



SHERQ Risk Management Group

Ensuring Compliance - Assuring Peace of Mind

Guideline on Designer Responsibilities



SHERQ Risk Management Group (Pty) Ltd

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1 INTRODUCTION

As the adage goes, “Ignorance is Bliss.” That may be so, but it is no defence in court.

Everything is great and goes well, until it doesn't. Then we very quickly begin to seek justification. It all comes down to “Reason vs Excuse”. Was there a justifiable reason or are we making excuses? Excuses, like ignorance, are no defence in courts.

A **Criminal** is a person who commits a crime, i.e. violates the law. A **Conviction** is the outcome of a criminal prosecution which concludes in a judgment that the defendant is **guilty of the crime charged**. Do you consider a person who commits an armed robbery and murders their victim, even though not arrested, to be a Criminal? If yes, is it not then true that anyone who commits any crime is a Criminal, even if the crime may be deemed to be less serious? Consider then the implications of not complying with legislation generally and those described in this guideline.

Legislation referred to or quoted in this Guideline should not be deemed to be a comprehensive indication of all applicable legislation as many other legislated requirements exist.

2 PURPOSE

To provide guidance for Designers, (including Designers of Temporary Works) whether self-employed or not, Clients, Chief Executive Officers and all Directors, Managers, Supervisors and Construction Health and Safety professionals on interpreting and explaining some of their legal obligations when Design work related to Structures or Temporary Works, is undertaken.

Comment

As a Designer (Architect, Engineer, Landscape Architects, Interior Designer or even a Temporary Works Designer) on a construction project, there are various legal requirements you must ensure. There are also some which are outside of your scope or competency and you must ensure you are not accepting responsibility or potential liability by doing so.

Where you are self-employed or are the C.E.O. or M.D. of an Architectural Design organisation or an Engineering Consultancy, the legal duties of the Employer, represented by the C.E.O. are also applicable and you should carefully consider them. [see Guideline on Employer Responsibilities on our website <https://sherq.biz/guidelines>] It is for this reason that some of these duties and responsibilities have been included in this Guideline

In my experience I have noted many instances where applicable legislation is either not known, understood or implemented, and in some instances, intentionally chosen to be ignored, and therefore Crimes are committed, and the perpetrators may face criminal action. In many such instances many Clients, Designers

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and Contractors approach is one of “It’s not possible or feasible” or “it’s too costly” or “it’s too difficult”. Choosing to ignore the legislation and therefore committing criminal acts, will be a lot costlier than implementing the requirements through well managed processes that are in fact not very difficult or costly, with the right professional assistance.

This Guideline is only a very short summary of extracts from limited legislation with some comments. There are many other applicable legal requirements which have not been included and this Guideline should therefore not be construed as being the only applicable requirements. This Guideline has not considered in detail the requirements as applicable on a Mine, save comments on requirements applicable to registered professionals.

A Designer may be appointed by, or in some instances undertakes Design without a legal appointment for, either a Client, Principle Contractor or Contractor. (In the Occupational Health and Safety Act, no such entity as a “Sub-Contractor” exists.)

Take some time to read this Guideline and thereafter consider the potential detrimental impacts of non-compliance.

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3 LEGISLATION

3.1 Act 38 of 2000 - Construction Industry Development Board Act

3.1.1 Section 1 - Definitions

“Client” means a person, body or organ of state who enters into a contract to procure construction works

“Construction Industry” means the broader conglomerate of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment

“Contractor” means a person or body of persons who undertakes to execute and complete construction works

Comment

This definition includes both a Principle Contractor and a Contractor and it should be noted when legislation refers to a Contractor, it includes all Principle Contractors also.

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“Construction Works” means the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure.

Comment

This includes the supply of materials, goods and other equipment to be used during construction and also various support services, including but not limited to Design, Project Management, etc.

“Project” means a construction works contract or a series of related construction works contracts.

Comment

All related construction activities, whether incidental thereto or not are deemed to be a single project. Both the Director General and the Chief Inspector [Department of Labour] have clarified this. The example given by them was that a road construction project may not be broken into smaller sections or packages and issued separately in order to avoid compliance. All such packages are to be combined and deemed to be a single road construction project. Each package may of course be contracted out separately to different Principle Contractors but the approach from the Client must be that it remains a single Project with separate Contracts. Likewise, they state that a housing development is to be combined and not packaged into smaller projects even if executed in stages.

Note

The definition of Construction Works includes provision of support and professional services, which may in some instances, include Design services.

3.1.2 CIDB Class of Construction Works - Civil Engineering (CE)

3.1.2.1 Definition of Civil Engineering (CE)

Construction Works primarily concerned with materials such as steel, concrete, earth and rock and their application in the development, extension, installation, maintenance, removal, renovation, alteration, or dismantling of building and engineering infrastructure.

Examples

Structures such as cooling tower, bridge culvert, dam, grand stand, road, railway, reservoir, runway, swimming pool, silo or tunnel. • The results of operations such as dredging, earthworks and geotechnical processes. • Township services, water treatment and supply, sewerage works, sanitation, soil conservation works, irrigation works, storm-water and drainage works, coastal works, ports, harbours, airports and pipelines.

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3.1.2.2 Definition of General Building Works (GB)

Construction Works that:

a) are primarily concerned with the development, extension, installation, renewal, renovation, alteration, or dismantling of a permanent shelter for its occupants or contents; or

b) cannot be categorised in terms of the definitions provided for civil engineering works, electrical engineering works, mechanical engineering works, or specialist works.

Examples

Buildings for domestic, industrial, institutional or commercial occupancies. • Car ports. • Stores. • Walls.

Comment

The categories and more specifically the CIDB grading are important as it is referred to and are a “gateway” for obtaining a construction work permit. [see below]

Note

CIDB Grading level 6 has an upper limit of R13 million.

3.2 Act 43 of 2000 - Council for Built Environments Act

3.2.1 Purpose

To provide for the establishment of a juristic person to be known as the Council for the Built Environment; to provide for the composition, functions, powers, assets, rights, duties and financing of such a council; and to provide for matters connected therewith.

3.2.2 Section 1 - Definitions

“built environment” means the field within which the registered persons practise;

“built environment professions” means the professions regulated by the professions’ Acts;

“councils for the professions” means the—

(a) South African Council for the Architectural Profession, established by the Architectural Profession Act, 2000;

(b) South African Council for the Project and Construction Management Professions, established by the Project and Construction Management Professions Act, 2000;

(c) Engineering Council of South Africa, established by the Engineering Profession Act, 2000;

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(d) *South African Council for the Landscape Architectural Profession, established by the Landscape Architectural Profession Act, 2000*

(e) *South African Council for the Property Valuers Profession, established by the Property Valuers Profession Act, 2000; and*

(f) *South African Council for the Quantity Surveying Profession, established by the Quantity Surveying Profession Act, 2000;*

3.3 Act 48 of 2000 - Project and Construction Management Professions Act

“professional” means a person who is registered in terms of section 19(2)(a);

“registered person” means a person registered under one of the categories referred to in section 18;

3.3.1 Section 18 - Categories of Registration

(1) The categories in which a person may register in the project and construction management are

(a) professional, which is divided into

(i) Professional Construction Manager; or

(ii) Professional Construction Project Manager; or

(b) candidate, which is divided into

(i) Candidate Construction Manager; or

(ii) Candidate Construction Project Manager; or

(c) specified categories prescribed by the council.

(2) A person may not practise in any of the categories contemplated in subsection (1), unless he or she is registered in that category.

(3) A person who is registered in the category of candidate must perform work in the project and construction management professions only under the supervision and control of a professional of a category as prescribed.

Comment

It is in terms of this legislation that the South African Council for the Project and Construction Management Professions (SACPCMP) exists.

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In terms of Section 18 (2) no person may practice, whether for a Client or a Contractor, as a Project Manager, Construction Manager of Health and Safety Professional, unless registered and in good standing with the SACPCMP.

The use of the word “*may*” in Section 18(1) must not be construed as an option to register or not, but rather an option to select a category in which a person **MUST register in order to undertake or perform any of the prescribed functions or duties within that category.**

There are numerous instances where Designers (architects or engineers) or other non-registered persons [not registered with the SACPCMP] are appointed by the Client to fulfil the role of Project Manager, albeit under the guise of another title, e.g. Co-ordinator, Planner, Client Agent, etc. If such a person is performing any of the functions and duties defined as being those of a Project Manager, then s/he is a Project Manager irrespective of the title endowed. The implications of doing so whilst not being registered and in good standing are dire and in fact could lead to criminal prosecution of both the Client and the person so acting and also the stopping of all works on the project.

Health and Safety Professionals are categorised under Sub-Section 1(c). It is important to note that they are deemed by law to be professionals and depending on their role, are viewed on the same level as engineers and architects and their legal duties and functions are similarly legislated.

Note

Whenever you make use of a person, or act as a person, whose roles and responsibilities form some or all of the duties or responsibilities of persons who are required to be registered, whether or not they carry a legal appointment, they **MUST** be registered and in good standing in that category with the SACPCMP.

3.3.2 Offences and Penalties

41. (1) A person contravening section 18(2), 23, 25(8) or 31(8)(a), (b), (e) or (f) is guilty of an offence.

(3) A person convicted of an offence in terms of section 18(2), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 18(2) or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991.

