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01 Feb 2024	28 Feb 2026	SHEQ Warehouse (Pty) Ltd	NJ Dick
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Occupational Health and Safety Act 85 of 1993 - Comprehensive Summary

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Introduction

The Occupational Health and Safety Act 85 of 1993 (OHSA) aims to provide for the health and safety of persons at work, persons using plant and machinery, and the protection of persons other than those at work from hazards arising from workplace activities. The Act establishes an advisory council for occupational health and safety and provides for related matters.

Section 1: Definitions

This section provides comprehensive definitions of terms used throughout the Act, including "approved inspection authority," "biological monitoring," "chief executive officer," "danger," "employee," "employer," "hazard," "health and safety equipment," "health and safety representative," "inspector," "major hazard installation," "occupational health," "plant," "reasonably practicable," "risk," "substance," "workplace," and many others.

Section 2: Establishment of Advisory Council

Establishes an Advisory Council for Occupational Health and Safety.

Section 3: Functions of Council

The Council advises the Minister on policy matters arising from the Act, matters relating to occupational health and safety, and performs assigned functions. The Council may conduct research, make rules for meetings, advise the Department on standards and training, and enter into agreements for specific tasks.

Section 4: Constitution of Council



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The Council consists of 20 members including the chief inspector (chairman), representatives from various government departments, employer and employee representatives, and experts in occupational safety, medicine, and hygiene.

Section 5: Period of Office and Remuneration

Members are appointed for three years on conditions determined by the Minister with the concurrence of the Minister of State Expenditure. Members may be reappointed, and certain members may receive allowances.

Section 6: Technical Committees

The Council may establish technical committees to advise on specific matters. Committee members are appointed for their knowledge and need not be Council members.

Section 7: Health and Safety Policy

The chief inspector may direct employers to prepare written health and safety policies describing their organization and arrangements for implementing and reviewing the policy. Employers must prominently display signed policies where employees normally report for service.

Section 8: General Duties of Employers to Their Employees

Employers must provide and maintain, as far as reasonably practicable, a working environment that is safe and without risk to employee health. This includes:

- Safe systems of work, plant, and machinery
- Taking steps to eliminate or mitigate hazards before using personal protective equipment
- Ensuring safety in the production, handling, storage, and transport of articles or substances
- Identifying workplace hazards and establishing precautionary measures
- Providing information, instructions, training, and supervision
- Not permitting work without precautionary measures
- Ensuring compliance with the Act
- Enforcing necessary health and safety measures
- Ensuring work is supervised by trained persons with authority
- Informing employees of their authority scope

Section 9: General Duties to Persons Other Than Employees

Employers and self-employed persons must conduct their undertakings to ensure that persons other than employees who may be directly affected by their activities are not exposed to health or safety hazards.



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Section 10: General Duties of Manufacturers and Others

Persons who design, manufacture, import, sell, or supply articles for work use must ensure they are safe when properly used. Those who erect or install articles must ensure the installation method doesn't create risks. Manufacturers, importers, sellers, or suppliers of work substances must ensure they are safe and provide relevant safety information.

Section 11: Listed Work

The Minister may declare certain work under specified conditions to be "listed work." This requires publication of draft notices in the Gazette for comment before implementation, except in urgent public interest cases.

Section 12: General Duties Regarding Listed Work

Employers with employees doing listed work must:

- Identify hazards and evaluate risks
- Prevent or minimize employee exposure to hazards
- Implement occupational hygiene programs, biological monitoring, and medical surveillance
- Keep health and safety representatives informed of actions and results

Section 13: Duty to Inform

Employers must:

- Make employees aware of work hazards and precautionary measures
- Inform health and safety representatives of inspections, investigations, inquiries, and exemption applications
- Inform representatives promptly of workplace incidents

Section 14: General Duties of Employees

Employees must:

- Take reasonable care of their own health and safety and that of others
- Cooperate with the employer to enable compliance with the Act
- Obey lawful orders and health and safety rules
- Report unsafe situations promptly
- Report incidents by the end of their shift or as soon as practicable

Section 15: Duty Not to Interfere With or Misuse Things

No person shall intentionally or recklessly interfere with or misuse anything provided in the interest of health or safety.



