

23 July 2021

## **RE: OHSA AMENDMENTS**

Recently, the Minister of Employment and Labour published an amendment Bill to the Occupational Health and Safety Act 83 of 1993, which bill is open for comment by the public up until 31 July 2021.

The main aim of the Principal Act is to provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery and the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work.

The proposed amendments however *prima facie* raise many concerns for business owners, however, is considered a benefit for employees.

The Bill seeks to make further provision in respect of the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery and to further regulate the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work.

The draft Bill essentially aims to strengthen the safety measures of workers in their respective workplaces and to introduce provisions that empower employees to withhold their labour service should they feel the environment is dangerous and unsafe, without being victimised by their employers.

Importantly, the definition of "risk assessment" is proposed to be inserted to the legislation, which means the systematic process of evaluating risks to an employee's health, which considers a complete hazard identification, how the employee may be affected, prioritization of risks.

The Bill will not just apply to Employers, but also to self-employed people too. In addition, it also introduces a number of onerous governance requirements that employers now need to comply with.

The Employer will need to conduct a detailed risk assessment in their particular workplace to evaluate risks to employee health and safety, which in its own will result

in a further financial burden on the company as they will in most cases make use of independent persons to conduct such assessments.

The development of the mandatory safety management systems will be time consuming and costly as independent persons with sufficient expertise will be used in most cases.

This compliance framework will have to be reviewed on a continuous basis by the CEO or the person to whom this has been delegated.

Further to the above, it is currently a prerequisite that workplaces with more than 20 employees elect a health and safety representative if there are up to 50 or 100 employees in shops/offices and other workplaces respectively. Over and above that, additional health and safety representatives need to be appointed. Only if there are two or more health and safety representatives, a health and safety committee need to be established. Under the proposed amendments, however, a health and safety committee will have to be established even if there is only one health and safety representative.

When one considers the fact that organisations have to appoint Covid-19 compliance officers, OHS representatives, Information Officers under POPI and PAIA as well as run multiple committees such as employment equity and skills development committees, health and safety committees it is evident that the regulatory burden on SA businesses is becoming increasingly onerous.

Under the proposed amendments, the employer's duties and obligations will be broadened as the Employer will now also be required to submit annual incident statistics on the first day of March each year in a format prescribed by the Department of Employment and Labour including contractor statistics, in addition to the normal financial year end obligations.

The CEO/ Employer or manager will be held criminally liable should their failure to comply with the Act result in death, permanent disability, or illness of a person.

Section 38- The penalties will be increased significantly as set out in Schedule 1. Maximum fine R500 000.00 and R 5 000 000.00, and the maximum imprisonment range between two and five years.

Another rather concerning proposal is the amendments to Section 43(4) of the OHS Act regarding penalties that may be prescribed for the contravention of regulations will significantly increase to a fine to a maximum of R5 000 000.00 or imprisonment for a period not exceeding 5 years or both.

As the onus is on the employer to adopt, implement and develop a recognised safety system that is based on international standards, employers will therefore be burdened with more liability when it comes to the safety of their workers. Workers however are also responsible to carry out lawful tasks and to ensure their own safety, and to report any unsafe or unhealthy situation as soon as possible.

In terms of other proposed amendments:

- a) Health and safety representatives will have enhanced rights.
- b) Union rights, in terms of health and safety disputes, are enhanced.
- c) Annual incident statistics reporting in March every year is extended to contractor incidents.

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