

An Introduction to OHSA and COIDA



Facilitated by Lucinda van Rensburg
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Workshop Objectives

- Interpretation
- COIDA vs OHSA
- OHSA
- Regulations
- Managing COVID in terms of OHSA
- Health and Safety Standards
- Role players and responsibilities
- Liability
- Risk
- Compliance
- Draft OHS Bill
- COIDA
- Role players
- Incidents and Disablement
- S22 Right to compensation occupational injuries
- S65 Right to compensation for occupational diseases & Schedule 3
- S35 Limitation liability
- S89 Contractors Certificate of good standing
- The way forward




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RULES OF INTERPRETATION



Step 1


Start with the definitions
Unless the context otherwise
indicates...





Step 2

If no definition – Dictionary meaning;
Ordinary everyday words get their
ordinary everyday meaning



Step 3

Law should not be interpreted in isolation

ignorantia iuris non excusat

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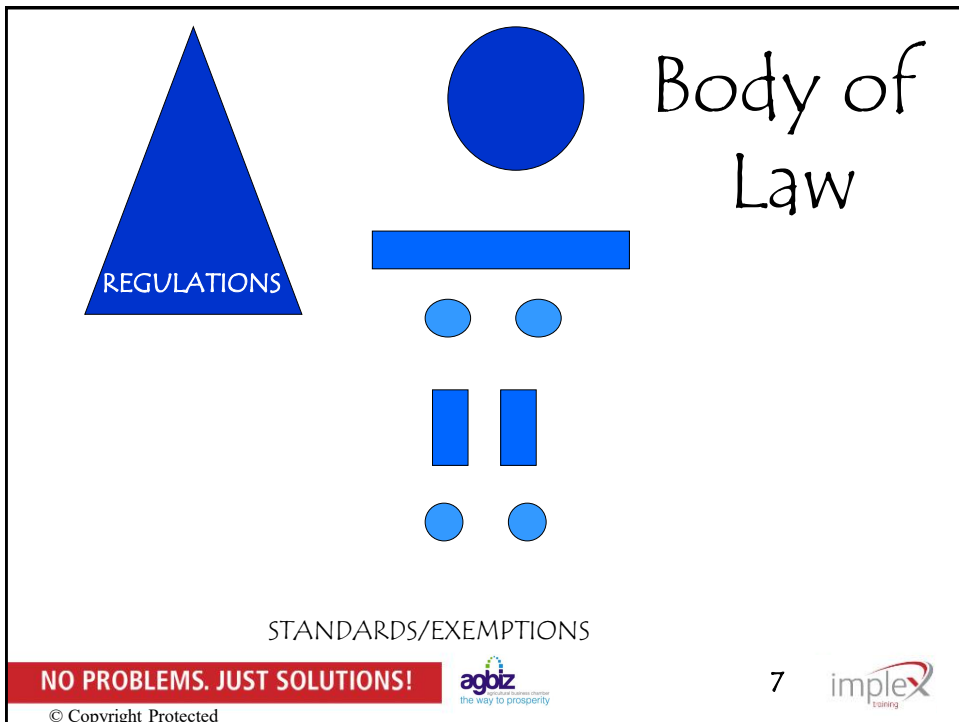
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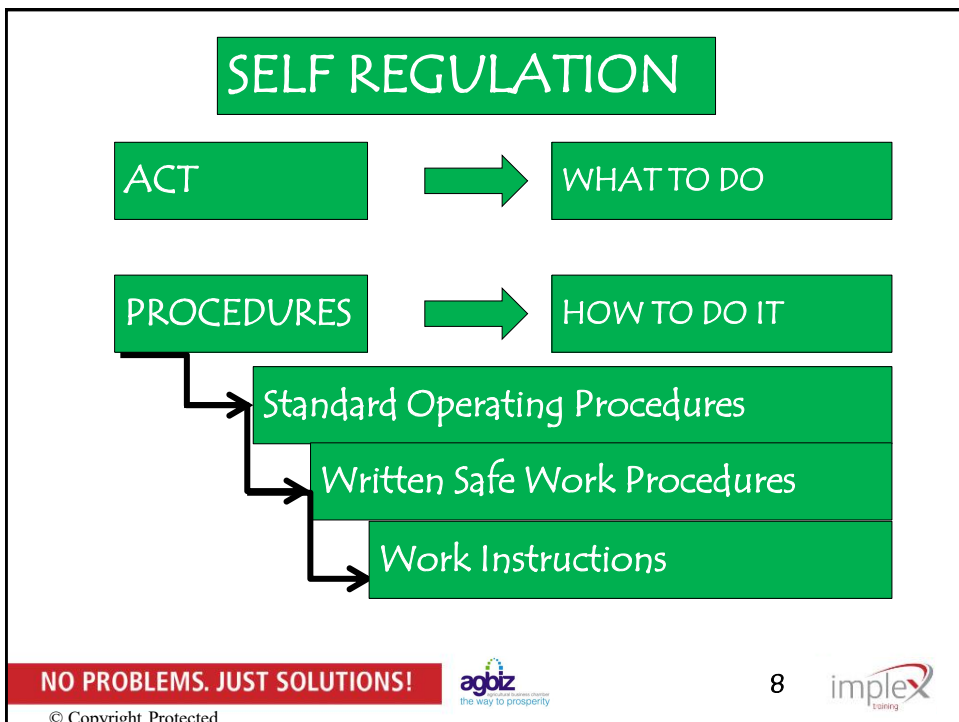
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Objectives of the legislation

