



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$72.41

WINDHOEK - 1 August 1997

No. 1617

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Government Notice

MINISTRY OF LABOUR

No. 156

1997

LABOUR ACT, 1992 : REGULATIONS RELATING TO THE HEALTH AND SAFETY OF EMPLOYEES AT WORK

The President has, after consultation with the Labour Advisory Council, under section 101 of the Labour Act, 1992 (Act 6 of 1992) -

- (a) made the regulations set out in the Schedule; and
- (b) determined that the regulations shall come into operation on 31 July 1997.

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CHAPTER 1**RIGHTS AND DUTIES OF EMPLOYERS****Interpretation**

1. In these regulations, unless the context otherwise indicates, a word or expression defined in the Act bears that meaning, and -

“Chief Inspector” means an inspector appointed under section 3, and holding the position of Chief Inspector of Factories in the Ministry of Labour;

“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 conducting of business of such body corporate or enterprise.

“competent person” means a person certified in writing by an inspector to be competent to perform a specific task, and “competent authority” has a corresponding meaning;

“inspector” means a person appointed as a labour inspector under section 3;

“section “ means a section of the Act;

“the Act” means the Labour Act, 1992 (Act 6 of 1992);

“work-place safety committee” means a work-place safety committee established by an employer in terms of section 99;

“work-place safety representative” means an employee elected as such in terms of ; and

any duty or function performed by an employer or any other person in terms of these regulations shall, unless otherwise indicated, be performed to the satisfaction of an inspector.

Employer’s general duties

2. (1) An employer shall -

- (a) investigate and identify the hazards attached to any work that is performed or may be performed by any of his or her employees, including the risks or potential risks to the health and safety of employees associated with such work, or to the health and safety of any other person who may be affected by such work;
 - (b) assess the hazards and risks identified in terms of paragraph (a);
 - (c) subject to paragraph (d), eliminate the hazards by employing appropriate measures, including the removal of the hazards, or the changing of the organization or schedules of the work performed;
or
 - (d) if it is not reasonably practicable to eliminate the hazards, do all that is reasonably practicable to minimize the hazards, or to reduce the risks caused by the hazards by means of the minimizing -
 - (i) the effects of the hazard at its source;
 - (ii) the effects of the hazards on employees; and
 - (iii) the level and period of exposure of employees to the hazard by means of the arrangement and organization of work.
- (2) In complying with paragraph (d) of subregulation (1), an employer shall rely upon the use of personal protective equipment by employees -
- (a) only if it is not reasonably practicable to reduce the risks by any other means; or

- (b) as a temporary measure while other steps are being taken to eliminate or minimize the hazard concerned.

(3) An employer shall provide every employee in his or her employ, including any person serving an apprenticeship in terms of any law, with training in the tasks that he or she is to perform, including all aspects of health and safety related to such tasks, so as to enable the employee to take reasonable care of his or her own safety and of that of other employees.

(4) If an employee's job description or the scope of his or her employment is changed in such a manner that he or she will be performing additional tasks, or tasks which will differ from the tasks which he or she previously performed, the employer shall -

- (a) in detail inform the employee of all aspects relating to, and train the employee in the performance of, the additional tasks;
- (b) instruct the employee in all the aspects of health and safety related to such tasks,

before the employee shall commence performing such tasks.

(5) An employer who has entered into an agreement with a contractor to perform certain tasks shall ensure that such a contractor complies with these regulations.

(6) All safety equipment and facilities, including personal protective equipment and clothing that an employer is required to provide in terms of any provision of the Act or of these regulations, shall be -

- (a) appropriate and effective for the purposes for which they are provided;
 - (b) supplied free of charge;
 - (c) maintained in an effective or working order and in a clean condition; and
 - (d) available at each work-place in sufficient quantities to ensure that any employee who is required to use personal protective equipment or clothing, is in a position to use such equipment or clothing.
- (7) An employee who is required to use personal protective equipment or clothing shall be thoroughly instructed on the proper use, the maintenance and the limitations of such equipment or clothing.
- (8) If necessary, all personal protective equipment and clothing shall be retained on the employer's premises and shall only be removed from the premises for the purposes of cleaning, repairing, maintenance or modification, as the case may be, when necessary.
- (9) No employer shall require or permit any employee to work in a place or in circumstances where the use of safety equipment, clothing or facilities are required by the Act or by these regulations, unless the employee uses the safety equipment, clothing or facility so required.
- (10) this regulation do not derogate from any other provision requiring the use by employees in any specific place of particular safety equipment, clothing or facilities.

