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Implications of Occupational Health and Safety Act non-compliance



Protecting your employees and company against non-compliance with the Occupational Health & Safety Act.

Non-compliance with occupational health and safety legislation in South Africa can have a negative impact, including death, loss of income and disability, to mention but a few. It is therefore of utmost importance for employers to comply with occupational health and safety legislation to reduce work-related injuries and illnesses.

In many jurisdictions around the globe, workplace inspections are conducted to assist businesses to adhere to occupational health and safety legislation, while *compliance orders* issued to work-sites as a result of these inspections are considered to reduce the risk of occupational injuries and exposure to health hazards.

In our series on *occupation health and safety in the workplace*, we have already discussed *employer responsibilities*. This week we look at the implications of non-compliance with the Occupational Health and Safety Act (OHSA). Employers in South Africa have a legal duty under both common law and statute (as per the OHSA) to provide and sustain a working environment free of risk to the health and safety of their employees.

Health and safety non-compliance

Are you aware how serious Health and Safety non-compliance penalties can be? Do you know what these penalties constitute in terms of the OHSA? There are companies that may find themselves in breach of the finer details of the OHSA simply due to a lack of information.

Every employee is valuable, therefore all employees who are exposed to hazards in the workplace are entitled to proper health and safety assistance programmes. Penalties for failure to comply with the prescripts of the OHSA include fines and imprisonment with a criminal record. It is important to know that where non-compliance leads to injury or a casualty, the employer could be held liable. For compliance purposes, the employer must provide effective leadership in health and safety management and demonstrate management commitment by allocating sufficient resources for workplace health and safety.

As can be seen from above, when an employer fails in his duties, he is in contravention of the OHSA, which is a Statutory Law, in which case he may be held criminally liable and prosecuted in his personal capacity.

Business owners should know that according to *Section 332 of the CRIMINAL PROCEDURE ACT 51 of 1977*, the following persons may be prosecuted individually and jointly with the Company:

- *CEO (Appointed 16(1));*
- *Directors;*
- *Assistant CEO (Appointed 16(2));*
- *Other Chief Officers Appointed (CFO, COO);*
- *Managers; Supervisors etc.*
- *and Responsible Employee or Operator.*

How integrated is your health and safety approach?

SERR Synergy guides clients through all the realities of compliance with occupational health and safety legislation. If your organisation needs an Occupational Health and Safety overview, policy or a safety manual, *contact us* today to find out more about our services.

About the author: Ilse-Marie van de Wall started her career as a Human Resources and Industrial Relations Practitioner in 2007. She holds a degree from the University of Pretoria and certificates in both NEBOSH and SAMTRAC. She is currently busy with a National Diploma in Safety Management at UNISA. As a professional Health and Safety Practitioner she is registered with SAIOSH and the SACPCMP. She started with SERR Synergy in 2016 and is employed as an Occupational Health and Safety Practitioner.

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