

Dear clients

Welcome to our second *ENSight* newsletter which focuses exclusively on health and safety in the workplace. The mining industry in particular has been under the spotlight of late and has been subject to criticism for the number of incidents resulting in fatalities. Even though the Chamber of Mines claims that fatalities have decreased by 50% since the mid 90's, a Mine Health and Safety Bill has been produced which proposes a drastic increase to the sanctions for ignoring safety regulations. Those who transgress face the prospect of R1m fines or five years' imprisonment under the proposals contained in the Bill.

Even if you are not in the mining industry a serious incident, especially one involving a fatality, will expose the business and individuals to the possibility of prosecution and fines. In addition, such incidents are more regularly finding their way into the press and can cause damage to reputation and adverse publicity. The article and the checklists we have included in this newsletter are aimed at helping companies to avoid these consequences and we hope you will find them useful. In any event, it is simply the right thing to do whatever you can to avoid risk to the health and safety of your employees.

Yours sincerely



Susan Stelzner and Rod Harper



the risks of risk assessments and safety audits

by ebrahiem abrahams

In terms of the Occupational Health and Safety Act (OHSA) the duty to perform a risk assessment and take steps following such an assessment rests upon an employer. OHSA does not say how these assessments must be done. Risk assessments can include physical inspections, management / employee discussions and safety audits.

Some employers outsource the risk assessment of their working environment and practices to external service providers, mainly in the form of safety audits. Does this mean that an employer has taken reasonably practicable measures to ensure that the working environment is safe and without risk to the health of its employees? What if the safety

audit gives the employer a 95% safety rating? Does this mean that the working environment is safe? Is there a risk that the safety audits can induce a false sense of "safety"?

It all depends on how these risk assessments are conducted and whether they indeed show that the

continued on page 2

the risks of risk assessments and safety audits (continued from page 1)

health and safety is an ongoing exercise

employer has taken steps to ensure that as far as reasonably practicable, the working environment is safe. Health and safety is of course an ongoing exercise.

The implementation of risk management

The general duty of the employer to ensure the health and safety of its employees is set out in section 8 of OSHA. In summary, OSHA requires that the employer:

- Identify the hazards in the workplace;
- Take the necessary steps to eliminate such hazards or minimise the employees' exposure as far as is reasonably practicable and;
- Where complete elimination of the hazard(s) is not possible:
 - Inform employees of the existence of such hazards;
 - Issue them with the necessary protective equipment;
 - Train them to work under the hazardous conditions exposed to; and
 - Supervise / discipline them to ensure they comply with the relevant requirements.

No further guidance is given by OSHA for the procedure or content of a risk assessment. It is only in the Construction Regulations that the issue of risk assessment is dealt with. In fact, Construction

Regulation 7 more than adequately explains what an employer needs to do in order to ensure that it is taking steps to create a safe working environment.

Construction Regulation 7 (A risk assessment guideline)

The following is evident from an analysis of Construction Regulation 7 (which does not impose an obligation on an employer who is not engaged in the construction industry but is nevertheless a very good guideline to all employers on how to go about a risk assessment):

the employer must ensure that a risk assessment is to be performed

- The employer must ensure that a risk assessment is to be performed;
- This assessment will be performed by a competent person appointed in writing;
- A competent person is any person having the knowledge, training, experience and qualifications specific to the work or task being performed.
- The risk assessment forms part of a health and safety plan and must include at least:
 - The identification of the risks and hazards to which persons may be exposed;
 - The analysis and evaluation of the risks and hazards identified;
 - Safe work procedures to mitigate, reduce or control the risks and hazards;

- A monitoring plan; and
- A review plan.

- The employer shall consult with the health and safety committee. In the event that no such committee exists, with a representative group of employees on the development, monitoring and review of the risk assessment.

A simple risk assessment procedure

We set out below a few simple steps to follow in fulfilling the obligation to conduct a risk assessment.

Step 1 :

- Identify the hazards in the workplace;
- Where this has been done before, **do it again** as new hazards may have arisen;
- Consult with your employees or their representatives;
- Include the health and safety committee in all processes;
- Check your accident reports and records of sick leave due as these may identify where the hazards are.

Step 2 :

- Identify who is in harm's way;
- Identify those at risk (these may include employees, contractors, visitors, members of the public, etc).

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the risks of risk assessments and safety audits (continued from page 2)

Step 3 : Evaluate the risks arising from the hazards

- Remember that the relationship between “risk” and “hazard” must always be kept in mind during any risk assessment;
- The risk that an incident may occur may not be significant, but the hazard may be a major one;
- For significant hazards, decide whether the risk is high, medium or low;
- Check whether there are legal requirements which speak to the risk which you have identified, eg regulations;
- Do not rely on the fact that you have generally accepted industry standards in place.
- Ask yourself whether there is anything more that you can do to ensure a safe and healthy working environment. Remember that the law says that you must do what is reasonably practicable to keep the workplace safe.
- Remember that the golden rule is that after you have identified and evaluated the risks arising from any hazards, ask yourself:
 - How do I get rid of the hazard altogether?
 - If I cannot get rid of the hazard, how do I control the risks so that harm is unlikely?

conduct regular reviews as workplace situations change

Caution! Also remember that new hazards may arise especially in instances where employees work on more than one site. In that case the rule should be that the employer needs to assess or re-assess the working environment.

risk assessment is not about ticking boxes

Do not rely on “templates”. There are many manuals used in various industries. Employers should not simply use an existing health and safety template on different projects. The inherent danger of such a practice is, of course, that no risk assessment of the specific hazards at the different sites has taken place. Consequently the manuals may not cover these hazards. If an incident should occur, there is very little chance that the employer will be able to show that it took all reasonably practicable steps to ensure the safety of its employees.

Safety audits are a good idea. Of course it is great if an employer gets a 95% safety rating. However, you may have to in fact assess the safety audit. It may very well be that it has not asked the right questions to the right people and therefore has failed to properly identify the risks. In fact it may very well be that all that the audit does is to identify **existing** risks which it may have audited for the past three years. So, be aware that it is probably not enough to merely “tick the boxes”. Ticking the boxes may not fulfil the requirement of taking all reasonably practicable steps. Your safety audit may indeed be your greatest hazard.

Step 4 : The risk assessment report

- Record the findings of the risk assessment. This is useful in showing that an assessment was done as well as pointing out the precautions taken in respect of the risks identified.
- Share those findings with your employees. This could be done via the Health and Safety Committee or in a general meeting and accompanied by a health and safety net. Ask for their feedback on the report.

Step 5 : Reviewing your assessment

- Do not stop at step 4. Monitoring and reviewing your health and safety plan is very important.

your safety audit may be your greatest hazard

Regularly review the risk assessment as workplace situations rapidly change.

- Remember – **do not rely on templates**. It may very well be necessary to audit the risk assessment itself.

Conclusion

Risk assessment is not about ticking the boxes. It is also not about reproducing what was in a previous “plan” taken from an existing “template”. It must be taken seriously as it is a preventative and proactive tool in the hands of an employer to ensure that its workplace is safe for its employees. Paying lip service to risk assessment might lead to major accidents with grave consequences for all.

smoking in the workplace



by nicky van der westhuizen

Have you taken steps to regulate smoking or are you still permitting your employees to smoke freely in the workplace? Not only is this against the law, but it may result in a loss of productivity, operating time and output as well as expose you to hefty penalties and fines.

The Tobacco Products Control Act (83 of 1993) provides that smoking is prohibited in **any public place**, which means any indoor or enclosed area that is open to the public or any part of the public and includes a **workplace** and public transportation.

The workplace

As long as you and/or your employees are working in a 'workplace', therefore, smoking is prohibited. A workplace in terms of the Tobacco Act includes:

- Any indoor or enclosed area in which employees perform the duties of their employment; and
- Any corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by employees during the course of their employment.

However, a workplace does not include any private dwelling and any designated smoking area that complies with certain prescribed requirements, even if the designated area would normally be classified as part of a workplace.

Designated smoking areas

If your workplace is considered to be a public place in terms of the Tobacco Act, you may designate a specific portion of the workplace as a smoking area. This will then

enable your employees who do smoke to be able to smoke on the premises, while still protecting the non-smoking employees.

all employers must have a written policy on smoking in the workplace

A designated smoking area has to conform to certain requirements, including that it may not exceed 25% of the total floor area of the workplace, must be separated from the rest of the workplace by a solid partition, must have ventilation that ensures that the air from the smoking area is directly exhausted to the outside and must display certain prescribed messages and/or signs.

Smoking policies

All employers are required to have a written policy on smoking in the workplace. This policy should have been prepared and applied in the workplace by no later than 1 January 2001. If you do not have a smoking policy, you need to ensure this is done urgently to ensure that you are not contravening the regulations published under the Tobacco Act.

Smoking policies will vary quite a lot depending on the size, nature and requirements of your workplace, and may include clauses relating to

the necessity of the policy, the application thereof, details of designated smoking areas, consequences of contravention and other related issues.

If you do not have a smoking policy in place, contact us so that we may assist you in preparing and implementing the required and appropriate policy, so as to ensure you are not in contravention of the Tobacco Act and its Regulations.

Consequences of non-compliance

Employers have a duty to ensure that the smoking laws are followed. An employer is required by law to:

- ensure that no person smokes anywhere other than a designated smoking area;
- ensure that employees who do not want to be exposed to tobacco smoke in the workplace are protected from tobacco smoke in that workplace; and
- ensure that employees may object to tobacco smoke in the workplace without retaliation of any kind.

If you do not ensure that the laws are complied with, you, as an employer may also face a fine or possible imprisonment, as well as the possibility that your employees may take action against you based on your failure to create a safe and healthy working environment.

more occupational health and safety checklists



by karen michael

Following on from the checklists on your general obligations under the OHS Act and the General Safety Regulations which we provided in our June newsletter, we have compiled further checklists on **Environmental Regulations for Workplaces, Facilities Regulations** and the **General Administrative Regulations**. Remember that there are still several other legal requirements that could apply to your business.

Your obligations under the environmental regulations	YES	NO
Have you checked whether your building complies with the necessary thermal requirements?		
Is the illumination at your workplace correct?		
Do you have the required emergency lighting?		
Does your building have the required number of windows?		
Have you checked whether the air in your building is safe for your employees and do you have air monitoring tests to prove this?		
Do you ensure that all spaces where your employees carry out their work are clear and unobstructed?		
Have all the noise zones in your building been identified?		
Are your escape/emergency doors constructed so that they can open outwards?		
Are all staircases and steps leading from one floor to another or to the ground provided with substantial hand rails?		
Are all staircases intended to be used as fire escapes constructed of non-combustible material?		
Have you checked whether all staircases intended to be used as fire escapes are kept clear of any material or other obstruction?		
Have you checked whether all staircases intended to be used as fire escapes are so designed that they do not terminate in an enclosed area?		
Are all staircases, passages and exits intended for escape purposes of a width and of a gradient which will facilitate the quick and safe egress of the number of persons intended to make use of them?		
Do you have the necessary fire fighting equipment at your premises and are these maintained in accordance with the legal requirements?		

continued on page 6

more occupational health and safety checklists (cont)

by karen michael

Your obligations under the facilities regulations	YES	NO
Have you checked whether your building has the necessary sanitary provisions?		
Do you have a policy dealing with smoking in your workplace?		
Do you provide an adequate supply of drinking water?		
Do your employees have ergonomically sound seats?		
Are all your rooms and facilities maintained in a clean, hygienic, safe, whole, leak-free condition and in a good state of repair?		
Your obligations under the general administrative regulations	YES	NO
Do you provide an updated copy of OHSA and relevant Regulations at every workplace where you employ 5 or more persons?		
Have you met with the registered union operative at your workplace, or in the case where there is no such union, with employee representatives, in order to consult or bargain with the aim to reach an agreement on the following –		
<ul style="list-style-type: none"> • Nominations or elections of health and safety representatives; • Terms of office of health and safety representatives; • Conditions and prescribed manner in which they will be removed as health and safety representatives; • The manner in which vacancies will be filled; • The manner in which health and safety representatives will perform their functions; • The facilities, training and assistance they will be provided with as contemplated in Sections 18(3) of OHSA? 		
Have you concluded a written agreement signed by all parties dealing with these issues?		
Do you carry out the required investigation and record the necessary information about all incidents occurring at your workplace?		

Note:

The perceived nuisance of auditing and monitoring health and safety compliance and the related costs are all neutralised when you have to deal with an incident involving criminal / statutory proceedings over an extended period. The inefficiencies of the health and safety inspectorate and State Prosecutors causes unnecessary delays, incurs more management time and involves increased cost. Get it right at commencement and avoid these frustrations.

what we offer

- Advice and opinions on health and safety legislation (OHS Act, COIDA, the Mine Health and Safety Act and Regulations)
- Health and safety audits
- Preparing legal registers setting out the health and safety laws companies are required to comply with in order to achieve OHSAS 18001 accreditation
- Investigation of incidents
- Preparation of reports for the DoL
- Liaison with the DoL
- Litigation arising from incidents including criminal prosecutions, inquests and civil claims

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