- COIDA
- To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases
- OHSA
- To provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery;
- The protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work



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OHSA	COIDA
	
<p>Punitive measures Criminal Liability Employee or Employee For non-compliance</p>	<p>Compensation Fund Funded by Employer Contributions Compensate Employee</p>

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Occupational Health and Safety Act, Act 85 of 1993


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this Act

Includes any regulation

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S43 Regulations

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S43 Regulations

- Minister may make regulations on OHS matter after Consultation with
 - Council
 - Minister of State Expenditure (if applicable)
 - Minister of Health (if applicable)
- Penalties for having contravened any regulation
- Any regulation made under the previous Act deemed to be made under OHSA

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General Regulations

- General Administrative Regulations, GNR. 929 of 25 June 2003
- General Safety Regulations, GNR. 1031 of 30 May 1986
- Explosive Regulations, GNR. 109 of 17 January 2003
- Construction Regulations, GNR. 84 of 7 February 2014
- Health and Safety of Children at Work Regulations, GNR. 7 of 15 January 2010
- Major Hazard Installation Regulations, GNR. 692 of 30 July 2001
- **Draft Major Hazard Installation Regulations, GNR.1483 of 15 November 2019**

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Health Regulations

- **Regulations for Hazardous Chemical Agents, GNR.280 of 29 March 2021**
- Lead Regulations, GNR. 236 of 28 February 2002
- Noise Induced Hearing Loss Regulations, GNR. 307 of 7 March 2003
- Regulations for Hazardous Biological Agents, GNR. 1390 of 27 December 2001
- **Regulations for Hazardous Biological Agents, GNR.1887 of 16 March 2022**

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STAATSKOERANT, 16 MAART 2022 No. 46051 3

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DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 1887 **16 March 2022**

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993
HAZARDOUS BIOLOGICAL AGENTS REGULATIONS, 20...

The Minister of Employment and 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.


MR TW NXESI MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 03/03/2022

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STAATSKOERANT, 15 FEBRUARIE 2022 No. 46043 3

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DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 187615 February 2022


**CODE OF PRACTICE: MANAGING EXPOSURE TO SARS-COV-2 IN THE
WORKPLACE, 2022**

Notice is hereby given that the Code of Good Practice: Managing Exposure to SARS-CoV-2 in the Workplace set out in the Schedule is issued by the Minister of Employment and Labour after consideration by NEDLAC in terms of section 203(2A) of the Labour Relations Act, 1995 (Act No. 66 of 1995) to take effect on the date of the lapsing of the Declaration of a National State of Disaster declared under GN313 of 15 March 2020 and extended in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002).

