum requirements on the employer by issuing a:

○ Prohibition notice

In the case of threatening danger, an inspector may prohibit a particular action, process, or the use of a machine or equipment, by means of a prohibition notice. No person may disregard the contents of such a notice and compliance must take place with immediate effect.



- **Contravention notice**

If a provision of a regulation is contravened, the inspector may serve a contravention notice on the workers or the employer. A contravention of the Act can result in immediate prosecution, but in the case of a contravention of a regulation, the employer may be given the opportunity to correct the contravention within a time limit specified in the notice which is usually 60 days.

- **Improvement notice**

Where the health and safety measures which the employer has instituted, do not satisfactorily protect the health and safety of the workers, the inspector may require the employer to bring about more effective measures. An improvement notice which prescribes the corrective measures is then served on the employer.

- ☆ ***Other powers***

To enable the inspector to carry out his or her duties, he or she may enter any workplace or premises where machinery or hazardous substances are being used and question or serve a summons on persons to appear before him/her. The inspector may request that any documents be submitted to him/her, investigate and make copies of the documents, and demand an explanation about any entries in such documents.

The inspector may also inspect any condition or article and take samples of it, and seize any article that may serve as evidence.



Note: The above mentioned powers of inspectors are not absolute. Any person, who disagrees with any decision taken by an inspector, may appeal against that decision by writing to:

The Chief Inspector Occupational Health and Safety
Department of Labour
Private Bag x117
Pretoria 0001.

b) Appeals against the decisions of the Inspector (OHS Act Section 35)

Employers have the right to appeal against the decision of an inspector, but:

- ✧ He must not ignore any notices, even if he deems it unreasonable.
- ✧ Appeal within the 60 day period to the chief inspector.
- ✧ If one feels aggrieved by the decision of the Chief Inspector, a further appeal can be made to the Labour Court within 60 days.

Remember, an inspector is entitled to extend the 60 day period, but he or she cannot reduce it.

c) Disclosure of Information (OHS Act Section 36)

No person, (employers and employees) may disclose information on the affairs any person, except when:

- ✧ It is for administrative purposes of this Act.
- ✧ It is for administrative purposes of justice.



- ☆ A person (including health and safety representatives) is entitled thereto.

It means that such person must have written permission from the person concerned.

d) Health and Safety Policy (OHS Act Section 7)

Under normal circumstances employers are not required to have a policy, but if he has one, then it is legally binding and employers can be held liable for not complying with it.

What is the value of a policy in practice?

It is a written commitment of the employer confirming that he will comply with the requirements of the OHS Act by ensuring that:

- ☆ A safe and healthy work environment is provided, or
- ☆ Alternatives (reasonable measures) have been implemented.

If an employer does not have a policy, the Inspector from the Department of Labour may instruct him to acquire one.

The employer must now develop and implement a safety plan (or in the case of contractors, a contractor's pack) which must be audited once every month by the client or his agent to ensure compliance.

e) General duties of employers towards workers (OHS ACT Section 8)

What must the employer do to ensure that the work environment is safe and without risk to the health of workers?



The employer must provide and maintain all the equipment that is necessary to do the work, and all the systems according to which work must be done, in a condition that will not affect the health and safety of workers.

Before personal protective equipment may be used, the employer must first try to remove or reduce any danger to the health and safety of his/her workers. Only when this is not practicable, should personal protective equipment be used.

The employer must take measures to protect his/her workers' health and safety against hazards that may result from the production, processing, use, handling, storage or transportation of articles or substances, in other words, anything that workers may come into contact with at work.

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

- ☆ identify potential hazards which may be present while work is being done, something is being produced, processed, used, stored or transported, and any equipment is being used;
- ☆ establish the precautionary measures that are necessary to protect his/her workers against the identified hazards and provide the means to implement these precautionary measures;
- ☆ provide the necessary information, instructions, training and supervision while keeping the extent of workers' competence in mind. In other words, what they may do and may not do;
- ☆ not permit anyone to carry on with any task unless the necessary precautionary measures have been taken;



- ☆ take steps to ensure that every person under his/her control complies with the requirements of the Act;
- ☆ enforce the necessary control measures in the interest of health and safety;
- ☆ see to it that the work being done and the equipment used, is under the general supervision of a worker who has been trained to understand the hazards associated with the work;
- ☆ such a worker must ensure that the precautionary measures are implemented and maintained.

f) All workers have the right to be informed (OHS Act Section 13)

The employer must see to it that every worker is informed and clearly understands the health and safety hazards of any work being done, anything being produced, processed, used, stored, handled or transported, and any equipment or machinery being used. The employer must then provide information about precautionary measures against these hazards.

