

Occupational Health *and* Safety Act

A new law to regulate health and safety in the workplace is to be debated in parliament in June. The Occupational Health and Safety Act will replace the current safety law, the Machinery and Occupational Safety Act (MOSA). It is expected to become law either late this year or at the beginning of next year. The most important changes it will introduce are procedures for the election of health and safety representatives.

MOSA gives management the right to appoint safety representatives. This was heavily criticised by the unions and after many years the government has responded by requiring the election of health and safety representatives. The representatives have extensive rights and powers and the union movement will have to debate and develop strategies to enable it to take the maximum advantage of these changes to the law.

The new Act, like MOSA,



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will apply to all workers in South Africa except those in the mining and fishing industries. Safety in the mining industry is regulated by the Minerals Act and the government recently approved the appointment of a Commission of Inquiry into occupational health and safety on the mines. The fishing industry will be regulated by special regulations made in terms of the Merchant Shipping Act.

Election of health and safety representatives

Every business employing more than 20 workers will have to have representatives. In shops and offices there must be at least one representative for every 100 workers. In all other workplaces, such as factories and building sites, there must be one representative for every 50 workers. In addition, an inspector can require a workplace to have a higher number of safety representatives.

The law states that an employer must *consult in good faith* with its employees or their representatives about the arrangements and procedures for the nomination or election of representatives. This means that an employer must meet with its workers or their trade unions to try to agree upon a process for electing health and safety representatives. These talks must be held with representatives of the entire workforce. Agreement should

be reached on issues such as the constituencies for the election of health and safety representatives, the practical arrangements for an election and how often elections should be held.

If this consultation does not lead to agreement between the employer and the workers, the unresolved issues must be referred to an inspector for arbitration. The decision of the inspector may be taken on appeal to the chief inspector and the Industrial Court. However, the Act prohibits a trade union or a group of workers from taking up a dispute over the elections in terms of the Labour Relations Act and staging a strike. The employer and trade union may also agree that the dispute be referred to an arbitrator other than an inspector.

Unions will have to be very careful as to the procedures that are agreed upon for the election of health and safety representatives. The Act does not give a specific role to unions and many employers will try to use this procedure to reduce the influence of trade unions over health and safety matters. The Act allows employers and workers to agree that no elections should be held and that the safety representatives should be nominated. In factories where unions are particularly strong, this could be used to reach an agreement that the elected shop stewards will be nominated as the safety

representatives.

Only full-time employees can be health and safety representatives. They must also be acquainted with the conditions and activities at their workplace. Again, this is likely to lead to disputes as employers may try to exclude key union officials from being representatives by saying they don't have knowledge of the conditions and activities at their workplace. Disputes about this will also be referred to an inspector to resolve.

Functions and powers

Health and safety representatives are elected for a particular section of a workplace and they perform all their functions in that section of their workplace (in small plants a single representative will be responsible for the whole place). The most important functions of a representative are to:

- ☐ review the effectiveness of health and safety measures;
- ☐ identify potential hazards and potential major incidents at the workplace;
- ☐ in collaboration with the employer, examine the causes of incidents that pose a threat to health and safety and accidents at the workplace;
- ☐ investigate complaints by employees relating to health or safety at work;
- ☐ make representations to the employer or a health and safety committee or an inspector on any one of

these issues;

- ☐ make representations to the employer on any matter affecting the health and safety of employees at work;
- ☐ inspect the workplace with a view to the health and safety of workers working there. These inspections must be conducted on a regular basis at an interval agreed upon between the representative and the employer;
- ☐ accompany an inspector on any inspection of the workplace and participate in consultations with the inspector at the workplace;
- ☐ receive information concerning health and safety from inspectors.

Health and safety representatives have the right to:

- visit the site of any accident or any other incident that could affect health and safety and conduct an inspection of the site;
- attend any investigation or formal inquiry held in terms of the Act;
- inspect any document which the employer is required to keep in terms of the Act;
- accompany an inspector on any inspection;
- be accompanied by a technical advisor on any inspection;
- participate in any internal health or safety audit that the company conducts.

These are a very extensive series of rights that go beyond the rights of representatives

under MOSA. In addition, the employer must provide health and safety representatives with the facilities, assistance and training that they require to carry out their functions. Training is definitely the most important aspect and trade unions will have to ensure that training for elected health and safety representatives is adequate and appropriate. All time spent by a safety representative carrying out their functions as well as receiving training is regarded as ordinary working time and they are entitled to payment.

The right of health and safety representatives to accompany inspectors on inspections is new. Where the employer has been informed by the inspector that an inspection will take place, the health and safety representatives concerned must be told. The employer must inform health and safety representatives of any inspection and investigation as well as any application it makes for an exemption from the Act or regulations. In addition, health and safety representatives must be informed as soon as possible about an accident or any other incident that endangered or could endanger the health or safety of workers. The representative for the area in which the incident or accident occurred must be informed.

Health and safety committee

Every workplace with two or more health and safety representatives must have a

health and safety committee. The committee consists of the representatives and persons representing the employer. The employer may not have more representatives than there are health and safety representatives.

The committee can consult over all aspects of worker health and safety. This includes the initiation or development of new health and safety measures as well as maintaining and reviewing current measures. The health and safety committee must meet at least once every three months. A large employer may have more than one committee.

The committee may make recommendations about matters of health and safety to the employer and, where these are not implemented, to an inspector. In addition it may discuss any incident in which a person was either injured, became ill or died.

Other changes to the law

The new Act covers occupational health. MOSA's coverage of occupational health is limited to a few very dangerous substances such as lead and asbestos. Now the chief inspector can draw up a list of hazardous substances. Any business that uses these hazardous substances will have to avoid or minimise the exposure of employees to the substances.

Where employees work with these substances, the employer must implement an occupational hygiene

programme as well as biological monitoring and medical surveillance. This requires regular medical testing of the employees to ensure that their exposure to the substance does not endanger their health.

The Advisory Council for Occupational Safety remains in effect and its power will be extended to occupational health. The council has 20 members of whom six represent workers' interests. Like other labour market institutions, it advises the Minister on all policy matters related to occupational health and safety.

The Council plays an important role in developing safety standards, making regulations and promoting education and training in occupational health and safety. Previously, none of the major trade union federations has been represented on this Council and COSATU and the other federations will have to consider whether to devote resources to participation in these structures.

Conclusion

The Occupational Health and Safety Bill is in general a progressive reform of the law. But it will not alone improve working conditions for South Africa's workers.

Organisational strategies will be required to take maximum advantage of the legal changes and translate them into real gains. ☆