Comment

There is no legal penalty prescribed against the Client, however other penalties may become applicable in terms of other legislation (OHS Act & Regulations or MHS Act & Regulations) or common law, where for example a serious injury or fatality occurred, and it is determined that the persons in responsible roles, whether appointed or not, were not registered and therefore not competent to have been appointed or to

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perform those functions or duties, Management may likewise be held to account. Having made use of a non-registered person may be deemed an aggravating factor in any sentencing and could extend any sentence instituted by a court.

Consider that the penalty against, for example, an unregistered Project Manager who earned R1.5 million per annum for 3 years could be liable for a fine of R9 million or an unregistered Safety Officer who earned R0.5 million per annum for 3 years could be liable for a fine of R3 million.

The penalty may be calculated also on previous projects for the same employer and all bonuses received related to the projects in which s/he was involved may also be included as earnings. A project manager who was remunerated say R15 million during 10 years plus R2 million in bonuses on various projects, could be liable for a fine of R34 million.

3.4 Act 44 of 2000 - Architectural Professions Act

3.4.1 Section 18(1) - Categories of Registration

The categories in which a person may register in the architectural profession are-

(a) professional, which is divided into

- (i) Professional Architect;*
- (ii) Professional Senior Architectural Technologist;*
- (iii) Professional Architectural Technologist; or*
- (iv) Professional Architectural Draughtsperson; or*

(b) candidate, which is divided into—

- (i) Candidate Architect;*
- (ii) Candidate Senior Architectural Technologist;*
- (iii) Candidate Architectural Technologist; or*
- (iv) Candidate Architectural Draughtsperson; or*

(c) specified categories prescribed by the council.

(2) A person may not practise in any of the categories contemplated in subsection (1), unless he or she is registered in that category.

Comment

The use of the word “may” in Section 18(1) must not be construed as an option to register or not, but rather an option to select a category in which a person **MUST register in order to undertake or perform any of the prescribed functions or duties within that category.**

It is unlawful for anyone to practice unless registered and in good standing.

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3.4.2 South African Institute of Architects Code of Ethics

RULES

1.1.1. Members shall ensure that their professional actions contribute to the quality and sustainability of the natural and built environment and, within this context, to the health and safety of the public.

2.1.3. Members shall conduct their professional practice in a manner that shall not knowingly violate the law.

2.2.3. Members should if, in the course of their work on a project, become aware of a decision taken by their employer or client which violates any law or regulation which will, in the member's judgement of the finished project, materially affect adversely the safety and health of the public,

- Advise their employer or client against the decision and
- Refuse to consent to the decision.

Comment

These rules are specifically concerned with health and safety of persons and also ensuring legal compliance. When referring to legal violations, it is in the broader context and not limited to the Architectural Professions Act.

All actions must be considerate of the health and safety of persons at all stages of design, construction and subsequent occupation of the building or use of a structure. Also, to be considered is the risk to the health and safety of persons during later maintenance of the building or structure, for example access to the roof or to clean windows. [see paragraph 3.7.6. Regulation 6(e) for additional information]

Paragraph 2.1.3 of the Code of Ethics requires that members shall not knowingly violate the law, however the legal premise of *ignorantia legis neminem excusat* (Latin for "ignorance of law excuses no one") means that you may also not unknowingly violate any law. It is a legal premise that every person is responsible to establish all applicable legal requirements and then comply with them.

Other examples of potential legal contravention are described in this guideline, but one that stands out is performing the functions of a Project Manager while not been registered as such in terms of Section 18 of Act 48 of 2000 Project and Construction Management Professions Act as described above.

3.5 Act 46 of 2000 - Engineering Professions Act

3.5.1 Section 18 - Categories of Registration

- (1) The categories in which a person may register in the engineering profession are
- (a) professional, which is divided into-

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- (i) *Professional Engineer;*
(ii) *Professional Engineering Technologist;*
(iii) *Professional Certificated Engineer; or*
(iv) *Professional Engineering Technician; or*
(b) *candidate, which is divided into—*
(i) *Candidate Engineer;*
(ii) *Candidate Engineering Technologist;*
(iii) *Candidate Certificated Engineer; or*
(iv) *Candidate Engineering Technician; or*
(c) *specified categories prescribed by the council.*
(2) *A person may not practise in any of the categories contemplated in subsection (1), unless he or she is registered in that category.*

Comment

The use of the word “*may*” in Section 18(1) **must not** be construed as an option to register or not, but rather an option to select a category in which a person **MUST** register in order to undertake or perform any of the prescribed functions or duties within that category.

It is unlawful for anyone to practice unless registered and in good standing.

3.5.2 ECSA Code of Conduct

1.2. Professional Conduct – Registered Persons are to ensure that they execute their work with integrity and in accordance with generally accepted norms of professional conduct.

1.6. Objective – Registered Persons are to ensure that they do not prejudice public health and safety.

3.3 Public Interest – Registered Persons (a) must at all times have due regards for and give priority to the health, safety and interest of the public.

Comment

All registered persons must be able to demonstrate that all their actions were at all times conducted in a professional manner and in the interest of health and safety of persons. This would include for example not acting as a Project Manager if not registered and informing the Client, of the Clients legal duties to appoint professionally registered persons in various required roles, and as circumstances require.

3.6 Act 85 of 1993 - Occupational Health and Safety Act**3.6.1 Purpose**

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; the protection of persons other than persons at work

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against hazards to health and safety arising out of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety; and to provide for matters connected therewith.

Comment

As can be seen, the purpose is to ensure the safety of employees at work, and away from the normal workplace, while performing work for the employer, and also persons who are not employed but who are at the employer's workplace (visitors) or who may be affected at any place (neighbouring communities) by the work activities of the organisation.

Note

The OHS Act and where applicable, the Regulations promulgated thereunder, apply to all industries and workplaces with the exception of a Mine or a boat / ship registered in terms of the merchant shipping act.

3.6.2 Section 1 - Definitions

“chief executive officer”, in relation to a body corporate or an enterprise conducted by the State, means the person who is responsible for the overall management and control of the business of such body corporate or enterprise;

“danger” means anything which may cause injury or damage to persons or property;

“hazard” means a source of or exposure to danger;

“incident” means an incident as contemplated in section 24(1);

“health and safety standard” means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act will in the opinion of the Minister promote the attainment of an object of this Act;

“major incident” means an occurrence of catastrophic proportions, resulting from the use of plant or machinery, or from activities at a workplace;

“machinery” means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confirming, transforming, transmitting, transferring, or controlling any form of energy;

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Comment

All material in a hydroelectric dam wall or concrete in an electrical pylon foundation are deemed to be “machinery” and the OHS Act purpose will apply and the General Machinery Regulations may apply. Compressed gas or air has potential energy and may likewise be considered as a machine.

“premises” includes any building, vehicle, vessel, train or aircraft;

“reasonably practicable” means practicable having regard to –

(a) the severity and scope of the hazard or risk concerned;

(b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;

(c) the availability and suitability of means to remove or mitigate that hazard or risk; and

(d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving there from.

Comment

It is easy to confuse “*practicable*” and “*practical*” because they look so much alike and overlap in meaning. “*Practicable*” means “*feasible*” as well as “*usable*,” and it cannot be applied to people.

“*Practical*” means “capable of being put into effect, useful,” wherein the confusion with “*practicable*” arises.

There is a subtle distinction between these words that is worth remembering.

For example, excavating a shallow trench 50 meters in length, making use of an Excavator, is both “*Practicable*” and “*Practical*”, should an Excavator be readily available. On the other hand, it is more “*Practical*” to excavate by hand if no Excavator is immediately available and the time delay and cost in obtaining one would outweigh the benefit of hand excavating.

Note

It must be noted that as the risk increases, so too must there be less and less reliance on being “*Practical*” and more and more reliance on being “*Practicable*” while remaining “*Reasonable*”, with due consideration of all the circumstances.

For example, the same 50 meter trench is to be excavated, but this time 2 meters in depth and in soft soil or sand. The risk of persons in such a trench being injured or killed due to collapse increases. Application of the “*Reasonably Practicable*” requirement should dictate that means other than hand excavation be used, and thereby reducing the number of persons exposed to the risk, even though the use of mechanical means may be more expensive. There MUST be a reasonable balance between Cost vs Benefit.

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“risk” means the probability that injury or damage will occur;

“safe” means free from any hazard;

3.6.3 Management Responsibilities

GNR 539 of 24 July 2015 Appendix 4 prescribes the following: -

1. *The person legally responsible for ensuring the provisions of the Occupational Health and Safety Act and Regulations of 1993 are implemented on behalf of the employer is the Chief Executive Officer (C.E.O.)*
2. *In the case of a company without a board of directors or a closed corporation, the Owner is the CEO.*
3. ...
4. *It is therefore incumbent on the C.E.O. that proper information, instructions, training and supervision, as far as practicable are provided for the health and safety of employees. [Section 8(e) of the OHS Act, 1993]*
5. *The necessary enforcement measure to assure the health and safety of employees are affected through a chain of command structure.*
6. ...
7. *The C.E.O. must ensure that a health and safety management system is in place to give effect to the provisions of the Act and regulations.*
8. *Anyone delegated by the C.E.O. to perform certain duties regarding information, instructions, training and supervision for employees, through the management chain of command structure and who omits to do so in contravening the Act and regulations and may be prosecuted.*

Comment

This must be read with the OHS Act and Regulations in general, and Section 8 and 16, in particular. [see below]

Essentially, every organisation, irrespective of the nature of the organisation, **MUST** have a Health and Safety Management System. The C.E.O. is responsible to ensure such a management system and to further implement a Chain of Command structure to give effect to the system. The health and safety management system need not be aligned with any specific standard. Many organisations develop an internal system, but it would be best practice to base it on a recognised standard, for example ISO 45001. The purpose of such a system must include measures to ensure legal compliance. The Chain of Command structure must be implemented and, in some instances, would be required to be linked to legal appointments. Furthermore, the C.E.O. is personally responsible to ensure proper information, instructions, training and supervision are provided at all levels and operations within the entire organisation.

