

## **Occupational Health and Safety Act, 1993 General Administrative Regulations, 2003**

The Minister of Labour has, under section 43 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), after consultation with the Advisory Council for Occupational Health and Safety, made the regulations in the Schedule.

### **1. Definitions**

In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates -

#### **"bargaining council"**

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means the bargaining council established by section 27 of the Labour Relations Act;

#### **"CCMA"**

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means the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Labour Relations Act;

#### **"Compensation Commissioner"**

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means the Compensation Commissioner appointed under section 2 of the Compensation for Occupational Injuries and Diseases Act, 1993;

#### **"Compensation for Occupational Injuries and Diseases Act"**

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means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

#### **"Labour Court"**

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means the Labour Court established by section 151 of the Labour Relations Act;

#### **"Labour Relations Act"**

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means the Labour Relations Act, 1995 (Act No. 66 of 1995);

#### **"provincial director"**

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in respect of the-

- a) Province of Eastern Cape, means the Provincial Director: Eastern Cape, Department of Labour, Private Bag X9005, East London, 5200;
- b) Province of Free State, means the Provincial Director: Free State, Department of Labour, P.O. Box 522, Bloemfontein, 9300;
- c) Province of Gauteng in the Magisterial Districts of-
  - i) Benoni, Bronkhorstspuit, Cullinan, Krugersdorp, Nigel, Pretoria, Randfontein, Soshanguve 1, Soshanguve 2, Springs and Wonderboom, means the Provincial Director: Gauteng North, Department of Labour, P. O. Box 393, Pretoria, 0001; or
  - ii) Alberton, Boksburg, Brakpan, Germiston, Heidelberg, Johannesburg, Kemptonpark, Oberholzer, Randburg, Roodepoort, Vanderbijlpark, Vereeniging and Westonaria,

means the Provincial Director: Gauteng South, Department of Labour, P. O. Box 4560, Johannesburg, 2000;

- d) Province of KwaZulu-Natal, means the Provincial Director: KwaZulu-Natal, Department of Labour, P. O. Box 940, Durban, 4000;
- e) Province of Mpumalanga, means the Provincial Director: Mpumalanga, Department of Labour, Private Bag X7263, Witbank, 1035;
- f) Province of the Northern Cape, means the Provincial Director: Northern Cape, Department of Labour, Private Bag X5102, Kimberley, 8300;
- g) Limpopo Province, means the Provincial Director: Limpopo, Department of Labour, Private Bag X9368, Pietersburg, 0700;\
- h) Province of North West, means the Provincial Director: North West, Department of Labour, Private Bag X1 , Buhrmansdrif, 2867; or
- i) Province of the Western Cape, means the Provincial Director: Western Cape, Department of Labour, P. O. Box 872, Cape Town, 8000, and

### **"provincial executive manager"**

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has a corresponding meaning;

### **"registered trade union for a workplace"**

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means a trade union registered in terms of the Labour Relations Act, with members in that workplace;

### **"the Act"**

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means the Occupational Health and Safety Act, 1993(Act No. 85 of 1993); and

### **"WCL 1", "WCL 2" and 'WCL 22"**

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means the prescribed forms for reporting of incidents and occupational diseases referred to in the Compensation for Occupational Injuries and Diseases Act.

## **2. Access to premises**

- 1) No person shall refuse an inspector entry into his or her premises to perform his or her functions unless that person is authorized to do so by any other law.
- 2) An inspector or his or her assistant may require an employer or user to make a person available who has full knowledge of the hazards associated with the activities of the workplace to accompany him or her during the entire visit of the workplace.

## **3. Exemption**

A certificate of exemption issued in terms of section 40 of the Act shall be signed by the chief inspector.

## **4. Copy of the Act**

Every employer with five or more persons in his employ shall have a copy of the Act and the relevant regulations readily available at the work place: Provided that, where the total number of employees is less than five, the employer shall, on request of an employee, make a copy of the Act available to that employee.

## **5. Health and safety committee**

- 1) Where a health and safety committee has been established in terms of section 19 of the Act, an employer shall-
  - a) make available a suitable meeting place to such committee; and
  - b) ensure that the records, as contemplated in section 20(2) of the Act, are kept for a period of at least three years.

## **6. Negotiations and consultations before designation of health and safety representatives**

- 1) The employer shall, in any workplace where there must be a health and safety representative in terms of section 17(1) of the Act and within four months after the commencement of these regulations or after commencing business, meet with the registered trade unions of that workplace in order to consult or bargain in good faith and conclude an agreement concerning the-
  - a) nomination or election of health and safety representatives;
  - b) terms of office of health and safety representatives and the circumstances and the prescribed manner in which they may be removed as health and safety representatives;
  - c) manner in which vacancies are to be filled;
  - d) manner in which health and safety representatives must perform their functions in terms of the Act; and
  - e) facilities, training and assistance that must be provided to a health and safety representative in terms of section 18(3) of the Act;  
Provided that, where there is no registered trade union, the employer shall enter into consultation with all employee representatives in that workplace in order to conclude an agreement with regard to subregulation (1).
- 2) An agreement referred to in subregulation (1) may include two or more employers as parties to the agreement.
- 3) The conditions applicable to collective agreements in terms of the Labour Relations Act, read with the changes required by the context, shall apply to agreements concluded in terms of subregulation (1).
- 4) A dispute shall exist if no agreement in terms of subregulation (1) is concluded on the arrangement and procedures for the nomination and the election of health and safety representatives at a workplace.
- 5) If a dispute exists in terms of subregulation (4), any party to the dispute may refer the dispute to the CCMA or Bargaining Council.
- 6) If a dispute is referred to the CCMA or Bargaining Council under subregulation (9), the CCMA shall attempt to resolve it through conciliation.
- 7) If a dispute remains unresolved, any party to the dispute may request that it be resolved through arbitration, in which case the CCMA shall, taking into account the objectives of the Act and the proposals of the parties, determine the arrangement and procedures for the nomination or the election of the health and safety representatives.