The employer must inform health and safety representatives when an inspector notifies him/her of inspections and investigations, to be conducted at the premises. The employer must also inform health and safety representatives of any application for exemption made, or of any exemption granted to him/her in terms of the Act. Exemption means being exempted from certain provisions of the Act, regulations, notices or instructions issued under the Act.

The employer must, as soon as possible, inform the health and safety representatives of the occurrence of an incident in the workplace. An incident is an event that occurs at the workplace where a person is killed, injured or becomes ill.



It is also the spillage of a hazardous chemical substance, for example, when a tank leaks formaldehyde (a chemical product used in industry) due to a faulty valve, or where machinery runs out of control, without killing or injuring anyone.

g) General duties of manufacturers, designers, importers, sellers or suppliers regarding the use of articles and substances at work (OHS Act Section 10)

Manufacturers, designers, importers, sellers and suppliers must ensure that:

- ☆ their articles are safe and without risk to health and comply with all prescribed requirements;
- ☆ when a structure or an article is installed on any premises, it must be done in such a way that neither an unsafe situation not a health risk is created. Substances.

Manufacturers, designers, importers, sellers and suppliers of any substances must ensure that:

- ☆ such substances are safe and without risk to health when it is used properly;
- ☆ information is available on the:
 - use of the substance at work;
 - health and safety risk associated with the substance;
 - conditions that are necessary to ensure that the substance will be safe and without risk to health when properly used;
 - procedures in case of an accident.



If a person to whom an article or substance has been sold or supplied, undertakes in writing to take specified steps to ensure that the article or substance will meet all the prescribed requirements, and will be safe and without risk to health, the duties of the importer, designer, seller, supplier or manufacturer will subsequently shift to the person who undertakes to take such steps.

h) General duties of the worker (OHS Act Section 14)

It is the duty of the worker to:

- ☆ take care of his/her own health and safety, as well as that of other persons who may be affected by his/her actions or negligence to act. This includes playing at work. Many people have been injured and even killed owing to horseplay in the workplace, and that is considered a serious contravention;
- ☆ where the Act imposes a duty or requirements on the employer to cooperate fully with the employer to enable him to achieve compliance;
- ☆ give information to an inspector from the Department of Labour if he/she should require it;
- ☆ carry out any lawful instruction which the employer or authorised person prescribes with regard to health and safety;
- ☆ comply with the rules and procedures that the employer gives him/her;
- ☆ wear the prescribed safety clothing or use the prescribed safety equipment where it is required;



- ✧ report unsafe or unhealthy conditions to the employer or health and safety representative as soon as possible;
- ✧ if he/she is involved in an incident that may influence his/her health or cause an injury, report that incident to the employer and authorised person or the health and safety representative as soon as possible, but no later than by the end of the shift.

i) Acts and Omissions of employees (OHS Act Section 37)

Vicarious liability in terms of Common Law applies in this case. This means that the employer can be held liable for acts or omissions of employees.

The OHS Act states that employers can be held liable unless:

- ✧ The misconduct was without involvement or permission;
- ✧ The misconduct was not within the person's scope of authority;
- ✧ All reasonable steps were taken by the employer to prevent the misconduct.

Vicarious liability in terms of Common Law means that the employer can be held liable for acts or omissions done by agents (mandatories).

The OHS Act states that employers could be held jointly liable for acts or omissions of contractors, unless there is a written agreement (contract) between the employer and the mandatory.

Remember - employers are responsible to ensure that ALL persons on his or her premises comply fully with the Act.



By simply giving verbal instructions forbidding wrongful acts are not acceptable as sufficient proof that the employer exercised all reasonable steps to prevent the act or omission in question. This implies that an agreement must be formulated and signed by both parties stipulating in writing to the arrangements and procedures between them to ensure compliance by the mandatory with the provisions of the OHS Act. This agreement is referred to as a 37(2) agreement.