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Note

Every registered organisation or company, irrespective of the nature of work performed, **MUST** have a documented Health and Safety Management System.

Records of Design (Drawings, Calculations, Risk Assessments, Methodologies, Site Inspections, etc.) are required to, in certain instances be stored and kept available for up to eighty years. The responsibility to do so remains with both the Designer and the Client. It is imperative therefore that the Client be provided with and maintains the Consolidated Health and Safety File as prescribed in Construction Regulation 7(1)(e).

As a Designer, your Management System must include a suitable process for Document and Record Control which also describes Retention and Disposition of Records, in line with legislation and best practices.

Applicability off a Construction Site

An administrative office, plant workshop, laydown storage area, etc. which is not located within the demarked boundaries of a construction site are still governed by the requirements of the OHS Act and the above are requirements, including but not limited to a Chain of Command structure, appointments in terms of the OHS Act and relevant Regulations and a documented Health and Safety Management system.

Applicability on a Mine

An administrative office of a mining organisation not located on a registered / proclaimed mine must ensure compliance with the OHS Act and the above requirements, including but not limited to a Chain of Command structure, appointments in terms of the OHS Act and relevant Regulations and a Health and Safety Management system.

3.6.4 Section 8 - Duties of an Employer

1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health and safety of his employees.

2) Without derogating from the generality of an employer's duties under sub-section (1), the matters to which those duties refer include in particular –

(a) a provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health,

(b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety of employees, before resorting to personal protective equipment;

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(c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;

(d) establishing, as far as is reasonably practicable, what hazards to the health and safety or persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant and machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;

(e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;

(f) as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;

(g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;

(h) enforcing such measures as may be necessary in the interest of health and safety;

(i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and

(j) causing all employees to be informed regarding the scope of their authority as contemplated in section 37(1)(b).

Comment

Consider this Section as a summary of the entire OHS Act and Regulations. If you do not comply 100% with any other Section, Regulation, Standard or other applicable legislation, you have also contravened Section 8.

The “Employer” is the company represented by the C.E.O. but also includes all persons responsible within the defined Chain of Command Structure. In other words, a Manager or Supervisor of a team of workers is deemed to be their “Employer” for the duration of work and is responsible to ensure compliance.



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The term “*Reasonably Practicable*”, if you refer to the definition, demands a Hazard Identification and Risk Assessment by the C.E.O. personally [s/he may assign this duty of course but remains responsible to ensure that it is done and properly at that] and every other person responsible for managing or supervising employees must likewise perform them. They must of course be recorded and communicated, and evidence of the communication kept.

To provide a workplace that is safe and without risk to health means that it must be in that condition initially and thereafter maintained in such a condition. “*Safe*”, as can be seen from the definition means 100% free from any hazard. This requires that ALL HAZARDS be identified and included in the hazard identification and risk assessment. No exceptions. “*No risk to health*” means free from occupational health stressors which include but are not limited to noise, dust, chemical or biological exposures etc. To maintain the workplace in a safe and healthy condition will require ongoing auditing and measuring of potential exposures and ensuring records are kept.

The other requirements within Subsection 2 require specifically the identification of hazards and assessment of risks for every possible type of work to be performed. Consider (c) and (d) and ask yourself Have I, based on a Hazard Identification and Risk Assessment process, identified and communicated controls for employees driving on a public road to and from site, or travelling on site, or every other type of work which is performed? A person making coffee, using a copier machine, a lawn mower, dumpy level, computer, etc. and the list is almost endless.

Consider then Subsection 2(e) and ask yourself, Have I provided, and can I prove that I have in fact provided sufficient information, instruction and training as may be necessary? How have I determined this and documented what may be deemed to be sufficient? Have I assessed employees in the form of a documented skills and training needs analysis specifically per each employee category or job title? Have I assessed outstanding needs and implemented a communication and training program per individual?

Consider then Subsections 2(g) and ask yourself, How do I ensure legal compliance with the OHS Act and relevant regulations and standards by every person who enters any premises or place under my control? This would be applicable to the Client on a construction site, a visitor to your administrative office, etc. If one of them was injured or killed can you demonstrate 100% compliance?

Consider then Subsections 2(h) and ask yourself, How do I through the Management System and Chain of Command Structure enforce ALL SUCH MEASURES necessary in the interest of both health and safety to employees, visitors and other persons not on the premises who may be negatively impacted by what we do?

Consider then Subsections 2(i) and ask yourself, How do I ensure all work is always adequately supervised by competent supervision? Have I included within our hazard identification and risk assessment, controls

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and processes to ensure high risk activities are always personally and competently supervised and lower risk activities are generally likewise supervised? If any task or activity resulted in an injury or fatality the first question that will be asked is Who was the responsible Supervisor and then Where was the Supervisor at the time? The next question will be for documented evidence that the responsible Supervisor had the necessary prescribed competencies and authorities in relation to the activity or task being performed?

Consider then Subsections 2(j) and ask yourself, Have I in writing ensured that each and every employee is aware of both the full scope and the limitation of their authority and can I produce a record thereof?

A reminder that this is all applicable to every employee based on or visiting sites as well as your head office and other areas.

Note

A Designer travelling to and from a site, attending meetings or performing inspections on a site, is performing part of their normal Scope of Work. Whether a self-employed person or as an employer of other Designers, you are legally obliged to ensure you and they are and remain safe by having performed the necessary prescribed (by law) identification of hazards, assessment of risk, determining and implementing of controls, communicating and training of them and supplying PPE. These are but a few. [see also paragraph 3.6.5 Section 13 – Duty to Inform]

3.6.5 Section 13 - Duty to Inform

Without derogating from any specific duty imposed on an employer by this Act, every employer shall–

(a) as far as is reasonably practicable, cause every employee to be made conversant with the hazards to his health and safety attached to any work which he has to perform, any article or substance which he has to produce, process, use, handle, store or transport and any plant or machinery which he is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;

(c) inform a health and safety representative as soon as reasonably practicable of the occurrence of an incident in the workplace or section of the workplace for which such representative has been designated.

Comment

Here again reference is made to the term “Reasonably Practicable”, in other words the hazard identification and risk assessment process is referenced. Specifically, this Section requires that every employee be informed regarding hazards, risks and controls, including Safe Work Procedures, in respect of each type of work s/he is required to perform and that related aspects are also mentioned. What is important is the wording “has to perform”. This requires that this be done before any work, activity or task is undertaken.

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This must also be applied immediately before any task is undertaken as part of a continuous risk assessment process, albeit a less formal nature, usually in the form of an Issue Based or Emerging Risk Assessment, which must still be recorded.

Unless you have written records that the communication had taken place and was fully understood, you will not be able to demonstrate compliance.

Every incident at a workplace must be communicated to every Health and Safety Representative for that area or workplace as soon as possible. This is in order that they may perform their functions, which include the right to review risk assessments, procedures and controls and to participate in the investigation which in any event should commence immediately following the occurrence of an incident.

Note

Do you have risk assessments for every task and hazard and can you provide evidence of having communicated to all of your employees?

SHERQ Risk Management Group has specialist risk assessors and assist you as part of the development and implementation of your Management System.

3.6.6 Section 16 - Chief Executive Officer Charged with Certain Duties

1) Every chief executive officer shall as far as is reasonably practicable ensure that the duties of his employer as contemplated in this Act, are properly discharged.

*2) Without derogating from his responsibility or liability in terms of sub-section (1), a chief executive officer **may** assign any duty contemplated in the said sub-section, to any person under his control, which person shall act subject to the control and directions of the chief executive officer.*

3) The provisions of sub-section (1), shall not, subject to the provisions of section 37, relieve an employer of any responsibility or liability under this Act,

Comment

The C.E.O. is ultimately responsible to ensure compliance with legislation and to provide a workplace that is safe and without risk to health. S/he MUST further ensure proper suitable and adequate training and supervision and requires specifically, but not limited to those, prescribed in Section 8, to implement a Health and Safety Management System and include a formal Chain of Command Structure.

Subsection 16(2) allows a C.E.O. to appoint one or more persons to assist him. Doing so is optional and not doing so cannot be enforced. The effect of not appointing an assistant simply means the C.E.O. retains full responsibility subject to the provisions of Section 37, which is regarding Vicarious Liability and is described in detail hereunder.

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NOTE

An appointment in terms of Section 16(2) [and any other legal appointment or authorisation for that matter – see Guideline on Legal Appointments on our website <https://sherq.biz/guidelines>] may not be generic to a point where responsibilities are not of a specific nature. Wording often used is in the lines of “Assist me to ensure compliance to the OHS Act and Regulations” or “Ensure the development and implementation of a Management System.” They are too broad unless only a single person is so appointed. If multiple appointments are made, then the responsibilities MUST be specifically distinctly defined so that there can be no ambiguity or shared responsibilities.

3.6.7 Section 24 - Report to inspector certain incidents

1) *Each incident occurring at work or arising out of or in connection with the activities of persons at work, or in connection with the use of plant or machinery, in which, or in consequence of which –*

(a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that he is likely either to die or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which he was employed or is usually employed;

(b) a major incident occurred; or

(c) the health or safety of any person was endangered and where –

(i) a dangerous substance was spilled;

(ii) the uncontrolled release of any substance under pressure took place;

(iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or

(iv) machinery ran out of control, shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be.