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Health Regulations

- **Asbestos Abatement Regulations, GNR.1196 of 10 November 2020**
 - **Amendments Asbestos Abatement Regulations GNR2092 of 20 May 2022**
- **Ergonomics Regulations, GNR.1589 of 6 December 2019**
- Environmental Regulations for Workplaces, GNR. 2281 of 16 October 1987
- Facilities Regulations, GNR. 924 of 3 August 2004
- **Commercial Diving Regulations, GNR. 2091 of 20 May 2022**

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Mechanical Regulations

- Driven Machinery Regulations, GNR.540 of 24 June 2015
- General Machinery Regulations, GNR. 1521 of 5 August 1988
- Lift, Escalator and Passenger Conveyor Regulations, GNR. 828 of 17 September 2010
- Regulations Concerning the Certificate of Competency, GNR. 533 of 16 March 1990
- Pressure Equipment Regulations, GNR. 734 of 15 July 2009
- **Draft Pressure Equipment Regulations, GoN. 606 of 9 July 2021**

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Electrical Regulations

- Electrical Installation Regulations , GNR. 242 of 6 March 2009
- Electrical Machinery Regulations , GNR. 250 of 25 March 2011

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S44 Incorporation of H&S Standards

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S44 Incorporation of H&S Standards

- Minister may incorporate any H&S standard
 - Notice of incorporation published in the Gazette
 - After consultation with Council
 - Doesn't have to publish the whole standard can refer to
 - Reference number
 - Title
 - Year of issue
- If the wording incorporated H&S standard is used it must be formally incorporated at the end of a set of regulations

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Employer



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).



Labour Broker

- The distinguishing feature of a labour broker is the nature of the service provided
- Provision of workers for the client
- **Not** provision of a service by using his employees
- **Rather** provision of employees as a service to a client

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8	1	As far as is reasonably practicable, provide and maintain a workplace that is safe and without risk to health of employee	a	Systems
			b	PPE last resort
			c	Stop Employee
			d	HIRA-C
			e	TISI
8	2	Without derogating from the generality of an employer's duties under S8(1), the matters to which those duties refer include in particular:	f	Implement measures
			g	Comply OHSA
			h	Enforce
			i	Supervision
			j	Scope of authority

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Reasonably practicable

Practicable having regard to -

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

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Reasonable Steps in H&S



1.1 Hazard Identification

1.2 Risk Assessment



Eliminate
& Control



Legal
Compliance

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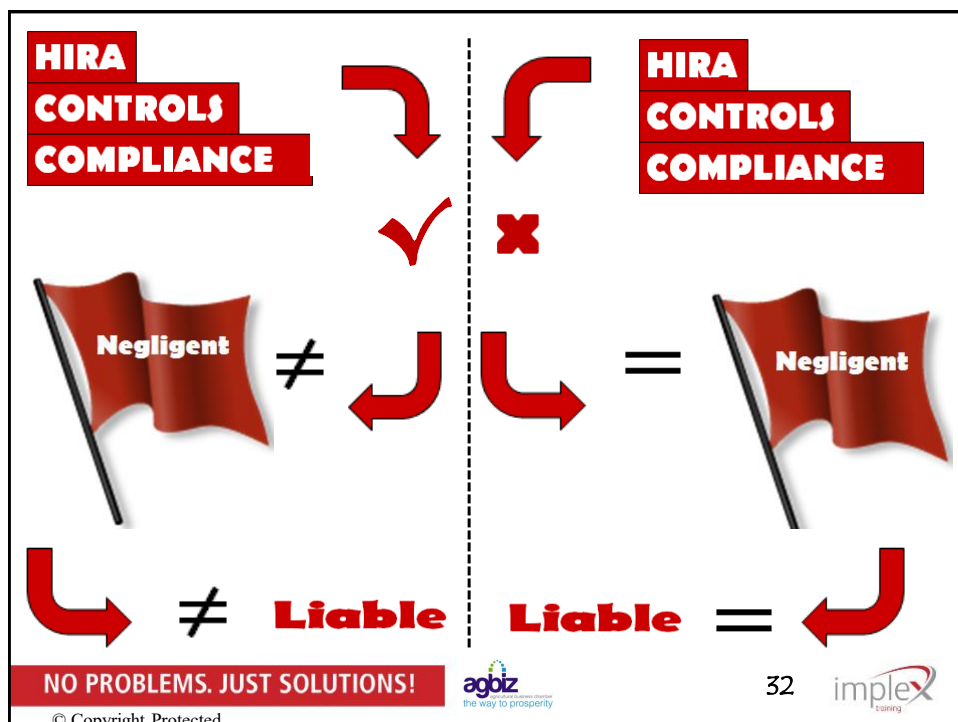