Employer's health and safety policy and programme

3. (1) An employer shall, in consultation with the work-place safety representatives, regularly prepare and review a written policy and programme on the protection of the health and safety of employees.

(2) The health and safety policy contemplated in subregulation (1) shall specify -

- (a) the aims and objectives of the policy; and
- (b) the general approach, means and measures to be adopted in order to achieve the objectives of the policy.

(3) The health and safety programme of an employer shall in detail specify -

- (a) the employer's health and safety arrangements for the prevention of health and safety risks;
- (b) the responsibilities relating to health and safety of persons occupying positions concerning the health and safety programme, or holding supervisory positions;
- (c) the programme aimed at improving the working conditions at the work-place, including, but not limited to, health and safety awareness programmes and training programmes; and
- (d) the procedures and methods to be adopted to implement the health and safety programme and policy.

Appointment of supervisors

4. An employer shall ensure that all work is performed under the supervision of a competent supervisor, who shall -

- (a) in addition to any other training required in terms of the Act or regulations, be trained to understand the hazards associated with all work he or she has to supervise;
- (b) have the duty to ensure that all precautionary measures required in terms of the Act or of these regulations are implemented; and
- (c) if required, provide employees under his or her supervision with appropriate training, including instructions relating to the safety in respect of specific work tasks and on the job training,

to the satisfaction of an inspector.

Duties of Chief Executive Officer

5. (1) The Chief Executive Officer of a corporate body shall ensure that such corporate body complies with the Act and of these regulations.

(2) The Chief Executive Officer contemplated in subregulation (1) may in writing delegate to any person under his or her control any duty contemplated in that subregulation, and such person shall perform such duty on behalf of and subject to the control of the Chief Executive Officer, but the Chief Executive Officer shall not be relieved from any duty so delegated by him or her.

(3) For the purposes of these regulations, the Permanent Secretary of a Ministry is the Chief Executive Officer of that Ministry.

Safety officers

6. (1) An employer shall, to the satisfaction of an inspector, in relation to the number of employees in his or her employment and in accordance with the safety risk involved for such employees in the execution of their duties -

- (a) appoint a safety officer, who may be the Chief Executive Officer; and
- (b) shall at the request of the inspector, appoint such additional safety officers as the inspector may determine,

which safety officers shall be required to monitor and evaluate the employer's compliance with its safety policy, with the Act and with these regulations.

(2) The employer shall, to the satisfaction of an inspector, furnish the safety officer or officers referred to in subregulation (1) with sufficient information, training, facilities and assistance so as to enable him or her or them to perform the functions contemplated in subregulation (1).

(3) The appointment of a safety officer in terms of subregulation (1) shall not derogate from the responsibilities of the Chief Executive Officer in terms of these regulations, or of any person to whom any duty of the Chief Executive Officer has been delegated under regulation 5(2).

(4) The safety officer or officers referred to in this regulation shall be a member of the work-place safety committee and shall take part in all the activities of the committee as a part of his or her duties and functions of employment.

Duties of employers to persons other than their employees

7. An employer shall conduct his or her undertaking in such a manner as to ensure, as far as is reasonably practicable and to the satisfaction of an inspector, that any person, including a person not in his or her employ, who may be affected by the activities of the employer, are not as a result of such activities exposed to any risks relating to the health or safety of such person.

Duties of self-employed persons

8. A self-employed person shall conduct his or her undertaking in such a manner as to ensure, as far as is reasonably practicable and to the satisfaction of an inspector, that his or her employees or any other person who may be affected by such person's activities, are not as a result of such activities exposed to any risk relating to their health or safety.

Duties of designers, manufacturers, importers and suppliers

9. (1) A person who designs, manufactures, imports or supplies any article for use at a work-place, or makes available a building in which work of any kind is to be undertaken, shall -

- (a) ensure that the article or building complies with all prescribed requirements relating to health or safety;
- (b) ensure, as far as is reasonably practicable, that the article or building is designed and constructed so as to be safe and without risks to the health of any person when used in a reasonable manner;
- (c) take such steps as are reasonably necessary to ensure that adequate information is available with regard to the correct use of the article or building, and the precautions necessary to ensure that the use thereof is safe and without risk to any person's health;
- (d) ensure that any assembly, erection or installation that is required at the work-place can be undertaken safely and without risk to the health of any person when performed in accordance with the manufacturer's instructions and specifications;
- (e) supply an operator's manual dealing with the assembly, installation, use and maintenance of an article in a language or in languages that is understood by any person who may work with the article; and
- (f) refrain from alterations and modifications to such article that could create any new conditions which may be hazardous to the health or safety of any person.