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Section 16: Chief Executive Officer Charged With Certain Duties

The chief executive officer (CEO) must ensure the employer's duties under the Act are properly discharged. The CEO may assign duties to others under their control, but this doesn't relieve the employer of responsibility or accountability. In government departments, the department head is deemed to be the CEO.

Section 17: Health and Safety Representatives

Employers with more than 20 employees must designate health and safety representatives in writing. Representatives must be:

- Full-time employees familiar with workplace conditions
 - Designated following consultation with employees or their representatives
 - In a ratio of at least 1:100 for shops/offices or 1:50 for other workplaces
- Representatives' activities must be performed during normal working hours.

Section 18: Functions of Health and Safety Representatives

Health and safety representatives may:

- Review health and safety measures
 - Identify potential hazards and major incidents
 - Examine incident causes with employers
 - Investigate employee health and safety complaints
 - Make representations to employers, committees, or inspectors
 - Inspect the workplace at intervals agreed with the employer
 - Participate in consultations with inspectors
 - Receive information from inspectors
 - Attend health and safety committee meetings
 - Visit incident sites, attend investigations and inquiries
 - Inspect relevant documents
 - Accompany inspectors, with technical advisers if approved
 - Participate in internal health and safety audits
- Representatives receive necessary facilities, assistance, and training and don't incur civil liability for failing to do anything under the Act.

Section 19: Health and Safety Committees

Employers must establish health and safety committees where two or more representatives are designated. Committees must:

- Include all representatives as members (if one committee) or each representative must be on at least one committee (if multiple committees)
- Not have more employer nominees than representatives
- Hold meetings at least quarterly
- Follow procedures they determine



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- May co-opt advisory members

Section 20: Functions of Health and Safety Committees

Health and safety committees:

- Make recommendations to employers on health and safety matters
- Discuss and report on workplace incidents
- Keep records of recommendations and reports
- Are not civilly liable for failing to perform duties Employers must take steps to ensure committees meet and perform their duties.

Section 21: General Prohibitions

The Minister may prohibit:

- Certain categories of employees from performing specific activities
 - Employers from requiring work in connection with dangerous processes
 - Work with hazardous articles or substances except under specified conditions
- Such prohibitions require consultation with the Council and the Minister for National Health and Welfare.

Section 22: Sale of Certain Articles Prohibited

No person shall sell or market articles, substances, plant, machinery, or health and safety equipment that doesn't comply with prescribed requirements or health and safety standards.

Section 23: Certain Deductions Prohibited

Employers may not deduct from employee remuneration or require payment for anything the employer must provide or do for health and safety. However, employers may recover losses from employees who intentionally damage health and safety equipment.

Section 24: Report to Inspector Regarding Certain Incidents

Employers or machinery users must report incidents within prescribed periods where:

- A person dies, becomes unconscious, loses a limb, is seriously injured or ill
- A major incident occurs
- Health or safety is endangered by dangerous substance spills, uncontrolled pressure releases, machinery failures, or out-of-control machinery The incident site must remain undisturbed until an inspector gives consent, except to prevent further incidents, remove injured/dead, or rescue persons.

Section 25: Report to Chief Inspector Regarding Occupational Disease



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Medical practitioners who examine or treat persons for occupational diseases must report cases to the employer and chief inspector within the prescribed period.

Section 26: Victimization Forbidden

Employers may not victimize (dismiss, reduce pay, alter terms, disadvantage) employees for providing information under the Act, complying with inspector requirements, giving evidence, or doing/refusing to do anything under the Act.

Section 27: Designation and Functions of Chief Inspector

The Minister designates a Department officer as chief inspector, who:

- Acts under the Director-General's supervision
- May perform any inspector's functions
- May delegate powers except certain ones
- May be temporarily replaced when absent An acting chief inspector may be designated during absence or pending appointment.

Section 28: Designation of Inspectors

The Minister may designate persons as inspectors to perform functions under the chief inspector's direction. Inspectors receive certificates stating their designation and any limitations, which they must produce when requested.

Section 29: Functions of Inspectors

Inspectors may:

- Enter workplaces without notice
- Question persons about Act-related matters
- Require document production
- Examine and copy documents
- Request explanation of document entries
- Inspect articles, substances, plant, machinery, work, or conditions
- Seize evidence for potential prosecution
- Direct employers or users to appear for questioning Employers must provide facilities for inspectors to perform their functions safely and effectively. Inspectors must issue receipts for seized items.