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Employee

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

S14 General duties of employees at work:

Every employee shall at work:

- Report incident before the end of the shift, or if not possible, as soon as reasonably practicable
- Report unsafe situations that the employee cannot deal with himself
- Carry out any lawful order given in the interest of H&S
- Take reasonable care of his own H&S
- Take reasonable care of the H&S of others affected by his activities
- Cooperate with any person with responsibilities under OHSA to ensure compliance

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S9 Employer Duty of Care for persons not employees

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

- Other persons
- Mandatories: Contractors and their employees if S37(2)
- Casuals
- Service Providers
- Visitors
- Intruders
- Community & Neighbours

Definition Mandatory:
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



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S37 Acts or Omissions by Employees or Mandatories

An act or omission by an employee is deemed to be an act or omission by the employer, unless the employer can prove:

1. Employee acted without permission
2. Employee acted outside the scope of his authority
3. Employer took all reasonable steps
4. Employer complied with OHSa and applicable Regulations

Fact that the Employer issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that the Employer took all reasonable steps to prevent the act or omission



NOTE: S37(2): The provisions of S37(1) shall *mutatis mutandis* apply in the case of a Mandatory of any employer or user except if the parties have agreed in writing



NOTE: S37(3) & (5): The Employee or Mandatory can be liable as if they were the Employer or in addition to the Employer

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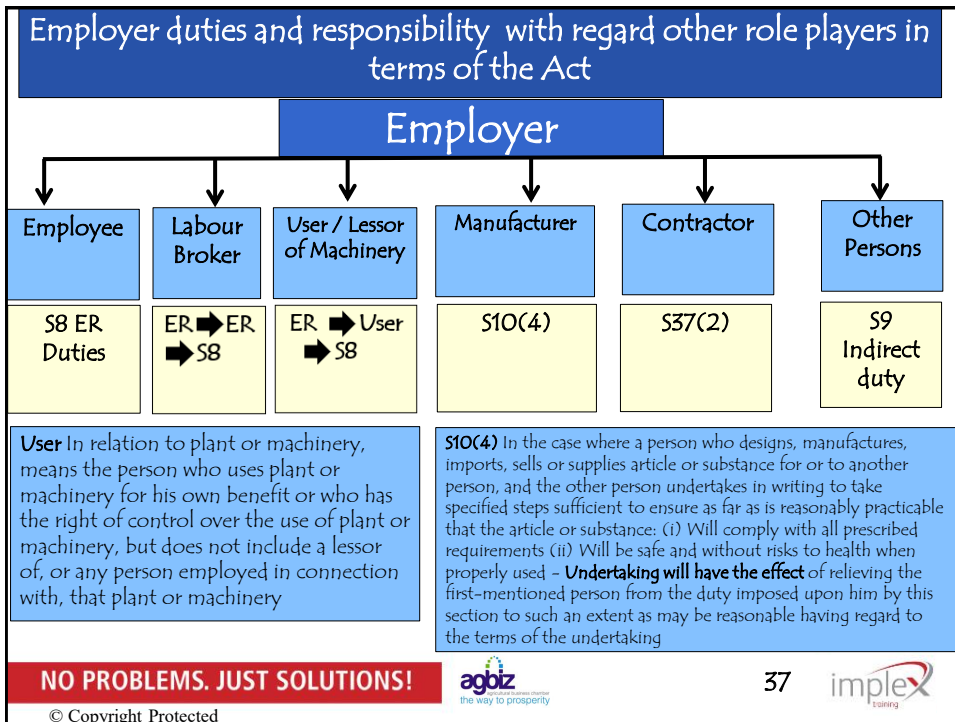


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Type of risks we face in our businesses