Comment

Refer to the definition and comments of “Machinery”

2) *In the event of an incident in which a person died, or was injured to such an extent that he is likely to die, or suffered the loss of a limb or part of a limb, no person shall without the consent of an inspector disturb the site at which the incident occurred or remove any article or substance involved in the incident there*

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from: Provided that such action may be taken as is necessary to prevent a further incident, to remove the injured or dead, or to rescue persons from danger.

3) *The provisions of sub-sections (1) and (2) shall not apply in respect of –*

(a) a traffic accident on a public road;

(b) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; of

(c) any accident which is to be investigated under section 12 of the Aviation Act, 1962 (Act No. 74 of 1962).

Comment

An incident must be deemed to be both an unwanted and unplanned event.

A Major Incident is defined as one of Catastrophic Proportions. Whether or not something is viewed as being a catastrophe is subjective and depends on an individual's viewpoint. The death of a family's breadwinner would be catastrophic to them but perhaps not so much so to you, their employer.

The manner of reporting incidents to the Inspector and the time frames allowed are prescribed in General Administrative Regulation 8.

In essence, where there has been a fatality, unconsciousness, (even if only for seconds) an amputation, (bone loss only - loss of for example an ear, nose or fingertip is not an amputation) machinery that ran out of control or a total or partial **structural collapse**, even where there was no injury sustained, [near hits or damage only incidents may fall within this category] the entire scene and equipment involved must be left as is, secured and not moved or tampered with until such time as an Inspector from Department of Labour has granted written permission to continue, which could take days. Of course, items may be made secure to prevent potential further injuries or damage. A running engine may be turned off and a barrier erected or secured, or an oil spill cleaned, etc. Injured and deceased persons may be removed. Nothing else may be removed unless it is necessary to protect its integrity, for example an inspection record on the ground outside. The Inspector **MUST** be informed immediately. A telephone call would suffice but it is advisable to follow it up via email as soon as possible to provide evidence of so reporting.

Where a fatality has occurred, the South African Police Services must also be informed. They will remove any deceased person for a post mortem examination and will investigate an inquest separately to the Department of Labour investigation.

Where an injury or illness has occurred and the injured is likely to be medically unfit for more than 13 calendar days, not work days, (base your decision on nature of injury and consider the medical prognosis)

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it must be reported to an Inspector with seven days. These are calendar days and not working days and weekends and shutdowns MUST be calculated and included.

All incidents must be investigated internally by the employer. This Guideline does not detail investigation requirements but be aware that all investigations must commence as soon as possible after the occurrence of an incident and finalised within 30 calendar days. [See Guideline on Incident Reporting, Recording and Investigating on our website <https://sherq.biz/guidelines>] Health and Safety Representatives are legally entitled to participate in investigations and so must be informed immediately.

All investigations commence with evidence gathering. Someone independent of the responsible Manager or Supervisor should take control of the scene and commence with the preliminary gathering of evidence once emergency responders have secured the area and necessary medical treatment has commenced. Other than a Health and Safety Committee, anyone responsible to conduct an investigation must be appointed, either generally for all investigations, or specifically for a particular incident.

It is advisable to make use of experienced investigators in serious incidents. In most cases, evidence missed cannot be recouped. Photos, timelines, persons (injured, witnesses, designers, inspection records, etc.) need to be secured to ensure they are not lost or tampered with.

Note

It is important to refer to Paragraph 3.7.1. below for the Definitions of both Design and Structure.

The Collapse of any Structure or part thereof may require the immediate stopping of work, securing of the scene, immediate reporting to the Department of Labour and a full investigation, even if no injuries occurred.

In a scenario where for example an installed I-beam or part of an access scaffold fractures, fails or collapses, an investigation would commence to determine causes. Although not intended to apportion blame, usually this is what results. As the Designer of that Structure, you would be involved in any such investigation and be required to demonstrate suitability of design (safety factors and legal compliance), your competence and many other factors. Remember also, that in terms of the OHS Act Section 34, you may not fail or refuse to answer any question by an inspector, unless it may incriminate you personally, or refuse or fail to produce any document or record. **You may be required to incriminate other persons.**

As a Designer, ask yourself Do I have in place a suitable Health and Safety Management System? Does the system describe my responsibilities and those of other Designers responsible to me? Have I ensured, where mandated, sufficient inspections were undertaken to ensure construction was according to the design and methodologies provided by me. Do I have records of such inspections? In essence, can I demonstrate that I acted reasonably and legally?

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SHERQ Risk Management Group has specialist investigators and you are welcome to call us. We are available 24/7/365 and will immediately begin communicating with your management and employees on scene to provide guidance until we arrive to take over an investigation.

3.6.8 Section 29 - Functions Inspectors

1) *An inspector may, for the purpose of this Act –*

(a) without previous notice, at all reasonable times, enter any premises which are occupied or used by an employer or on or in which an employee performs any work or any plant or machinery is used, or which he suspects to be [on] such premises;

Comment

Permission to enter any workplace or giving advance notification, is not a requirement, and obstructing or refusing entry is a serious punishable offence. Reasonable times should be construed as being both during normal working hours and during a period in which it could reasonably be expected that s/he would be given assistance. Arriving ten minutes before closing and requiring records which are held at your head office may be deemed to be unreasonable and would make a good argument for the request being impossible to provide. You however still may not refuse entry or refuse to assist. Make it clear that you will co-operate fully but only as far as you are able. Note all discussions and write them down as soon as you can.

(b) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;

Comment

You have the right not to implicate yourself in any crime or civil libel. You do not have the right to refuse to answer a question which may implicate any other person. **You must answer truthfully.**

*(c) require from any person who has control over or custody of a book, record or other document on or in those premises, **to produce to him forthwith**, or at such time and place as may be determined by him, such book, record or other document;*

Comment

To produce forthwith means immediately. If it is a requirement for a document or record to be at a particular place, for example a daily inspection record which **MUST** be in the vehicle or plant, and it is not, but has been sent to the administrative office, it may be deemed that it was unable to be produced. Likewise, proof of an appointment, evidence of competency Drawings and Calculations, etc. must be available at the

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workplace in either the Health and Safety File or the "Record file" on site. Referring to head office to obtain it may also be construed as not being able to produce it "forthwith."

Note

Ensure that your Health and Safety Management System specifies all requirements for control and disposition of records and ensure that it complies to legal requirements.

- (d) examine any such book, record or other document or make a copy thereof or an extract there from;*
- (e) require from such a person an explanation of any entry in such book, record or other document;*

Comment

Where an explanation is sought, it must be given immediately. If the responder genuinely does not know and therefore is unable to explain, someone who does know and can explain, must respond immediately. Asking that the question be deferred to obtain an explanation will likely not be accepted unless it genuinely requires explanation from someone who is not immediately available. An example of this would be an inspector asking a Client or C.E.O. of a Design Studio, how s/he determined competency of a Designer prior to his / her appointment. The Client or C.E.O. will have to explain and not refer to the HR department or another person. The person who makes the appointment must ensure competency prior to appointing.

- (f) inspect any article, substance, plant or machinery which is or was on or in those premises, or any work performed on or in those premises or any condition prevalent on or in those premises or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;*
- (g) seize any such book, record or other document or any such article, substance, plant or machinery or a part or sample thereof which in his opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;*
- (h) direct any employer, employee or user, including any former employer, employee or user, to appear before him at such time and place as may be determined by him and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;*
- (i) perform any other function as may be prescribed.*

2) (a) *An interpreter, a member of the South African Police or any other assistant may, when required by an inspector, accompany him when he performs his functions under this Act.*

(b) *For the purpose of this Act an inspector's assistant shall, while he acts under the instructions of an inspector, be deemed to be an inspector.*

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3) *When an inspector enters any premises under sub-section (1) the employer occupying or using those premises and each employee performing any work thereon or therein and any user of plant or machinery thereon or therein, shall at all times provide such facilities as are reasonably required by the inspector to enable him and his assistant (if any) to perform effectively and safely his or their functions under this Act.*

Comment

Such facilities may include a desk & chair, pen & paper, access to a photo copier / scanner / printer, Personal Protective Equipment and any other reasonable request. S/he has the right to remove any article, which includes computers, mobile phones, etc. if they in his / her opinion contain evidence of any nature. It would be advisable to have a means immediately available at all times to make copies as is your right. You however may find it difficult to convince the Inspector to wait around for hours on end while you copy an entire hard drive.

It would be best practice that your Management System provides for, and that you do in fact, ability to store back-up data in the Cloud or on another device.

Note

Remember that you are legally responsible for the Inspectors health and safety while on your premises. In some circumstance you need to provide an induction as was previously discussed. You also need to ensure that s/he complies with the OHS Act and Regulations while on your premises.

4) *When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in sub-section (1) (f) or (g), he shall issue a receipt to the owner or person in control thereof.*

3.6.9 Section 30 - Special Powers of Inspectors

1) (a) *Whenever an employer performs an act or requires or permits an act to be performed, or proposes to perform an act or to require or permit an act to be performed, which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person, the inspector may in writing **prohibit** that employer from continuing or commencing with the performance of that act or from enquiring or permitting that act to be continued or commenced with, as the case may be.*

(b) *Whenever a user of plant or machinery uses or proposes to use any plant or machinery, in a manner or in circumstances which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person who works with such plant or machinery or who is or may come within the vicinity thereof, the inspector may in writing **prohibit** that user from continuing or commencing with the use of such plant or machinery or in that manner or those circumstances, as the case may be.*

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(c) An inspector may in writing **prohibit** an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be exposed in the course of his employment for a longer period than a period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the employee belonging to that category or employees, as the case may be.