Section 30: Special Powers of Inspectors

Inspectors may in writing:

- Prohibit employers from activities threatening health or safety
- Prohibit machinery use in dangerous ways
- Prohibit employee exposure to hazardous conditions beyond specified periods
- Block, bar, barricade, or fence off hazardous areas



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- Direct employers to take steps to protect health and safety
- Direct compliance with regulations within specified periods Employers must inform representatives and employees of such prohibitions, directions, or notices.

Section 31: Investigations

Inspectors may investigate incidents resulting in injury, illness, or death to determine if formal investigations are needed. Investigation reports go to the attorney-general and chief inspector.

Section 32: Formal Inquiries

The chief inspector may direct formal inquiries into incidents. Inspectors conducting inquiries may:

- Subpoena witnesses and evidence
- Hold public hearings (with exceptions)
- Designate persons to lead evidence
- Accept certain affidavits as evidence
- Appoint commissioners to take evidence Reports go to the chief inspector and attorney-general in serious cases.

Section 33: Joint Inquiries

Inquiries under this Act may be held jointly with inquests under the Inquests Act for incidents resulting in death.

Section 34: Obstruction of Investigation or Inquiry

No person may:

- Fail to comply with lawful directions or subpoenas
- Refuse to answer questions (except self-incriminating ones)
- Encourage noncompliance with inspector instructions
- Refuse to assist inspectors
- Refuse to attend inquiries
- Insult inspectors or disrupt proceedings

Section 35: Appeal Against Decision of Inspector

Persons aggrieved by inspector decisions may appeal:

- To the chief inspector within 60 days in writing
- To the industrial court within 60 days of the chief inspector's decision Appeals against prohibitions don't suspend the prohibition's operation.

Section 36: Disclosure of Information



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Information about others obtained under the Act may only be disclosed:

- For proper administration of the Act
- For justice administration
- At the request of authorized health and safety representatives or committees

Section 37: Acts or Omissions by Employees or Mandataries

Employers are presumed responsible for employee violations unless:

- The employee acted without permission
 - The act was outside the scope of employment
 - The employer took all reasonable steps to prevent the violation
- Special arrangements between employers and mandataries (contractors) must be documented in writing to ensure compliance. Employees and mandataries may be convicted alongside employers.

Section 38: Offences, Penalties and Special Orders of Court

Violations of numerous provisions constitute offences punishable by:

- Fines up to R50,000 or imprisonment up to one year or both
 - For negligent acts causing injury: fines up to R100,000 or imprisonment up to two years or both
- Courts may order compliance with provisions, and in cases of illegal deductions, determine and recover amounts from employers.

Section 39: Proof of Certain Facts

The Act provides for various legal presumptions including:

- Presence on premises creates presumption of employment
- Inspector's opinion of age is presumed correct unless contested
- Employer records are admissible as evidence against them
- Untrue entries in records are presumed willful falsification

Section 40: Exemptions

The Minister may exempt employers from Act provisions for specified periods under certain conditions. Exemptions are granted via certificates or Gazette notices and may be amended or withdrawn.

Section 41: This Act Not Affected by Agreements

Provisions of the Act or conditions in notices cannot be affected by any agreement, whether made before or after the Act commenced.

Section 42: Delegation and Assignment of Functions

The Minister may delegate powers (except regulation-making) to officers and authorize provincial or local authorities to perform functions under the Act.



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Section 43: Regulations

The Minister may make regulations on numerous matters including:

- Building safety
- Machinery design and operation
- Training and safety equipment
- Health and safety measures
- Occupational hygiene
- Medical surveillance
- Hazardous substances
- Emergency equipment
- Health and safety directives
- Registration of hazardous work
- Inspection authority accreditation Regulations may prescribe penalties for contraventions.

Section 44: Incorporation of Health and Safety Standards

The Minister may incorporate health and safety standards into regulations by reference, without stating the full text. Such incorporated standards are deemed to be regulations after two months.

Section 45-50: Administration and Enforcement

These sections cover:

- Methods for serving notices
- Jurisdiction of magistrates' courts
- State being bound by the Act
- Conflict with other laws (OHSA prevails over Explosives Act)
- Repeal of previous laws
- Short title and commencement provisions