- Safety
- Hygiene
- Health
- Food safety
- Quality

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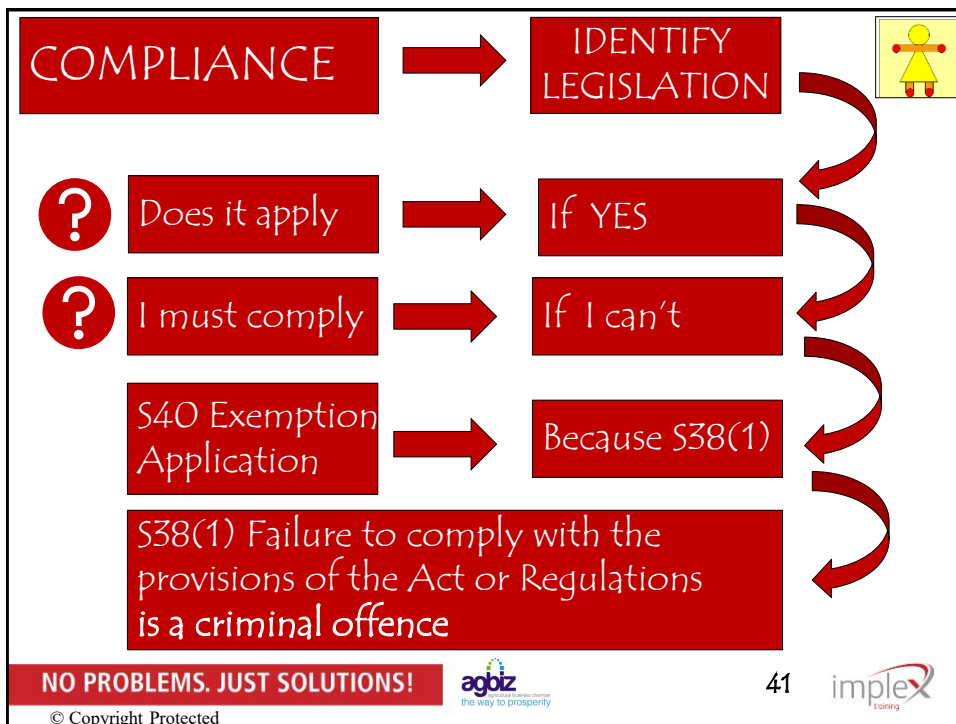


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Drivers for compliance

- Legal responsibility
- Financial implications and consequences
- Moral responsibility
- Reputational risk and brand protection

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Draft

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STAATSKOERANT, 14 MEI 2021 No. 44572 111

DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 422 14 May 2021

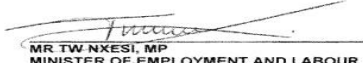
PUBLICATION OF THE OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL, 2020

1. I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, hereby give notice in terms of Rule 276(1)(b) of the Rules of the National Assembly that I intend to introduce the Occupational Health and Safety Amendment Bill, 2020 in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

The Bill seeks to amend the Occupational Health and Safety Act, 1993, so as to delete, substitute and insert certain definitions; to effect certain technical corrections; to make further provision in respect of the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; to further regulate the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to further regulate the composition of an advisory council for occupational health and safety; and to provide for matters connected therewith.

A copy of the Bill can be found on the website of the Department of Employment and Labour at <http://www.labour.gov.za/legislation/bills/proposed-amendment-bills> and that of the Parliamentary Monitoring Group at <http://www.pmg.org.za> and, after introduction, may also be obtained from: Government Printers: Cape Town (Telephone number: (021) 465-7531).


MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 13/04/2021

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STAATSKOERANT, 21 MEI 2021 No. 44610 3

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DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 447 21 May 2021

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL, 2020

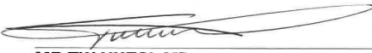
1. I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and Labour, has published proposed amendments to the Occupational Health and Safety Act, 1993, in the Government Gazette 44572, R.422 on 14 May 2021, for general information and comment.

2. Submission of representations:

a. All interested parties are invited to submit written comments on the draft bills,

b. Such comments should be addressed to: Mr. Tibor Szana, Department of Employment and Labour, Private Bag X 117, Pretoria, 0001, e-mailed to Tibor.Szana@labour.gov.za

c. Comments should reach the Department of Employment and Labour not later than **31 July 2021**.


MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 19/05/2021

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Compensation for Occupational Injuries and Diseases Act, 130 of 1993

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Applicability

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Applicability

- Applies to
 - All employers
 - Casual and full-time workers who, as a result of a workplace accident or work-related disease
 - Are injured, disabled, or killed; or
 - Become ill
- “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
- “Occupational Injury” means a personal injury sustained as a result of an accident



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Types of compensation paid to workers

- Medical aid
- Temporary disablement
- Permanent disablement
- Fatalities

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disablement

means temporary partial disablement, temporary total disablement, permanent disablement or serious disfigurement, as the case may be

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temporary partial disablement

means the temporary partial inability of an employee as a result of an accident or occupational disease for which compensation is payable to perform the whole of the work at which he or she was employed at the time of accident or at the commencement of occupational disease or to resume work at a rate of earnings not less than that which he or she was receiving at the time of accident or occupational disease

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temporary total disablement

means the temporary total inability of an employee as a result of an accident or occupational disease for which compensation is payable to perform the work at which he or she was employed at the time of accident or at the commencement of occupational disease or work similar thereto;

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permanent disablement

in relation to an employee and subject to section 49, means the permanent inability of an employee to perform any work as a result of an accident or occupational disease for which compensation is payable

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employee

means a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind

Includes:

- Casual employee employed for the purpose of the employer's business
- Director or member of a body corporate who has entered into a contract of service or of apprenticeship or learnership with the body corporate, in so far as he acts within the scope of his employment in terms of such contract

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employee excludes

- Person, including a person in the employ of the State, performing military service or undergoing training referred to in the Defense Act, 1957 (Act 44 of 1957), and who is not a member of the Permanent Force of the South African Defense Force
- Member of the Permanent Force of the South African Defense Force while on 'service in defense of the Republic' as defined in section 1 of the Defense Act, 1957

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employee excludes

- Member of the South African Police Force while employed in terms of section 7 of the Police Act, 1958 (Act 7 of 1958), on 'service in defense of the Republic' as defined in section 1 of the Defense Act, 1957
- Person who contracts for the carrying out of work and himself engages other persons to perform such work
- Domestic employee employed as such in a private household

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employer

means any person, including the State, who employs an employee, and includes

- Any person controlling the business of an employer
- If the services of an employee are lent or let or temporarily made available to some other person by his employer, such employer for such period as the employee works for that other person
- Labour broker who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker

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S22 Right of an Employee to compensation

- If Employee meets with an accident resulting
 - Disablement
 - Death
- Employee/dependants
- Entitled to the benefits provided for prescribed by COIDA
- No periodical payments for
 - Temporary total disablement
 - Temporary partial disablement
 - Lasts for three days or less

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S22 Right of an Employee to compensation

- If an accident is attributable to
 - **Serious & wilful** misconduct of the employee
- No compensation payable unless
 - Accident results in serious disablement
 - Employee dies in consequence thereof leaving a dependant wholly financially dependent upon him
- Notwithstanding DG may order the employer or mutual association to pay the cost of medical/portion thereof

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serious and wilful misconduct



means

- Being under the influence of intoxicating liquor or a drug having a narcotic effect
- Contravention of any law for the protection or the health of employees or for the prevention of accidents, if such contravention was committed wilfully or with a reckless disregard of the provisions of such law
- Any other act or omission which the DG having regard to all the circumstances considers to be serious and wilful misconduct

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S22 Right of employee to compensation

- Accident deemed to have arisen out of and in the course of the employment of an Employee
- Notwithstanding that Employee was at the time of the accident acting contrary to
 - Any law applicable to his employment
 - Any order by or on behalf of his Employer
 - Any order of his Employer
- If the Employee was in the opinion of DG
 - So acting
 - For the purposes of or in the interests of
 - Or in connection with
 - Business of his Employer

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S22 Right of employee to compensation

- Conveyance of an employee free of charge to or from his place of employment
- For the purposes of his employment
- By means of a vehicle driven by the employer himself
- Or one of his employees
- Specially provided by employer for the purpose of conveyance
- Deemed to take place in the course of an employee's employment