(d) A prohibition imposed under paragraph (a), (b) or (c) may at any time be revoked by an inspector in writing if arrangements to the satisfaction of the inspector have been made to dispose of the treat which gave rise to the imposition of the prohibition.

2) In order to enforce a prohibition imposed under sub-section (1) (a) or (b), an inspector may block, bar, barricade or fence off that part of the workplace, plant or machinery to which the prohibition applies, and no person shall interfere with or remove such blocking, bar, barricade or fence.

3) Whenever an inspector is of the opinion that the health or safety of any person at a workplace or in the course of his employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or user, as the case may be, to take reasonable steps in the interest of such person's health or safety, the inspector may in writing direct that employer or user to take such steps as are specified in the direction within a specified period.

4) Whenever an inspector is of the opinion that an employer or a user has failed to comply with a provision of a regulation applicable to him, the **inspector may in writing direct** that employer or user to take within a period specified in the direction such steps as in the inspector's opinion are necessary to comply with the said provision, and are specified in the direction.

5) A period contemplated in sub-section (3) or (4) may at any time be extended by an inspector by notice in writing to the person concerned.

6) An employer shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees concerned.

Comment

If an inspector finds dangerous or adverse conditions at the workplace, he or she may set requirements to the employer in the following ways: -

Improvement notice: When in the opinion of an inspector [whose opinion may be subjective] the arrangements or systems [physical conditions or processes] implemented by an employer do not suffice to protect the health and safety exposures of persons, s/he may issue a notice instructing such employee to take such corrective actions as described to, improve such arrangement.

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The time frame for corrective actions will be stipulated in the notice but such period does not usually exceed 60 days. It can be extended by the inspector if circumstance warrant a longer period.

Contravention Notice: When in the opinion of an inspector [whose opinion may be subjective] the arrangements or systems [physical conditions or processes] implemented by an employer do not comply with any legal requirement or acceptable standard, s/he may issue a notice instructing such employee to take such corrective actions as described to, correct such contravention. A contravention of a requirement prescribed in the Act is usually prosecuted criminally in court while a contravention of a regulation is usually remedied following a Contravention Notice.

The time frame for corrective actions will be stipulated in the notice but such period does not usually exceed 60 days. It can be extended by the inspector if circumstance warrant a longer period.

Prohibition Notice: When in the opinion of an inspector [whose opinion may be subjective] the arrangements or systems [physical conditions or processes] implemented by an employer pose an immediate threat to the health or safety of any person, s/he may issue a notice instructing such employee to take such corrective actions as described to, correct such condition. Such notice may be restricted to a location or area, a specific process or operation or an entire premises or site, and effectively instructs the employer from proceeding with or allowing any such described process or work from continuing or any area to be entered until such time as the situation or condition has been rectified to the satisfaction of such inspector. **In essence, s/he can stop a whole or part of a site.**

There is no time frame for corrective actions. All work is to remain stopped until the prohibition has been lifted in writing.

Note: You have only two options – correct the deficiencies to the satisfaction of the inspector who issued the notice or appeal to the Chief Inspector within 60 calendar days.

Important

A new revised Occupational Health and Safety Act has been drafted and it is expected that it will be published in the very near future. It makes provision for fines of up to R5 million per count for convictions in court. It also extends the Special Powers of Inspectors, who will then be able to issue summonses of up to R50 000-00 per contravention. The accused person can either pay an admission of guilt fine or appear in court in a similar nature to traffic fines. Although it has not been documented, it is likely the Department of Labour will keep a record of individuals so fined and monitor repeat offenders.

Are you ready to transition to the new legislation?

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3.6.10 Section 36 - Disclosure of Information

No person shall disclose any information concerning the affairs of any other person obtained by him in carrying out his functions in terms of this Act, except –

(a) to the extent to which it may be necessary for the proper administration of a provision of this Act;

(b) for the purposes of the administration of justice; or

(c) at the request of a health and safety representative or a health and safety committee entitled thereto.

Comment

This section is self-explanatory. Remember that the Protection of Personal Information [POPI] Act legislates many addition restraints.

The most common area where these requirements are contravened is with employees' medical records. It is often found that medical practitioners provide confidential medical information, including but not limited to for example, results of lung function test, medical conditions, etc. which are then kept in a file on a site. The only medical record allowed on site is the Annexure 3 indicating "Fit", "Conditionally Fit" or "Not Fit". Other records should be stored at Head Office and are part of the legislated Medical Surveillance Programme which should be defined in your Management System. Where an employee has been referred to an optician, clinic, etc. for a diagnosed condition, this information may not be disclosed. The employee is required to, after having completed the referral process, return to the Occupational Health Practitioner who must issue a revised Annexure 3 indicating fitness and again and only this may be kept on site.

Although medical information is deemed confidential, the interests of the employee may not outweigh the Duty of Care of the Employer. In other words, where an individual's medical condition or the use of prescription drugs affecting his / her ability to perform safely, or poses a risk to that employee or other employees, such information can reasonably be expected to be disclosed by such an employee.

3.6.11 Section 37 - Acts or Omissions by Employees or Mandataries

1) Whenever an employee does or omits to do any act which it would be an offence in terms of this Act for the employer of such employee or a user to do or omit to do, then, unless it is proved that –

(a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;

(b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and

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(c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user himself shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect thereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

Comment

What we have here is Vicarious Liability (the Master - Servant Principle).

Employers are vicariously liable, under the “*respondeat superior doctrine*”, for negligent acts or omissions by their employees in the course of employment (sometimes referred to as 'scope and course of employment'). To determine whether the employer is liable, the difference between an independent contractor and an employee is to be drawn. To be vicariously liable, there must be a requisite relationship between the Employer and the Employee, which could be examined by three tests: Control test, Organisation test, or Sufficient relationship test. An Employer may still be held liable under principles of vicarious liability (may be convicted and sentenced) if an employee undertakes an authorized act in an unauthorized way.

Employers may also be liable under the common law principle represented in the Latin phrase, *qui facit per alium facit per se* (one who acts through another, acts in one's own interests). That is a parallel concept to vicarious liability and strict liability, in which one person is held liable in criminal law for the acts or omissions of another.

Where for example the actions of an Employee [direct employee or that of a mandatory] were negligent, and the actions resulted in the death of another, that Employee and the Employer [line management up and including the C.E.O.] may be convicted and sentenced for Culpable Homicide, unless such line manager and C.E.O. can demonstrate compliance to the above requirements. Permission or Connivance can also be given tacitly. Failure to actively prevent an action may be deemed to be having permitted it. If, the individual Employees Scope of Authority is not defined, it will be impossible to demonstrate that the actions were outside of such Scope of Authority.

If reasonable steps (after having applied the Reasonable Person principle described previously) were not taken to ensure that the acts committed by the employee were not committed, then it may be deemed that tacit permission was given. The codicil here, is that having issued an instruction to NOT do something will not be deemed as sufficient. More than a simple instruction is required to demonstrate that you took all reasonable steps.

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Let's consider the obligations of a C.E.O. to provide and maintain a workplace that is safe and without risk to all manner of persons, based on risk assessments, from which adequate suitable controls stem, which are then implemented through the Management System and Chain of Command Structure. The C.E.O. appoints persons with varying, but separate, (hopefully) roles and responsibilities to assist with these responsibilities. Such appointment should include a requirement, that it is subject to continuous provision by the C.E.O., of direction and control. If you are the C.E.O., ask yourself Can I demonstrate that I have continuously participated in an active manner in the development and implementation of the Management System and the implementation of controls? Do I have evidence of more than simply having received monthly statistical reports? Have I issued directives and exercised control? More importantly, Have I taken steps to ensure that they were carried out?

Consider then the actions of a junior architect or engineer, who reports to you, and who is mistaken in calculations or does not perform an inspection properly and the result is a collapse or worse, a fatality. Would you be deemed to have provided adequate supervision and control and acted sufficiently to ensure they complied?

Having issued directives or instructions is still not enough. They must be actioned to ensure compliance.

Note

This requirement applies down through the entire Chain of Command Structure, where each level of management or supervision can be held criminally and / or civilly responsible and liable.

2) The provisions of sub-section (1) shall mutatis mutandis apply in the case of a mandatary of any employer or user, except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the mandatary with the provisions of this Act.

Comment

This is the reference to the renowned Section 37(2) agreement, often entered into between Principle Contractors and Contractors or between Clients and Principle Contractors.

A **Mandatary** is any organisation (juristic person), natural person or group to whom a mandate has been given and who is thereby mandated to perform any form of work on behalf of another. This includes also, for example, a Designer and a Health and Safety Professional mandated by a Client.

A **Mandate** is an official order or commission to do something and empowers the Mandatary to act on behalf of a Mandator.

A **Mandator** is a person, group or organisation who issues a Mandate to a Mandatary.

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Simply having such an agreement in place does not automatically exempt the Mandators C.E.O. and line management from being responsible and therefore liable. It will need to be demonstrated that the Mandatary also complies 100% with the OHS Act and Regulations and has a suitable Management System and the necessary risk assessments, controls and competencies. If not, the reasonable person test would be applied, and the question would be could the Mandatary and all employees have reasonably been expected to provide and maintain a workplace that was safe and without risk to health at the time of entering into such an agreement? If the answer is a resounding No, then the Section 37(2) agreement is worthless and may even be deemed to be an aggravating factor as it may be viewed as having attempted to intentionally avoid responsibility.