(2) A person who assembles, erects or installs any article for use at a work-place on any premises where the article is to be used by any other person shall, as far as is reasonably practicable, ensure that such article is erected or installed in such a manner that it is safe and without risk to safety or health when used in accordance with the manufacturer's specifications.

(3) A person who manufactures, imports or supplies any substance for use at a work-place shall -

- (a) ensure, as far as is reasonably practicable, that the substance is safe and without risks to the safety or health of any person when used, handled, processed, stored or transported in accordance with the manufacturer's specifications and in a reasonable manner; and
- (b) ensure that a safety data sheet providing the following information relating to the substance is handed or explained to any person who may handle, work with or be exposed to the substance in respect of -
 - (i) the use of the substance at work;
 - (ii) the risk associated with the substance relating to the health or safety of any person;
 - (iii) any restrictions or controls upon the use or storage of the substance, including, but not limited to, exposure limits;
 - (iv) the safety precautions necessary to ensure that the substance is safe and without risk to health;
 - (v) procedures to be followed in the case of an accident in connection with, or the excessive exposure to, or any other emergency involving, the substance; and
 - (vi) the disposal of waste and used containers in which the substance has been stored.

Work-place safety representatives

10. (1) A work-place safety representative -
- (a) shall monthly inspect each place where employees represented by him or her are employed, except a place where the employer and the work-place safety representative have agreed, or an inspector has directed, that inspections be conducted at longer or shorter intervals;
 - (b) shall not less than once in each period of twelve months, perform a thorough examination of each place where employees represented by him or her are employed;
 - (c) may be accompanied by a technical adviser during any inspection, investigation or examination in terms of section 99(2)(b)(i) or of these regulations;
 - (d) shall either personally or with the assistance of another work-place safety representative or a technical adviser, prepare a written record of every inspection, investigation or examination;
 - (e) shall submit a copy of the written report contemplated in paragraph (d) to the safety officer and to the employer;
 - (f) shall be entitled to attend any inquiry into an accident or other incident at a place where employees represented by him or her are employed;

- (g) shall be entitled to accompany an inspector on any inspection or investigation of a place where employees represented by him or her are employed;
 - (h) may record in writing any representation made to or by the employer;
 - (i) shall be entitled to consult with the safety officer, technical experts and inspectors; and
 - (j) shall be entitled to receive adequate training to participate in the health and safety training of employees.
- (2) A safety officer shall -
- (a) after considering the written record of an inspection, investigation or examination, endorse the record and state whether or not he or she is in agreement with any of the findings of the work-place safety representative; and
 - (b) at the request of a work-place safety representative, meet with the representative to discuss any inspection, investigation or examination.
- (3) If a work-place safety representative makes a representation in writing to the employer, the employer shall upon the representation -
- (a) make an endorsement to the effect that he or she has received it;
 - (b) state whether or not he or she agrees with the contents of the representation; and

- (c) indicate what steps, if any, have been, or will be, taken to address the issue raised in the representation,

and shall thereafter return the representation to the work-place safety representative.

(4) If a work-place safety representative makes a representation in writing to an inspector, the inspector shall in writing respond to the representation, indicating the steps he or she has taken in respect of the representation.

(5) A work-place safety committee shall -

- (a) meet not less than once quarterly or at such shorter interval as may be agreed upon with the employer and employees concerned, or as an inspector may direct;

- (b) in writing advise to, or communicate with, the employer; and

- (c) keep copies of its minutes and retain such copies for a period of five years.

(6) An employer shall -

- (a) make a suitable meeting place and suitable facilities, including a room in which to consult with employees, available to the work-place safety representatives and to a work-place safety committee;

- (b) arrange for the release of work-place safety representatives and the members of a work-place safety committee from their normal duties for the purpose of performing any duty specified in section 99(2)(b)

of the Labour Act or in subregulation (1), and of attending meetings of the committee, as the case may be; and

- (c) respond in writing to the work-place safety committee in respect of any written advice or other communication received from the work-place safety committee.

Removal from the work-place

11. (1) An employee who removes himself or herself from any place where he or she is employed when he or she has reasonable cause to believe that his or her health or safety will be endangered at such place -

- (a) may seek the assistance of his or her work-place safety representative, who may assist the employee at any meeting held as a result of his or her removal from his or her work-place ; or
- (b) shall report to either his or her immediate supervisor or to the safety officer stating the reasons for his or her belief that his or her health or safety will be endangered.