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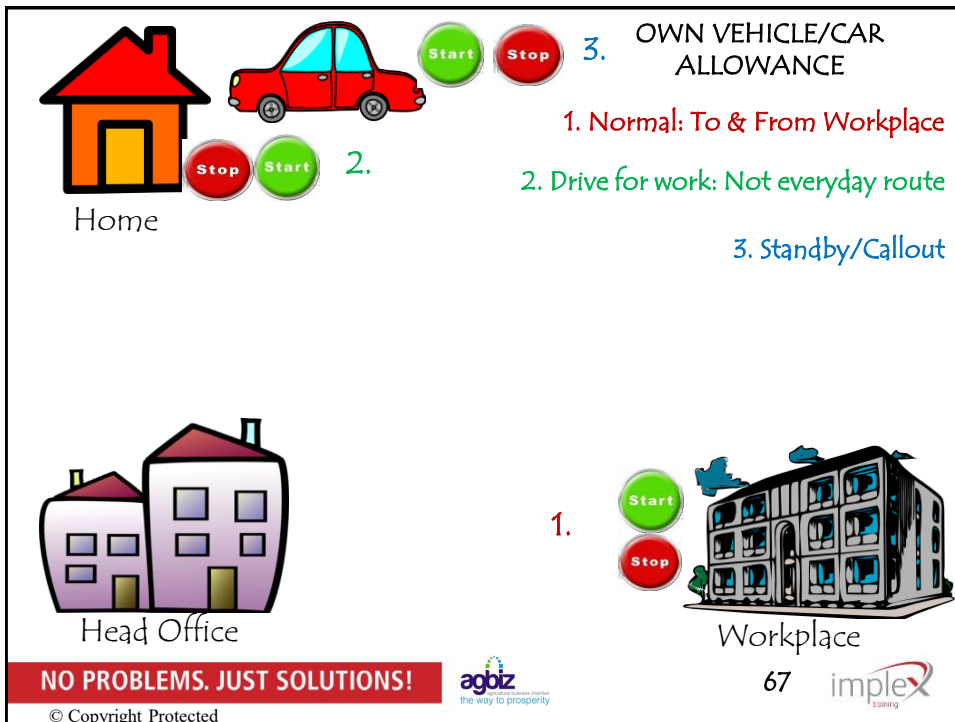


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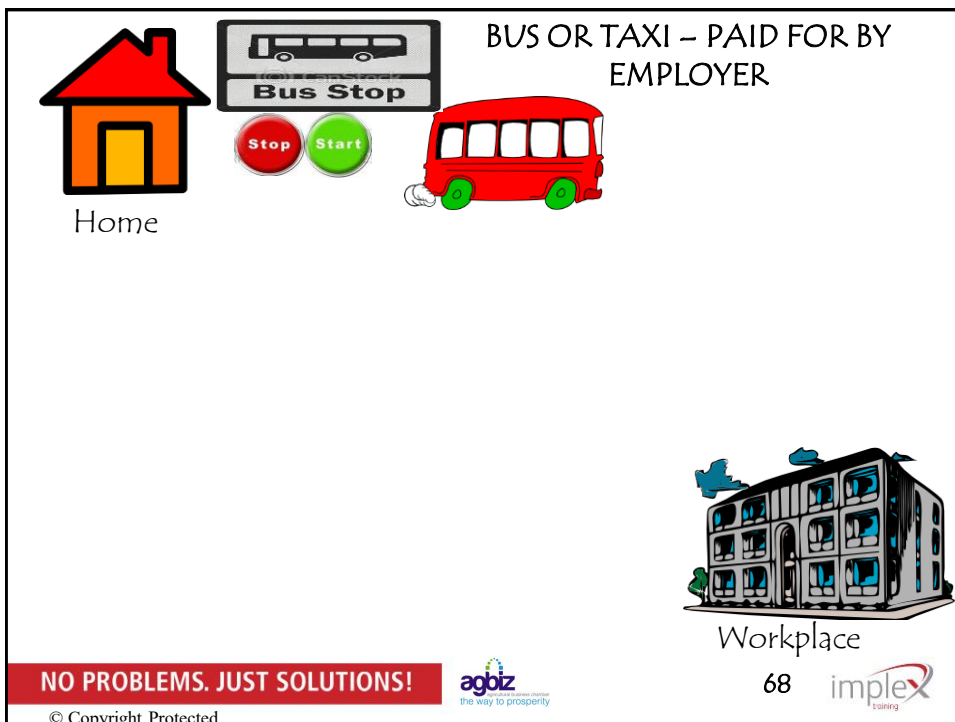