Note

The above applies also to the Clients Section 37(2) agreement with Designers or Principle Contractors who may not have had the capacities and competencies, including professional registration where applicable, at the time of entering into such agreement.

3) Whenever any employee or mandatary of any employer or user does or omits to do an act which it would be an offence in terms of this Act for the employer or any such user to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer or user.

Comment

As an employer of either a direct employee or that of a mandatary, you may be convicted and sentenced to a fine, imprisonment or both, as if you had personally committed the offence in question.

4) Whenever any employee or mandatary of the State commits or omits to do an act which would be an offence in terms of this Act, had he been the employee or mandatary of an employer other than the State and had such employer committed or omitted to do that act, he shall be liable to be convicted and sentenced in respect thereof as if he were such an employer.

5) Any employee or mandatary referred to in sub-section (3) may be so convicted and sentenced in addition to the employer or user.

6) Whenever the employee or mandatary of an employer is convicted of an offence consisting of a contravention of section 23, the court shall, when making an order under section 38(4), make such an order against the employer and not against such employee or mandatary.

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3.7 GNR 84 of 7 February 2014 Construction Regulations

3.7.1 Regulation 1 - Definitions

“Agent” means a competent person who acts as a representative for the client

NOTE: This is a Health and Safety Agent [the Clients Health and Safety Professional] as opposed to a Clients Project / Site Agent or Manager

“Client” means any person for whom construction work is being performed

Comment

The Client can only ever be the person who is in effect paying the final account and who will benefit from the construction works by “owning” the structure after completion. Commercially and contractually, a Principle Contractor may be a “client” of a Contractor in that they compensate such Contractor, but the Principle Contractor is only a conduit for monies originating from the Principle Contractors Client.

There can only ever be one “Client” on a construction project, the person or organisation who ultimately pays the bill and will own or benefit from the completed structure.

“Competent Person” means a person who

- a. Has in respect of the work or task to be performed the required knowledge, training and experience and, where applicable, qualifications, specific to that work or task; and*
- b. Is familiar with the [OHS] Act and with the applicable regulations made under the Act*

Comment

Take cognisance of the very wide ambit of this definition. To act as a Clients Designer (architect or engineer, etc.), **Competence MUST be demonstrated** and in some legislated instances having a Qualification is a requirement. Where professional registration is a requirement, such is also a requirement to be deemed competent.

Also, of importance, is that competence is directly related to the work or task required to be performed.

“Construction Work” means any work in connection with

- a. The construction, erection, alteration, renovation, repair, demolition or dismantling of or addition to a building or similar structure, or*

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b. *The construction, erection, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system, or the moving of earth, clearing of land, the making of excavation, piling, or any similar civil engineering structure or type of work*

Note

This MUST be read in conjunction with the same definition as described above in the CIDB Act. [see above]

“Contractor” means an employer who performs construction work

Comment

These are both Principle Contractors and their Contractors and any self-employed person performing Construction Work.

Note

If any work to be performed is that as is defined as “Construction Work” then the organisation or person performing that work is deemed to be a Contractor and the legislated requirements in the Construction Regulation apply. **Any work in connection with, would include Design (amongst many other support functions) and therefore all Design work is deemed to be Construction Work and therefore a Designer MAY also be deemed to be a Contractor.**

“Design” in relation to any structure, includes drawings, calculations, design details and specifications.

Comment

This becomes of utmost importance when the requirements of Construction Regulation 7(1)(e) are implemented. [see below] This regulation is concerned with the requirement that a Principle Contractor hand to the Client a Consolidated Health and Safety File which amongst many other prescribed contents, **MUST** include a record of all drawings, designs, material used and similar information. This therefore requires that all revisions of all drawings AND DESIGNS, (including all calculations, design details and designers’ specifications) are included along with all materials used during construction.

Note: It is the appointed Health and Safety Professional representing the Client, who is legally responsible and whose duty it is, to compile the consolidated file received from the Principle Contractor and ensure it is handed to the Client. The minimum contents thereof are legislated.

Also note: that site diaries and all quality records, for example, required inspection and release, test and approval records etc. are deemed to be health and safety records and will form part of the consolidated health and safety file.

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As a Designer, in conjunction with the Health and Safety Professional, ensure records are being properly kept.

“Designer” means

- a. A competent person who
 - (i) Prepares a design
 - (ii) Checks and approves a design
 - (iii) Arranges for a person at work under his or her control to prepare a design, including an employee of that person where he or she is the employer; or
 - (iv) Designs temporary works, including its components
- b. An architect or engineers contributing to or having overall responsibility for a design
- c. A building services engineer designing details for fixed plan
- d. A surveyor specifying articles or drawing up specifications;
- e. A contractor carrying out design work as part of a design and building project; or
- f. An interior designer, shop-fitter or landscape architect

Comment

The normal process for a conventional building, is for an Architect to provide a Design and the relevant Professional Engineers to supplement it. A structural engineer would for example, design concrete and rebar and be required to sign off after a site inspection, authorising the casting stages.

The Client however remains responsible to ensure the various Designers are competent, registered and in good standing, even where employed by a Contractor. This is the duty of the Clients Health and Safety Professional who shall verify competence and registration and where necessary appoint them on the Clients behalf when employed by the Client or authorise the Contractor to appoint them when employed by the Contractor.

They should NEVER be appointed by the Clients Project Manager.

“Health and Safety File” means a file, or other record containing the information in writing as required by these regulations

“Health and Safety Plan” means a site, activity or project specific documented plan in accordance with the client’s health and safety specification

“Health and Safety Specification” means a site, activity or project specific document prepared by the client pertaining to all health and safety requirements related to construction work.

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Comment

The Client is responsible to compile risk assessments and health and safety specifications which are to be provided to Designers prior to design and to Contractors prior to pricing / tendering. These must be done by a competent person and should never be attempted by the Clients Project Manager alone.

The risk assessments and health and safety specifications must be provided to the various Designers prior to any design and later the Principle Contractor prior to tender / pricing.

They, along with proof of the issuing thereof, must also be included with the application for the Construction Work Permit.

"structure" means—

(a) any building, steel or reinforced concrete structure (not being a building), railway line or siding, bridge, waterworks, reservoir, pipe or pipeline, cable, sewer, sewage works, fixed vessels, road, drainage works, earthworks, dam, wall, mast, tower, tower crane, bulk mixing plant, pylon, surface and underground tanks, earth retaining structure or any structure designed to preserve or alter any natural feature, and any other similar structure;

(b) any falsework, scaffold or other structure designed or used to provide support or means of access during construction work; or

(c) any fixed plant in respect of construction work which includes installation, commissioning, decommissioning or dismantling and where any construction work involves a risk of a person falling;

Comment

It also includes any part of any structure designed to support or distribute a load.

"temporary works" means any falsework, formwork, support work, scaffold, shoring or other temporary structure designed to provide support or means of access during construction work;

Comment

The Designer must be competent commensurate to the complexity of the temporary works. For example, Design of formwork for the casting of a pavement edge will require less competency than that required for in-situ casting of a bridge deck or floor levels in a building.

Note

In some instances, the Design of temporary works need not be done by a qualified person, but such person must still be deemed to be otherwise a Competent Person and all Designers MUST ALWAYS be appointed.

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3.7.2 Regulation 2 - Scope of Application

- (1) *These Regulations are applicable to all persons involved in construction work.*
- (2) *Regulation (3) and (5) are not applicable where the construction work carried out is in relation to a single storey dwelling for a client who intends to reside in such dwelling upon completion thereof.*

Comment

Although not specifically defined, it is generally accepted that a single-storey dwelling is one which is of a ground floor only and a roof which is accessed only to perform maintenance or effect repairs.

Where a flat roof with access stairs or a protruding balcony is to be constructed as part of the dwelling, it is not deemed to be a single-story dwelling and this regulation will not apply, and therefore Regulations (3) and (5) remain in effect.

Are you performing work for a Client who has not engaged the services of a Construction Health and Safety Professional to act as their Agent? If "Yes", both you and the Client are at risk. You should advise them to engage one immediately.

We are able to assist with these and many other services.

NOTE

There are many other legislated duties imposed on the Client and so it is advised that the Client obtain professional Health and Safety assistance. [See Guideline on Client Responsibilities on our website <https://sherq.biz/guidelines>]

3.7.3 Construction Work Permit

Regulation 3 - Application for Construction Work Permit

1. *A client who intends to have construction work carried out, must at least 30 days before that work is to be carried out apply to the provincial director in writing for a construction work permit to perform construction work if the intended construction work will-*
 - a. *Exceed 180 days*
 - b. *Will involve more than 1800 person days of construction work; or*
 - c. *The works contract is of a value equal to or exceeding thirteen million rand of Construction Industry Development Board (CIDB) grading level 6*
2. *An application contemplated in subregulation (1) must be done in a form similar to Annexure 1*

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3. *The provincial director must issue a construction work permit in writing to perform construction work contemplated in subregulation (1) within 30 days of receiving the construction work permit application and must assign a site-specific number for each construction sit*
4. *A site-specific number contemplated in subregulation (3) must be conspicuously displayed at the main entrance to the site for which that number is assigned.*
5. *A construction work permit contemplated in this regulation may be granted only if—*
 - (a) *the fully completed documents contemplated in regulation 5(1)(a) and (b) have been submitted; and*
 - (b) *proof in writing has been submitted—*
 - (i) *that the client complies with regulation 5(5)*
 - (ii) *with regard to the registration and good standing of the principal contractor as contemplated in regulation 5(1)(j); and*
 - (iii) *that regulation 5(1)(c), (d), (e), (f), (g) and (h) has been complied with. ...*
6. *A client must ensure that a principle contractor keeps a copy of the construction permit contemplated in subregulation (1) in the occupational health and safety file for inspection by an inspector, the client, the clients authorised agent, or an employee.*

Published Notes from Construction Regulations

- a) *Refer to exemption issued by the Chief Inspector.*
- b) *The 30 days required to issue a Construction Work Permit is on condition that all correct and fully completed documents are submitted as per the attached 'list of items (not limited to) to be submitted with the construction work permit application.*
- c) *Where any person aggrieved by any decision taken by an inspector in relation to the application of a Construction Work Permit under a provision of this regulation may appeal against such decision to the chief inspector in terms of Section 35.*
- d) *The Construction Work Permit shall be issued to the Client for whom the Construction work is conducted.*

Comment

The exemption referred to in a) has expired and is no longer valid.