If the employer fails to make provision for a written agreement and the mandatory does or omit to comply with lawful requirements he may be prosecuted and jailed for the offence.

If however a written agreement is in place, the mandatory shall be prosecuted and jailed as if he was the employer at the time that the offence was committed.

j) Rights of the worker

The Occupational Health and Safety Act have extended the workers' rights to include the following:

Right to information

The worker must have access to:

- ✧ the Occupational Health and Safety Act and regulations;
- ✧ health and safety rules and procedures of the workplace;
- ✧ health and safety standards which the employer must keep at the workplace. The worker may request the employer to inform him/her about :
 - health and safety hazards in the workplace;
 - the precautionary measures which must be taken;



- the procedures that must be followed if a worker is exposed to substances hazardous to health. The worker may request that his/her private medical practitioner investigate his/her medical and exposure records.

If the worker is a health and safety representative, he/she may investigate and comment in writing on exposure assessments and monitoring reports.

Right to participate in inspections

If the worker is a health and safety representative, he/she may accompany a health and safety inspector from the Department of Labour during an inspection of the workplace and answer any questions the inspector may ask.

Right to comment on legislation and make representations

The worker may comment or make representations on any regulation or safety standard published under the Occupational Health and Safety Act.

Right not to be victimised

An employer may not dismiss a worker from his/her service, reduce a worker's salary or reduce a worker's service conditions because:

- ☆ the worker supplied information, which is required of him/her in terms of the Act, to someone who is charged with the administration of the Occupational Health and Safety Act



- ✧ the worker complied with a lawful notice, (e.g. a prohibition, contravention notice, etc.)
- ✧ the worker did something which in terms of the Act should have been done
- ✧ the worker did not do something which in terms of the Act is prohibited
- ✧ the worker has given evidence before the Labour Court or a Court of Law on matters regarding health and safety. Right to appeal

The worker may appeal against the decision of an inspector.
Appeals must be referred in writing to:

The Chief Inspector Occupational Health and Safety
Department of Labour
Private Bag X117
Pretoria 0001

k) Duty not to interfere with or misuse objects (OHS Act Section 15)

No-one may interfere with or misuse any object that has been provided in the interest of health and safety. A person may, for example, not remove a safety guard from a machine and use the machine or allow anybody else to use it without such a guard.



I) The OHS Act and how it is affected by Agreements (OHS Act Section 41)

The only agreements that can affect the Act are:

- ☆ An exemption being granted by the Minister that may be granted when compliance is either not possible or not necessary;
- ☆ Section 10(4) - the selling of equipment that doesn't comply with the Act;
- ☆ Section 37(2) - the arrangement between an employer and a mandatory (contractor).

m) The Employer

To define “**an employer**” means, subject to the provisions of subsection (2)* of the Occupational Health and Safety Act (Act 85 of 1993), 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 1 (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);

- * 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.***

From the above, it is clear that it is not only the owner, CEO and/or Directors of an organisation that are technically speaking regarded as “employers”.



The board of directors of an organisation may within their scope of authority designate one of the board members to be responsible for Health and Safety in the organisation. This director will then be regarded as the 16.1 (or employer) and may delegate his authority as described in OHS Act section 16.2.

– **CEO Charged with certain duties (OHS Act Section 16)**

The CEO is mainly responsible, but may assign any duty to any person who shall act under his or her direction and control:

The assignee then becomes the "employer" or part thereof. The CEO is responsible to ensure that the employer (organisation) complies with all the applicable requirements of the Act. A CEO doesn't have to be appointed - he or she is automatically "appointed" in terms of Section 16(1).

How does, he or she ensure compliance?

By assigning duties to any person who shall:

- a) Act under his or her direction and control.
- b) Manage the persons being appointed.
- c) Get concise, to the point feedback.

These appointments are referred to as 16(2) appointments.

– **Controversial issues**

Can a Section 16(2) appoint another Section 16(2)?

Legally speaking he cannot, because the Occupational Health and Safety Act stipulates that only the CEO may assign his or her duties.