## **7. Designation of health and safety representatives**

***[deleted by General Amendment No. R.930 as published in Government Gazette No. 25130 dated 25 June 2003]***

## **8. Reporting of incidents and occupational diseases**

- 1) An employer or user, as the case may be, shall-

- a) within seven days of any incident referred to in section 24(1)(a) of the Act, give notice thereof to the provincial director in the form of WCL1 or WCL2; and
  - b) where a person, in consequence of such an incident, 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 or she is likely either to die or to suffer a permanent physical defect, such incident, including any other incident contemplated in section 24(1)(6) and (c) of the Act, shall forthwith also be reported to the provincial director by telephone, facsimile or similar means of communication.
- 2) If an injured person dies after notice of the incident in which he or she was injured was given in terms of subregulation (1), the employer or user, as the case may be, shall forthwith notify the provincial director of his or her death.
  - 3) Whenever an incident arising out of or in connection with the activities of persons at work occur to persons other than employees, the user, employer or self-employed person, as the case may be, shall forthwith notify the provincial director by facsimile or similar means of communication as to the-
    - a) name of the injured person;
    - b) address of the injured person;
    - c) name of the user, employer or self-employed person;
    - d) address of the user, employer or self-employed person;
    - e) telephone number of the user, employer or self-employed person;
    - f) name of contact person;
    - g) details of incident:
      - i) What happened;
      - ii) where it happened (place);
      - iii) when it happened (date and time);
      - iv) how it happened;
      - v) why it happened; and
    - h) names of witnesses.
  - 4) Any registered medical practitioner shall, within 14 days of the examination or treatment of a person for a disease contemplated in section 25 of the Act, give notice thereof to the chief inspector and the employer in the form of WCL22.
  - 5) Any other person not contemplated in this regulation may in writing give notice of any disease contemplated in section 25 of the Act, to the employer and chief inspector.

## **9. Recording and investigation of incidents**

- 1) An employer or user shall keep at a workplace or section of a workplace, as the case may be, a record in the form of Annexure 1 for a period of at least three years, which record shall be open for inspection by an inspector, of all incidents which he or she is required to report in terms of section 24 of the Act and also of any other incident which resulted in the person concerned having had to receive medical treatment other than first aid.
- 2) An employer or user shall cause every incident, which must be recorded in terms of subregulation (1), to be investigated by the employer, a person appointed by him or her, by a health and safety representative or a member of a health and safety committee within 7 days from the date of the incident and finalised as soon as is

reasonably practicable, or within the contracted period in the case of contracted workers.

- 3) The employer or user shall cause the findings of the investigation contemplated in subregulation (2) to be entered in Annexure 1 immediately after completion of such investigation.
- 4) An employer shall cause every record contemplated in subregulation (1) to be examined by the health and safety committee for that workplace or section of the workplace at its next meeting and shall ensure that necessary actions, as may be reasonable practicable, are implemented and followed up to prevent the recurrence of such incident.

#### **10. Witness at inquiry**

- 1) When an inspector is directed to hold a formal inquiry into an incident in terms of section 32(1) of the Act, he or she shall notify the employer or user concerned of the date, time and place of such inquiry.
- 2) The employer or user shall forthwith advise in writing those persons who witnessed an incident, the union recognised by him or her and any other person specified by the inspector, of such date, time and place, and that their presence shall be required at the inquiry.
- 3) The employer or user concerned shall ascertain which of the persons he or she has advised in terms of subregulation (2) are likely to refuse to attend the inquiry, and shall forthwith advise the inspector of the names and addresses of such persons in for the inspector to subpoena such persons.
- 4) A subpoena issued in terms of section 32(2) of the Act shall be in the form of Annexure 2: Provided that, when a subpoena is served personally on a person, the service of such subpoena may be effected by any person authorised thereto by the inspector who has signed it.

#### **11. Returns**

An employer or a user shall on demand furnish the inspector with such returns as may be required for the purposes of the administration of the Act.

#### **12. Offences and penalties**

- 1) Any person who-
  - a) contravenes or fails to comply with any provision of regulations 2(1), 4, 5, 6(1), 7, 8(1), 8(2), 8(3), 8(4), 9(1), 9(2), 9(3), 9(4), 10(2) or 10(3);
  - b) fails to furnish a return required in terms of regulation 11; or
  - c) refuses or fails to comply, to the best of his or her ability, with a request made by the inspector to make available a person to accompany him or her during the visit of the workplace, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months and, in the case of a continuous offence, to an additional fine of R200 for each day on which the offence continues or to additional imprisonment of one day for each day on which the offence continues: Provided that the period of such additional imprisonment shall in no case exceed 90 days.

#### **Annexures**

***[Annexure 1 deleted by General Amendment No. R.930 as published in Government Gazette No. 25130 dated 25 June 2003]***

**FORMS LEFT OUT**