When applying for a Construction Work Permit, the application must be accompanied by evidence that: -

1. Each Designer was supplied with the Clients Risk Assessment and Health and Safety Specification **PRIOR** to any Design.
2. Each Designer has been appointed and duties in terms of Regulation 6(1) have been agreed.

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3.1. Each Designer has provided a declaration that the Clients Health and Safety Specification and Baseline Risk Assessment and also that all Ergonomic Risks associated with the construction phase and later occupation or use of the structure WAS or Will Be considered during the Design.

Note

As a Designer, ensure that you have these **PRIOR** to commencing with any Design. You will be signing a legal declaration that you did.

3.7.4 Regulation 5 - Duties of a Client

1. A client must

- a. **Prepare a baseline risk assessment** for an intended construction project
- b. **Prepare a suitable, sufficiently documented and coherent site-specific health and safety specification** for the intended construction work based on the baseline risk assessment contemplated in paragraph(a)
- c. **Provide the designer with the health and safety specification contemplated in paragraph (b)**
- d. **Ensure that the designer takes the prepared health and safety specification into consideration during the design stage;**
- e. **Ensure that the designer carries out all the responsibilities contemplated in Regulation 6**
- f. *Include the health and safety specification in the tender documents*
- g. *Ensure that potential principle contractors submitting tenders have made adequate provision for the cost of health and safety measures*
- h. *Ensure that the principal contractor to be appointed has the necessary competencies and resources to carry out the construction work safely;*
- i. *Take reasonable steps to ensure co-operation between all contractors appointed by the client to enable each of those contractors to comply with these Regulations;*
- j. *Ensure before any work commences on a site that every principal contractor is registered and in good standing with the compensation fund or with a licensed compensation insurer as contemplated in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);*
- k. *Appoint every principal contractor in writing for the project or part thereof on the construction site;*
- l. *Discuss and negotiate with the principal contractor the contents of the principal contractor's health and safety plan contemplated in regulation 7(1), and must thereafter finally approve that plan for implementation;*

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- m. Ensure that a copy of the principal contractor's health and safety plan is available on request to an employee, inspector or contractor;
- n. Take reasonable steps to ensure that each contractor's health and safety plan contemplated in regulation 7(1)(a) is implemented and maintained;
- o. Ensure that periodic health and safety audits and document verification are conducted at intervals mutually agreed upon between the principal contractor and any contractor, but at least once every 30 days;
- p. Ensure that a copy of the health and safety audit report contemplated in paragraph (o) is provided to the principal contractor within seven days after the audit;
- q. Stop any contractor from executing a construction activity which poses a threat to the health and safety of persons which is not in accordance with the client's health and safety specifications and the principal contractor's health and safety plan for the site;
- r. **Where changes are brought about to the design** or construction work, make sufficient health and safety information and appropriate resources available to the principal contractor to execute the work safely; and
- s. Ensure that the health and safety file contemplated in regulation 7(1)(b) is kept and maintained by the principal contractor.
2. **Where a client** requires additional work to be performed as a result of a **design change** or an error in construction due to the actions of the client, **the client must ensure** that sufficient safety information and appropriate additional resources are available to execute the required work safely.
3. Where a fatality or permanent disabling injury occurs on a construction site, the client must ensure that the contractor provides the provincial director with a report contemplated in section 24 of the Act, in accordance with regulations 8 and 9 of the General Administrative Regulations, 2013, and that the report includes the measures that the contractor intends to implement to ensure a safe construction site as far as is reasonably practicable.
4. Where more than one principal contractor is appointed as contemplated in subregulation (1)(k), the client must take reasonable steps to ensure co-operation between all principal contractors and contractors in order to ensure compliance with these Regulations.
5. **Where a construction work permit is required** as contemplated in regulation 3(1), **the client must**, without derogating from his or her health and safety responsibilities or liabilities, **appoint a competent person in writing as an agent** to act as his or her representative, and where such an appointment is

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made the duties that are imposed by these Regulations upon a client, apply as far as reasonably practicable to the agent so appointed.

6. **Where notification of construction work is required** as contemplated in regulation 4(1), **the client may, without derogating from his or her health and safety responsibilities or liabilities, appoint a competent person in writing as an agent to act as his or her representative, and where such an appointment is made the duties that are imposed by these Regulations upon a client, apply as far as reasonably practicable to the agent so appointed: Provided that, where the question arises as to whether an agent is necessary, the decision of an inspector is decisive.**
7. **An agent contemplated in subregulations (5) and (6) must—**
 - (a) **manage the health and safety on a construction project for the client; and**
 - (b) **be registered with a statutory body approved by the Chief Inspector as qualified to perform the required functions;**
8. **When the chief inspector has approved a statutory body as contemplated in subregulation (7)(b), he or she must give notice of that approval in the Gazette.**

Published Notes from Construction Regulations

a) Regulation 5(1)d must be read with regulation 6, **the duties of the designer and a written report must be submitted to the Client by the Designer as proof of compliance with the afore said regulation.**

b) Regulation 5(1)(i) *Where there are multiple principle contractors (or contractors) on site appointed by the client, the **client shall coordinate cooperation** between contractors to ensure health and safety control, read with regulation 7(4). Regulation 5 (5); (6) and (7).*

c) *Where a client specifies which contractors a principal contractor must appoint the duties as specified in 7(1)(c)(iii) shall be applicable to the said client.*

d) *A client may appoint a Construction Health and Safety Agent or Construction Health and Safety Manager based on the scope and risk profile of construction work to represent him/her on matters of health and safety. Provided that, where the question arises as to whether a Construction Health Safety Agent or a Construction Health and Safety Manager is necessary, the decision of an inspector is decisive.*

Comment

On a conventional building design, the services of an Architect are likely used whereas on a civil engineering type design, the Designer may well likely be a structural or civil engineer. It goes without saying that in most instances, Designs are undertaken by teams of competent specialists. Be that as it may, one

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individual remains responsible for the overall Design, be that an Architect or an Engineer, who is responsible to verify all the other Designs and who must perform the eventual final signoff of the structure. **The Client, by way of their appointed Health and Safety Professional remains responsible to verify competency and professional registration of all Designers and “subordinate designers” and to appoint them.**

This is where the importance of having an appointed competent Health and Safety Professional comes into play. They should be involved at conception stage in order that **the risk assessments and specifications can be made available to the Designers in advance of any design** and to ensure compliance with this legislation as a whole.

Some of these requirements are performed by way of audits and inspections to be performed by a competent person. It is a legal requirement that the Clients Health and Safety Professional perform these.

Where a Construction Work Permit is required, the Client has no option other than to appoint a competent Health and Safety Professional who is registered with the SACPCMP who MUST then manage all aspects of Health and Safety on the project, from feasibility until completion and during the defects period. Such representative can be either a registered Agent or a Manager.

3.7.5 Regulation 6 - Duties of Designers

The designer of a structure must

- a. **ensure that the applicable safety standards incorporated into these Regulations under section 44 of the Act are complied with in the design;**

Comment

If an incident were to occur are you able to demonstrate compliance?

- b. **take into consideration the health and safety specification submitted by the client;**

Comment

The Designer needs to have them prior to Design in order to do so. You will be required to sign a written declaration that they were received in advance and were considered during all phases of design.

- c. **before the contract is put out to tender, make available in a report to the client**

- (i) **all relevant health and safety information about the design of the relevant structure that may affect the pricing of the construction work;**
- (ii) **the geotechnical-science aspects, where appropriate; and**
- (iii) **the loading that the structure is designed to withstand;**

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Comment

A full report is to be provided. Drawings and calculations alone, will not suffice.

- d. inform the client in writing of any known or anticipated dangers or hazards relating to the construction work, and make available all relevant information required for the safe execution of the work upon being designed or when the design is subsequently altered;*

Comment

This will require a full hazard identification and risk assessment process be undertaken with due consideration to the construction methodologies reasonably expected to be undertaken. Examples may include use of lifting machinery, pumping of concrete, fall risk due to exposed edges or openings, etc. It would also include things like time required for concrete to attain a strength sufficient to support itself prior to removal of support work and even means of attaching fittings, etc.

Note

It is recommended that you make use of the services of a competent profession to assist with or review the risk assessments that you are responsible for.

We are able to assist you with these requirements ensuring you are not at risk.

- e. refrain from including anything in the design of the structure necessitating the use of dangerous procedures or materials hazardous to the health and safety of persons, which can be avoided by modifying the design or by substituting materials;*

Comment

Use of dangerous material is usually not a concern. Asbestos for example would be avoided totally. Procedures (methodologies) of construction on the other hand are not so obvious. Glass facades for example, should be designed to be installed from inside the structure and not require then persons or glass sheets dangling on the outside of a structure which increases risk.

