

What are the OHS legislative requirements for the SA construction industry?



Building contractors in the South African construction industry are faced with a number of challenges.

In this blog we discuss a few of these health and safety challenges in the construction industry with special focus on Principal and Sub-contractors.

One of the numerous challenges that small and medium business entities (SMEs) and business owners – operating as principal agents or contractors – face in the South African construction industry, is the fact that the Occupational Health and Safety Act 85 of 1993 (OHSA), its regulations and other legislation are misinterpreted or misunderstood by or are unknown to various important stakeholders.

South Africa's building industry has great growth potential, yet the small building contractors struggle to get a foot in the door due to their inability to identify, manage or finance the legal requirements or failure to implement the legislation, while the industry giants have the financial capacity and capability to take over the industry and monopolise the sector, making it extremely difficult for the smaller (local) entities to enter the building industry successfully.

In addition to South Africa's regulatory uncertainty, the various requirements of the country's construction legislation exacerbate the confusion, especially amongst small construction enterprises.

What are the construction industry requirements?

There are various requirements within the building industry to ensure a safe workplace and legislative compliance. Listed below are five of the more prominent requirements in no specific order of importance.



Letter of Good Standing

One of the most important construction-specific requirements is the Letter of Good Standing in terms of the Compensation for Occupational Injuries and Diseases Act, Act No. 130 of 1999 (COIDA).

Construction projects are generally awarded to a contractor subject to a valid and paid-up Letter of Good Standing with the Compensation Commissioner at the Department of Labour, or the Federated Employers' Mutual Assurance Company Limited (FEMA). ***The purpose of the Letter of Good Standing is to ensure that a business has the ability to meet the requirements set out in COIDA.*** In exchange for an annual fee, the business receives assurance of compensation for claims relating to occupational injuries, diseases or deaths. Without this legal document, an entity is regarded as being non-compliant. All claims are subject to investigation. Compensation cannot be claimed for injuries, diseases or deaths that take place outside the workplace.



SACPCMP registrations

Secondly, the South African Council for the Project and Construction Management Professions (SACPCMP) is a statutory body that regulates the registration of construction professionals, such as construction officers, managers and agents. In the interest of providing work that is up to standard and in line with legislation, as stated in Construction Regulation 8(5), a contractor is required to appoint a competent safety officer, taking into account the size and duration of the project.

The Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000) states that registration with SACPCMP is required only within the construction industry. The purpose of this exclusion is to ensure that those candidates and professionals working in this specific industry are knowledgeable and competent and to encourage continuous professional development for those registered professionals.



Being fit and competent for work

Mandatory training forms a fundamental part of successful implementation on a construction site. Without relevant training, employees are not equipped to perform certain duties and to assume certain responsibilities. Competency and experience are regarded as the most crucial components on which the building industry bases its success.

In the building industry specifically, contractors need to ensure that First Aiders, Safety Representatives and Fire Fighters are the first in line for training. In addition to training, it is a legal requirement that **ALL** employees submit to a medical assessment in order to receive a “fit for work” medical certificate (clean bill of health) in the form of an Annexure 3 (refer to the Construction Regulations 2014).

Employers are subject to different demands in terms of medical requirements, competencies and training, depending on their type of businesses within the building industry. For instance, roofers working at heights are required to undergo working-at-heights medicals and to attend working-at-heights rescue training.



Mandatory agreements and contractors

Section 37(2) of the Occupational Health and Safety Act refers to a mandatory written contractual agreement entered into between a client and a contractor in terms of work and/or services to be provided, subject to the terms and conditions of the Mandatory Agreement.

The agreement states that the client has put in place certain health and safety rules and regulations in order to ensure compliance on site, and that it is the prerogative of the client to expect all contractors to adhere to these rules and regulations.

Section 37(1) places full responsibility and liability on the employer in terms of compliance, unless a Mandatory Agreement has been signed between the client and contractor, as proof of instruction from the client, to prohibit certain actions or conditions that would be in contravention of the OHSA. Only when the agreement has been signed, can full liability and responsibility be placed on the contractor for actions taken by the contractor in contravention of the Act.

The Mandatory Agreement between the client and contractor ensures that both parties involved accept responsibility and liability for health and safety compliance on site.



Approved Health and Safety files

Finally, no South African contractor will or should be allowed to access a construction site without an approved health and safety file compiled by a qualified and competent safety officer or safety team. The OHS file includes documentation such as the Health and Safety Plan, Safe Operating Procedures, Letter of Good Standing, employee details, Fall Protection Plan, Emergency Plan and Risk Assessments, to name but a few. Most of these documents can only be compiled by a trained and competent practitioner.

In conclusion

By familiarising yourself with various applicable legislation, regulations and by-laws will assist you as employer to understand the demands of the industry better. Key legislation to consider includes the OHSA, Construction Regulations 2014, General Safety Regulations and General Administrative Regulations.

SERR Synergy assists business owners with a comprehensive OHS service which creates and continuously develops a health and safety culture and system within the business that aligns with the business's internal policies and goals. We have a dedicated and qualified team that implements health and safety legislation, and assists with small- to large-scale OHS projects, concerns or aspects.

About the Author: Inge-Marie joined our team in August 2018 and currently holds the title 'Occupational Health and Safety Officer'. She is registered with SACPCMP as Candidate Construction Health and Safety Officer, holds a SAMTRAC certificate and is currently in her final year of completing a B.Com Business degree at UNISA. She has more than six years' experience in the construction and health and safety industry, specialising in roof work and working at heights. She is currently responsible for various industry-specific clients, including construction, manufacturing, chemicals and oil, as well as wireless internet service providers. She compiles OHS files, risk assessments and fall protection, emergency and evacuation plans and conducts regular internal audits for clients.

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