If any appointment is required in terms of section 16.2, the appointment must be made by the CEO or person assigned to act on behalf of the board of directors.

Can a 16(2) designate refuse to sign a legal appointment?

Yes he or she can, but in terms of Common Law they still are responsible. *The master is responsible for the well being of his servants.*

What is the solution to this?

Don't allow a Section 16(2) appointee to appoint further in terms Section 16(2).

Why not?

- a) The intention never was for this appointment to be watered down.
- b) Any person being assigned in terms of Section 16(2) can assign other persons with specific duties to assist him by referring to the specific Section of the Act.

Assignees have to know:

- c) Their responsibilities.
- d) The applicable legal requirements.
- e) Their legal liabilities.
- f) Whether they can reasonably manage and “execute” their appointment.



n) Health and safety representatives (OHS Act Section 17)

What are health and safety representatives?

They are full-time workers nominated and elected by the workers and designated in writing by the employer after the employer and workers consulted one another and reached an agreement about who will be health and safety representatives. Further they must at least be familiar with the circumstances and conditions at that part of the workplace for which they are designated. Agreement must also be reached on the period of office and functions of the health and safety representative and must be settled amongst the employer and the workers.

How many health and safety representatives must be designated?

A representative must be designated for every workplace consisting of 20 or more workers. Therefore, where only 19 workers are employed, it is not necessary to designate a representative.

In the case of shops and offices, one representative must be designated for every 100 workers or part thereof. For example, one representative must be designated in the case of 21 to 100 workers. But two representatives must be designated where 101 to 200 workers are employed.

In the case of other workplaces, one representative must be designated for every 50 workers or part thereof. For example, one representative must be designated in the case of 21 to 50 workers. But two representatives must be designated where 51 to 100 workers are employed.



Depending on circumstances, an inspector may require the designation of more representatives, even in the case where the number of workers is less than 20. For example, the layout of a plant may be of such a nature that the designation of only one representative for 50 workers is insufficient. The inspector may then require the designation of more representatives. However, if the employer and workers so agree, more than the prescribed number of representatives may be designated.

When must health and safety representatives be designated?

Within four months after the commencement of the employer's business.

An employer with more than 20 workers, whose business is operative for less than four months, does not have to designate representatives. In the case where, for example, seasonal workers are employed on farms, causing the number of workers to exceed 20 for a period less than four months, the designation of representatives is also not necessary.

When must health and safety representatives perform their activities?

All activities regarding the designation, function and training of representatives must be performed during normal working hours.



What may health and safety representatives do?

Health and safety representatives are entitled to do the following:

- **Health and safety audits**

Representatives may check the effectiveness of health and safety measures by means of health and safety audits.

- **Identify potential dangers**

Representatives may identify potential dangers in the workplace and report them to the health and safety committee or the employer.

- **Investigate incidents**

Representatives may together with the employer investigate incidents, investigate complaints from workers regarding health and safety matters, and report about it in writing.

- **Make representations**

Representatives may make representations regarding the safety of the workplace to the employer or the health and safety committee or, where the representations are unsuccessful, to an inspector.

- **Inspections**

As far as inspections are concerned, representatives may:

- i. inspect the workplace after notifying the employer of the inspection
- ii. participate in discussions with inspectors at the workplace and accompany inspectors on inspections
- iii. inspect documents
- iv. with the consent of his/her employer, be accompanied by a technical advisor during an inspection.



– **Attend committee meetings**

Representatives shall attend health and safety committee meetings.

o) Health and safety committees (OHS Act Section 19 & 20)

What is the purpose of health and safety committees?

Members meet in order to initiate, promote, maintain and review measures of ensuring the health and safety of workers.

When must health and safety committees be established?

At least one committee must be established when two or more representatives are designated.

How many members does a health and safety committee comprise of?

The employer determines the number of committee members, based on the following:

- if only one committee has been established for a workplace, all the representatives must be members of that committee
- if two or more committees have been established for a workplace, each representative must be a member of at least one of those committees. Therefore, every representative must be a member of a committee. The employer may also nominate other persons to represent him/ she on a committee but such nominees may not be more than the number of representatives designated on that committee.



- If, however, an inspector is of the opinion that the number of committees in a workplace is inadequate, he or she may determine the establishment of additional committees.