- f. take into account the hazards relating to any subsequent maintenance of the relevant structure and must make provision in the design for that work to be performed to minimize the risk;*

Comment

Subsequent maintenance includes everything from painting, washing windows and the replacement of light bulbs. Consider a large atrium with light fixtures 20 meter high. Ladders in South Africa may not exceed 9 meters in length, so how would they be accessed? Perhaps by use of a Mobile Elevated Work Platform but

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then can it access the building? Are doorways wide enough? Are any of the fixtures located above ramps or stairs where a MEWP cannot be used?

- g. **when mandated by the client to do so, carry out the necessary inspections at appropriate stages to verify that the construction of the relevant structure is carried out in accordance with his design: Provided that if the designer is not so mandated, the client's appointed agent in this regard is responsible to carry out such inspections;**
 - h. **when mandated as contemplated in paragraph (g), stop any contractor from executing any construction work which is not in accordance with the relevant design's health and safety aspects: Provided that if the designer is not so mandated, the client's appointed agent in that regard must stop that contractor from executing that construction work;**
 - i. **when mandated as contemplated in paragraph (g), in his or her final inspection of the completed structure in accordance with the National Building Regulations, include the health and safety aspects of the structure as far as reasonably practicable, declare the structure safe for use, and issue a completion certificate to the client and a copy thereof to the contractor; and**
 - j. **during the design stage, take cognisance of ergonomic design principles in order to minimize ergonomic related hazards in all phases of the life cycle of a structure.**
2. **The designer of temporary works must ensure that—**
- a. *all temporary works are adequately designed so that it will be capable of supporting all anticipated vertical and lateral loads that may be applied;*
 - b. *the designs of temporary works are done with close reference to the structural design drawings issued by the contractor, and in the event of any uncertainty consult the contractor;*
 - c. *all drawings and calculations pertaining to the design of temporary works are kept at the office of the temporary works designer and are made available on request by an inspector; and*
 - d. *the loads caused by the temporary works and any imposed loads are clearly indicated in the design.*

Published Notes from Construction Regulations

Regulation 6 (1) (c) - Designers must ensure that designs are accompanied by a report as required in terms of this regulation.

Comment

The Definition of a Structure is extremely important and so please refer to it above.

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No Design may be undertaken until the Designer has been provided with the Clients Risk Assessment and Health and Safety Specification. Evidence of having received them will be required to be kept and included with the application for a Construction Work Permit.

The **Designer must provide a report** indicating that the Clients Health and Safety Specifications and Baseline Risk Assessment were received prior to any Design and were considered and included in that report must be the prescribed information and loading calculations. The **report must also include all hazards** related to the construction work and information relevant for the safe execution of the work. In other words, **the designer MUST identify all hazards and risks and provide a construction methodology** to be implemented during the construction phase.

If mandated to do so, the Designer must perform inspections of the works at various stages of construction. This would usually be in accordance with an approved and agreed Inspection and Test Plan. This would include the written permission for the contractor to continue with an activity after such inspection.

The Clients appointed Health and Safety Professional would be required to verify compliance on the behalf of the Client and in cases where the Designer has not been mandated to carry out inspections, to carry out all required inspections. These would include amongst others, verification of construction as per the approved (by the Health and Safety Professional in advance) Inspection and Test Plans and in writing, authorising the continuation of activities.

3.7.6 Regulation 11 - Structures

1. *A contractor must ensure that*
 - a. *all reasonably practicable steps are taken to prevent the uncontrolled collapse of any new or existing structure or any part thereof, which may become unstable or is in a temporary state of weakness or instability due to the carrying out of construction work;*
 - b. *no structure or part of a structure is loaded in a manner which would render it unsafe; and*
 - c. *all drawings pertaining to the design of the relevant structure are kept on site and are available on request to an inspector, other contractors, the client and the client's agent or employee.*

Comment

This can only be partially done by having and considering all calculations, hazards and risks and methodologies provided by the Designer.

4 CONCLUSION

There are various other legal obligations on the Designer. In essence, at least the following needs to be undertaken: -

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1. At conception the Client should appoint a Health and Safety Professional before even (or immediately or as soon as possible after) consulting an Architect or other Designer. If this has not been done, advise the Client to do so urgently to assist to retrospectively assist with compliance.
2. The Health and Safety Professional must perform a risk assessment and compile a Design specific Health and Safety Specification.
3. Provide the Risk Assessment and Health And Safety Specification to the management team and to prospective, Designers (Architects, Engineers, Landscape Architects, Interior Designers, etc.) and keep evidence thereof. The evidence of having done so at this stage will be required to be included in the later application for a Construction Work Permit, where one is required.
4. The Health and Safety Professional must verify competency and professional registration of potential Designers.
5. The Client must select a Designer (an Architect for conventional buildings) and conclude a commercial contract. The Client must consider requiring site visits and inspections and include this in the contract.
6. The Health and Safety Professional appoints the Designer on behalf of the Client, having first advised them of their legal obligations. The evidence of having done so at this stage will be required to be included in the later application for a Construction Work Permit, where one is required.
7. Concept and / or final Designs (drawings, calculations and methodologies) and all identified hazards are obtained from the designer and verified by the Health and Safety Professional who then revises the Clients Baseline Risk Assessment and Health and Safety Specifications.
8. Provide the Designs (drawings, calculations and methodologies) and all identified hazards to prospective professional engineers and keep evidence thereof. The evidence of having done so at this stage will be required to be included in the later application for a Construction Work Permit.
9. The Health and Safety Professional verifies the competency and professional registration of potential professional engineers.
10. Select the professional engineer/s and conclude a commercial contract. Consider requiring site visits and inspections and include this in the contract.
11. The Health and Safety Professional appoints the Professional Engineer/s having advised them of their legal obligations. The evidence of having done so at this stage will be required to be included in the later application for a Construction Work Permit, where one is required.
12. Engineering and revised Architectural Designs (drawings, calculations and methodologies) and all identified hazards are obtained and verified by the Health and Safety Professional who then revises the Baseline Risk Assessment and Health and Safety Specifications.
13. Provide all Designs (drawings, calculations and methodologies), revised risk profile and Health and Safety Specifications to prospective Principle Contractors.

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14. The Health and Safety Professional verifies competencies and resource provision of all prospective Principle Contractors and has input into the selection process.
15. The Health and Safety Professional reviews and comments on their Health and Safety Plans and files and discusses and negotiates until final acceptance or rejection.
16. The Client enters into commercial contracts with the selected Principle Contractor/s. Ensure that the Health and Safety Professional is provided the opportunity to comment on and provide input into the contents of the contract.
17. The Health and Safety Professional approves the Principle Contractor/s Health and Safety Plan and file and appoints them on behalf of the Client.
18. Ensure a proper document and records control system is implemented on the project with records of transmittals of critical documents and records.
19. The Health and Safety Professional applies for a Construction Work Permit which can take up to 30 days to receive.
20. Allow only for site establishment, which includes the required inductions and verifications of processes etc. of the Principle Contractor/s, pending the receipt of the construction work permit.
21. Establish, agree and distribute a schedule of planned site meetings, audits and inspections.
22. Obtain the Construction Work Permit and issue to Principle Contractor/s and ensure the unique number is prominently displayed at the site entrance.
23. Commence with the construction activities.
24. Ensure proper records are kept for inclusion in the Consolidated Health and Safety file required to be provided to the client after completion of the project.
25. Have a successful safe and profitable project.

5 MANAGEMENT SYSTEMS

A Management System **IS NOT** a project health and safety file. Do not for a moment believe that having a safety file and plan approved by a Client is sufficient to demonstrate compliance.

We can provide support for all manner and size of customers via our electronic platform and offer various very affordable solutions. We make use of an online platform within which we can support and host your Management System and all associated documents and records, but without the additional licencing fees which would apply if internal to yourselves.

Our platform includes as basics the following: -

1. We map your system. By this is meant, we map out all documents and records required by the system and make provision for numbering for each of them.

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2. We generate and provide templates for the basic documentation. Everything from a standard letterhead to policies, registers, inspection records, injured employee forms, etc.
3. Within the system we make use of workflows and generate tasks to accountable employees of yours, to author and review the various documents.
4. We then with our team perform a review to ensure legal compliance based on your legal register.
5. The documents are then returned to you for final review and then approval and once approved they are published, and the latest revisions are available online to your employees.
6. This also applies to each project / site and include site specific Plans, Risk Assessments, Emergency Plans etc.
7. Included will be a legal register which we will develop.

Access is provided to your employees as required with various access restriction which can be applied. There will be no access which is not approved by your authorised top management.

No confidential information, for example, employment contracts etc. will be hosted unless requested. They can be accommodated with very strict access controls implemented.

Included in the above will be access to our professional team 24/7/365 to offer advice on compliance and incident response etc.

The system will be aligned with the three ISO standards [9001, 14001 & 45001] and be certification ready should you decided at a later stage to seek certification.

All existing documentation and records can easily be incorporated to ensure integrity is maintained.

We can assist you with your other requirements and offer very affordable solutions.

Please visit our website at <https://sherg.biz> or email us at info@sherg.biz for any additional advice or information or [Click Here](#) for quotes for our various services.

Additional free information and guidelines are available on our website at <https://sherg.biz/guidelines/>

Please visit our website to download the latest revisions of all Guidelines.