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S29 Liability for payment of compensation

- If an employee is entitled to compensation in terms of COIDA
 - DG
 - Or the Employer individually liable
 - Or the mutual association concerned
 - As the case may be
- Will be liable for the payment of compensation

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S35 Substitution of compensation for other legal remedies

- No action will lie by EE/any dependant
 - For recovery of damages in respect of any occupational injury or disease
 - Resulting in the disablement or death EE
 - Against EEs employer
- No liability for compensation
 - On the part of ER
 - will arise
 - In respect of disablement/death
- Limitation of Civil Liability

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S43 Claim for compensation

- Must be lodged by or on with the
 - Commissioner
 - ER
 - Mutual Association
- Within 12 months
 - After the date of the accident
 - After the date of death
- If not, claim for compensation will not be considered
 - Except where the accident concerned has been reported in terms of S39
 - Notice of an accident by Employer

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S44 Prescription

- A right to benefits in terms of COIDA will lapse if
- Accident is not brought to the attention of
 - Commissioner
 - Employer
 - Mutual Association
- Within 12 months after the date of accident

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occupational disease

means any disease contemplated in section 65(1)(a) or (b)

S65 Compensation for occupational diseases

- Employee entitled to the compensation if it is proved that:
- employee contracted a disease mentioned in the first column of Schedule 3 and the disease arose out of and in the course of employment
- Employee contracted another disease (not listed) and the disease arose out of and in the course of employment
- Right to benefits will lapse if any disease is not brought to the attention of
 - Commissioner, Employer, Mutual association concerned
 - Within 12 months from the commencement of that disease

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S66 Presumption regarding cause of occupational disease

- If an employee who has contracted an occupational disease
- Was employed in any work mentioned in Schedule 3 in respect of that disease
- Presumed
- Unless the contrary is proved
- Disease arose out of and in the course of his employment

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S80 Employer to register with commissioner and to furnish him with particulars

- All ERs who employ 1 or more part-or full-time workers
- Must register with the Compensation Fund and pay annual assessment fees
- A separate registration is necessary for each separate branch of a business, unless an arrangement for combined registration has been made

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Benefits of Registration

ERs

- ERs are protected against civil claims if a worker is injured on duty

Workers

- Workers who are injured on duty can claim compensation for temporary or permanent disablement
- If workers die as a result of an injury on duty, their dependants can claim compensation

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S82 Employer to furnish returns of earnings

- Before 31 March each year, all ERs (including contractors) must submit a statement of earnings paid to all their workers from the beginning of March to the end of February
- The annual assessment fee is calculated on workers' earnings and an assessment tariff based on the risks associated with the type of work being done

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S86 Assessment to be paid by Employer to commissioner

- S86: Assessment fees are payable in advance within 30 days of the date on the assessment notice sent to employers each year
- S87: If Employers do not pay their assessment fees, they will be fined
- DG may impose a fine at the prescribed percentage on the outstanding amount upon him

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S89 Mandators and contractors

- ERs who give work to contractors must obtain a letter of good standing from the contractor
- To prove that the contractor is registered and that assessment payments are up to date
- Agreement with Contractor for
 - Execution by or under the supervision of the contractor
 - Whole or any part of any work
 - Contractor will in respect of his employees employed in the execution of the work
 - Register as an employer
 - Pay assessments

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S89 Mandators and contractors

- If a contractor fails so to register or pay any assessment
 - Employees deemed to be the Employees of the client
 - Client must pay the assessments
- If client has paid an assessment or compensation
 - May recover that assessment or compensation from the contractor
- If client has paid an assessment or compensation to the commissioner
 - May set off the amount against his debt to the contractor

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S89 Mandators and contractors

- DG may recover compensation from the contractor instead of from the client
 - If the full amount cannot be recovered from the one
 - Shortfall can be recovered from the other
- Client will not be liable for any accident
 - Which happened at a place
 - Which is not on or about the premises
 - On which the client undertook to execute the work
 - Or which is not otherwise under his control or management

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Going forward

- Risk management
- Incident management
- Contractor management
- Training management
- Appointees and responsibility
- Food safety
- RSRS
- HSMS



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Q&A

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