How often do health and safety representatives meet?

They meet whenever it is necessary, but at least once every three months. The committee determines the time and place. However, if 10% or more of the workers make a written request for a meeting to the inspector, the inspector may order that such a meeting be held at a time and place which he/she determines.

Who determines the procedure at the meeting?

The members of the committee elect the chairperson and determine his or her period of office, meeting procedures, etc.

May health and safety committees consult experts for advice?

Yes, committees may co-opt persons as advisory members for their knowledge and expertise on health and safety matters. However, an advisory member does not have the right to vote.

What do health and safety committees do?

The committees only deal with health and safety matters at the workplace or sections thereof for which such committees have been established. Generally, health and safety committees have the following functions:



- ***Make recommendations***

A committee must make recommendations to the employer about the health and safety of workers. Where these recommendations do not lead to solving the matter, the committee may make recommendations to an inspector.

- ***Discuss incidents***

A committee must discuss any incident that leads to the injury, illness, or death of any worker and may report about it in writing to the inspector.

- ***Recordkeeping***

A committee must keep record of every recommendation to the employer and every report to an inspector.

- ***Other functions***

Committee members must perform any other functions in favour of occupational health and safety as may be required of them by legislation and by their employer.

p) Deductions (OHS Act Section 23)

An employer may not make any deduction from a worker's salary with regard to anything he/she is required to do in the interest of health and safety in terms of the Act.

q) Reporting of Incidents (OHS Act Section 24)

The following must be reported to the Department of Labour:

Incidents that cause death, unconsciousness, loss of a limb or part thereof, occupational disease, physical defect, or incidents that results in a worker being off-duty for 14 days or longer due to an injury or illness.



Off-duty means not being able to continue with normal duties.

Major incidents (incidents of catastrophic proportions). The intention is that members of public must not be affected. This includes:

- The release of toxic substances;
- Explosions;
- Fires.

This means that the following incidents have to be reported:

- spillages of s dangerous substances.
- An uncontrolled release of substance under pressure.
- Fractured machinery - uncontrolled, flying or falling objects.
- Machinery that ran out of control.

Remember - endangerment also means anything that may (it has potential) cause injury or damage to persons or property or machinery.

Incidents that do not have to be reported

- Traffic, aviation and household incidents. These must be reported to the SAPS.

Reporting has to be done:

- In writing (WCL 1 or 2) within the prescribed period (GAR 8) – i.e. 7 days.
- Immediate reporting (telephone, fax, e-mail, etc.) except where a person will be off-duty 14 days or more.



❖ Prescribed manner (see GAR 8) - that is either on a:

- WCL 1 form - for occupational disease or
- WCL 2 form - for occupational injuries.

r) Report to the Chief Inspector regarding occupational diseases (OHS Act Section 25)

If a medical practitioner examines or treats someone for a disease that he/she suspects arose from that worker's employment, the medical practitioner must report the case to the worker's employer and to the Chief Inspector.

s) Cooperation with the inspector

Compliance with directions, subpoenas, requests or commands

Employers and workers must comply with the directions, subpoenas, requests or orders of inspectors. In addition, no one may prevent anyone else from complying.

Answering questions

The inspector's questions should be answered, but no-one is obliged to answer a question by which he/she might incriminate him/herself. To incriminate oneself means that one is suggesting that one is responsible for a contravention.

Investigations

When the inspector so requires, he/she must be provided with the necessary means and be given the assistance he/she may need to hold an investigation.



The inspector may also request that investigations be attended by individuals who may assist the inspector with the investigation. No one may insult the inspector or deliberately interrupt the investigation.

t) Penalties

When the worker does something which in terms of the Occupational Health and Safety Act is regarded as an offence, the employer is responsible for that offence, and he or she could be found guilty and sentenced for it, unless the employer can prove that:

- he/she did not give his/her consent
- he/she took all reasonable steps to prevent it
- the worker did not act within the scope of his/her competence, in other words, that the worker did something which he/she knew he/she should not have done.

The foregoing also applies to a mandatory of an employer, for example a subcontractor, unless the parties agree beforehand in writing on how the mandatory will comply with the provisions of the Act.

Notes:


