

# Workplace safety a crucial issue

**F**OUR workers were killed recently in Stellenbosch while renovating an old industrial building in which a slab collapsed. The labour department indicated that the building contractor flouted the Occupational Health and Safety Act and its regulations in a number of ways, failing to ensure a safe working environment.

This raises the question of what employers can do to ensure the health and safety of employees.

Our constitution says everyone has a right to an environment that is not harmful to his or her health or wellbeing. The act requires an employer to provide and maintain a working environment that is safe and without risk to the health of employees. This is a wide obligation and places all aspects in the workplace relating to health and safety of employees on the employer's shoulders. The legislation sets out duties to employers to ensure the safety of their employees. The act and its regulations also contain obligations for specific industries and operations.

Many of the duties under the regulations require the employer to do what is practical to ensure safety. For example, employers must ventilate workplaces to reduce exposure to certain substances below specified limits. If this is not practical, the employer may rely upon protective clothing and equipment.

In the case of an accident such as the Stellenbosch case, the

labour department will investigate whether the employer took all reasonably practical steps to comply with health and safety requirements. Should the department investigation find any fault on the part of the employer for the accident it may decide to hold a formal inquiry. A magistrate will preside at such an inquiry.

The purpose of such an inquiry is twofold:

- To determine liability for the accident; and
- To gain experience in preventing similar incidents in the future.

In certain cases, the findings of the inquiry will lead to the institution of criminal proceedings.

The contractor may be summoned to an inquiry, as well as face criminal charges such as culpable homicide based on the fact that the employees died due to the negligence of the employer.

An employer found guilty of offences can be liable to a fine of between R50 000 to R200 000, and imprisonment of between one to two years, depending on the nature of the offence.

Ultimately, responsibility for health and safety rests with the CEO of a company. It is not a defence for the CEO to indicate that he has delegated responsibility for health and safety to more junior employees. The CEO can delegate the functions, but cannot relieve himself of the responsibility to ensure that health and safety regulations have been carried out.

The labour department is quot-



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ed as saying that in the Stellenbosch accident the employer was not contributing to the Compensation Fund for workplace-related deaths and injuries. The department went on to say that this meant that the dependants of the deceased employees will not be able to claim compensation.

This is not correct. Under the Compensation for Occupational Injuries and Diseases Act an employer must register with the Compensation Commissioner within seven days of employing its first employee. Failure to register is an offence and if an employer is not registered and an accident

occurs the Compensation Commissioner has the option of fining the employer up to the full amount of the compensation payable to the employee(s), in addition to a penalty. In the Stellenbosch accident the dependants of the deceased employees would be able to claim from the Compensation Fund but the fund can recover from the employer.

Employers are well advised to register employees with the Compensation Fund. In the event of a workplace accident, all claims are directed to the Compensation Fund. An employee or his dependants cannot bring a civil damages

claim against the employer as a result of sustaining injuries or, as in this case, a death resulting from an accident in the workplace when he can claim from the Compensation Fund.

The law recognises that accidents can happen in the workplace and requires employers to act responsibly by seeking to prevent accidents or to minimise their risk. Whether these accidents are as a result of employers seeking greater profits, ignorance of their health and safety obligations or simply just ignoring these obligations, the failure to comply carries a heavy price: for the affected

employee it could mean a life-changing injury, or death. For the employer it could mean huge fines, being prohibited from continuing with certain work practices and even imprisonment.

The important lesson is that employers should take proactive steps to prevent accidents. Health and safety should be a priority, not an afterthought. When an employer is unsure of whether it is complying with health and safety obligations it should conduct a risk assessment of its work practices.

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