(2) If the matter is not resolved in accordance with subregulation (1), the employer shall arrange for a meeting between a senior representative of the employer and the employee, which employee may be assisted by a work-place safety representative, a technical adviser or a trade union representative.

(3) If the matter is not resolved in accordance with the procedures prescribed by subregulation (2), the employer shall notify an inspector, who shall -

- (a) after hearing representations from the employer and from the employee or his or her representative, make a decision which shall be final and binding upon the parties concerned; or
 - (b) by notice in writing, issue an order under section 100(1)(iv), ordering the employer to refrain from carrying out, or to carry out, any action specified in such notice in order to ensure the health and safety of the employee concerned.
- (4) If the inspector finds that the employee referred to in subregulation (1) had reasonable cause to believe that his or her safety or health was endangered as contemplated in that subregulation, or if the employer has agreed to take effective measures to ensure the health and safety of the employees -
- (a) all work-places where a similar hazard may exist shall be investigated by an inspector and, if necessary, similar effective measures shall be taken; and
 - (b) the employee concerned shall be entitled to his or her full remuneration for the period from the date that the employee removed himself or herself in accordance with subregulation (1), until -
 - (i) the date of the inspector's decision taken in terms of this regulation; or
 - (ii) if the inspector in terms of subregulation (3) orders the employer to take certain measures, until such measures have been taken.

(5) An employer shall not dismiss or in any other way take disciplinary action against an employee for exercising his or her rights in terms of this regulation and any such action by an employer shall be regarded as unfair in terms of section 45.

Prohibition

12. An employer shall ensure that no person under the age of 16 years is employed or permitted to work -

- (a) at, on or in the immediate vicinity of, any construction site, engineering works, trench or excavation;
- (b) at any pulp mill, saw mill or woodworking establishment;
- (c) in the immediate vicinity of an industrial processes at any factory;
- (d) in any silo, storage bin, vat, hopper, tunnel, shaft, sewer or other confined space;
- (e) on the cutting line of any packing plant or the evisceration line of any poultry plant or abattoir;
- (f) in any forestry or logging operation;
- (g) on any drilling or servicing rig;
- (h) as an operator of any heavy, mobile equipment, any crane or other heavy, hoisting equipment; or

- (i) as an operator of a forklift truck or similar mobile equipment within a work-place or in the vicinity of other employees.
- (2) An employer shall ensure that no person under the age of 18 years is employed -
 - (a) underground, or in or at the open-pit face of any mine;
 - (b) as a radiation worker; or
 - (c) in any activity for which respiratory protective equipment is required by any regulations made under the Act, except if that work is performed under close and competent supervision to the satisfaction of an inspector.

Offences and Penalties

13. Any person who contravenes or fails to comply with any provision of regulation 2(1), (2) or (3), 3, 4, 5, 6(1),(2),(3) or (4), 7, 8, 9(1),(2) or (3), 10(1),(2),(3),(4),(5) or (6), 11(1),(2),(3),(4) or (5), or 12(1) or (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$ 2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

CHAPTER 2

ADMINISTRATION

Interpretation

14. In this Chapter, unless the context otherwise indicates -

“approved inspection authority” means an inspection authority approved by the Chief Inspector in respect of a particular approved service or activity;

“dangerous occurrence” includes -

- (a) the structural failure of a building, structure, temporary false work or concrete form work;
- (b) the overturning or major failure of a crane or similar hoisting device;
- (c) contact with an uninsulated electrical conductor by any hoisting or excavating equipment, by any vehicle or by any load associated with that equipment or vehicle;
- (d) the structural failure of all, or part of, any temporary or permanent support for an excavated shaft, tunnel, caisson, coffer dam, trench or excavation;
- (e) the bursting of a grindstone or grinding wheel;
- (f) an uncontrolled spill or escape of toxic, corrosive or explosive substances that has, or may have, seriously affected the health and safety of any employee;

- (g) any premature detonation or uncontrolled use of explosives; or
- (h) the failure of a support system of any suspended platform.

“factory” means any premises or part of a premises on or in which -

- (a) an article or part of such an article is made, manufactured, produced, built, assembled, compiled, printed, processed, treated, adapted, repaired, renovated, rebuilt, altered, ornamented, painted (including spray painting), polished, finished, cleaned, dyed, washed, broken-up, disassembled, sorted, packed or put into a container, heated, chilled, frozen or stored in cold storage;
- (b) livestock (including poultry) are slaughtered;
- (c) electricity is generated;
- (d) photographs, films or videos tapes or audio tapes are developed or processed; or
- (e) any activity is conducted which is connected with or is incidental to any one or more of the activities mentioned in paragraphs (a) to (d), but does not include premises on or in which the activities mentioned in those paragraphs are conducted -
 - (i) by fewer than five persons, except if, in the opinion of an inspector, a high risk substance is used, processed or produced in any manner on the premises, in which case this exception shall not apply;

- (ii) inside, and secondary to, a shop conducted solely for the purpose of selling by retail from that shop;
- (iii) on a farm by a farmer, including a partnership or group of persons other than a company, solely in connection with products which he or she has produced on the farm operated by him or her, or solely in connection with his or her farming operations;
- (iv) solely in connection with consultative professional services;
- (v) in respect of facilities used solely for teaching and instruction in primary, secondary or tertiary educational institutions; and
- (vi) on a premises used temporarily and solely for carrying out building work or an activity connected therewith :

Provided that the Chief Inspector may, at his or her discretion, determine that a part of a factory shall be considered to be a separate factory, or that two or more factories, having the same employer, shall be considered to be a single factory;

“occupational accident” means an accident arising in the course or as a result of an employee’s employment, and denotes an unexpected, unplanned and unwanted specific event, which disrupts work and results in personal injury, or disease or death of any person, or damage to property, or loss of production, time or money;

“serious injury” means any injury likely to endanger the life of, or cause permanent impairment to, a person; and

“temporary false work” is the temporary structure erected to support wet concrete while the concrete is hardening, for example the ceilings or floors in high rise buildings : Provided that the false work has to carry the full weight of the concrete while wet and is only removed once the concrete has hardened.

Approved Codes of Practice

15. (1) The Minister may, for the purpose of providing practical guidance concerning any provision of the Act or of these regulations, after consultation with the Labour Advisory Council, approve or issue a code of practice.

(2) A code of practice shall not impose upon any person any duty or obligation in addition to those contained in the Act or in these regulations.

(3) If a person is charged with the contravention of any provision in respect of which a code of practice has been issued -

- (a) the code of practice shall be admissible as evidence in any legal proceedings instituted in respect of the contravention of such provision; and
- (b) if it is proven that the person failed to comply with the code, or that part of the code relevant to the provision contravened, or that the person failed to comply with the provision by any method other than the method stipulated in the code of practice, such person shall be guilty of the contravention of that provision.

Incorporation of health and safety standards

16. (1) The Minister may by notice in the *Gazette* and after consultation with the Labour Advisory Council, incorporate in the regulations any health and safety standard, or part of such standard, with a reference to the number, title and year of issue of the health and safety standard and any other particulars required to identify it sufficiently, but need not state the text of the health and safety standard.

(2) Any health and safety standard incorporated under subregulation (1) shall, for the purposes of these regulations and in as far as it is not repugnant to any regulation, be considered to be a regulation.

(3) When any health and safety standard is at any time after its incorporation, amended or substituted by the competent authority, the notice incorporating the standard shall, unless otherwise stated, be considered to refer to the health and safety standard as amended or substituted.

(4) The Minister shall cause a register of particulars of every health and safety standard incorporated in the regulations to be maintained and to supply any person on request with a copy of any such standard.

(5) "Health and safety standard", for the purposes of this regulation, means a health and safety standard which, in the opinion of the Minister, will promote the attainment of any object of these regulations.

Health and Safety Procedures

17. (1) If the Minister is satisfied that the Act or these regulations do not adequately provide for the regulation of the health and safety relating to the conducting of an employer's operations, or any part of such operations, the Minister may direct the employer to, in accordance with subregulation (2), prepare a health and safety procedure which shall adequately provide for the health and safety of the employer's employees and of any other person which may be affected by any operation conducted by the employer.

(2) The employer shall prepare any health and safety procedure referred to in subregulation (1) in consultation with the work-place safety committee concerned.

(3) The Minister may approve a health and safety procedure as submitted by the employer, or may approve the procedure subject to such changes as he or she may direct the employer to make to the procedure.

(4) A health and safety procedure approved in terms of subregulation (3) shall form part of these regulations in respect of the employer concerned.

Appointment of approved inspection authorities

18. (1) The Chief Inspector may permit any inspection function, investigation, testing, sampling, analysis or training to be performed by an approved inspection authority with the necessary expertise to the satisfaction of the Chief Inspector.

