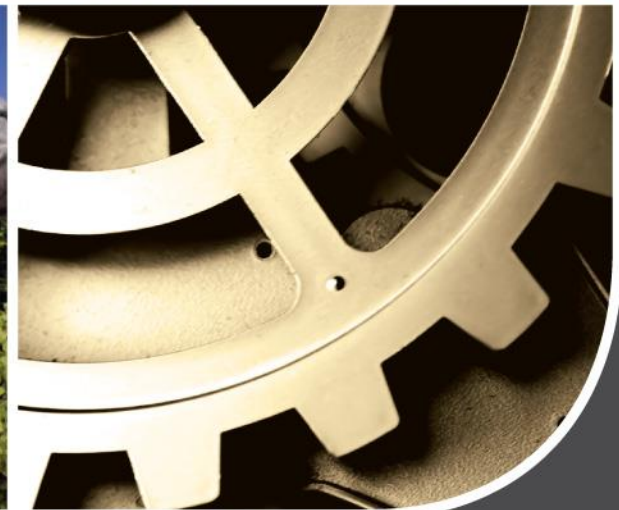


BRANCH: INSPECTION & ENFORCEMENT SERVICES: OHS

Tibor Szana: Chief Inspector OHS

Working from Home – OHS Policy and Reasonable Accommodation During COVID-19



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



Content

- Relevant Definitions
- Relevant Sections of OHSA

Section 1(1)

- "**employee**" means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or supervision of an employer or any other person;
- "**employer**" means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him, but excludes a labour broker as defined in section I (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);
- "**employment**" or "employed" means employment or employed as an employee;

- "**hazard**" means a source of or exposure to danger;
- "**health and safety equipment**" means any article or part thereof which is manufactured, provided or installed in the interest of the health or safety of any person;
- "**healthy**" means free from illness or injury attributable to occupational causes;
- "**incident**" means an incident as contemplated in section 24 (1);

- "**hazard**" means a source of or exposure to danger;
- "**health and safety equipment**" means any article or part thereof which is manufactured, provided or installed in the interest of the health or safety of any person;
- "**healthy**" means free from illness or injury attributable to occupational causes;
- "**incident**" means an incident as contemplated in section 24 (1);

- **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 therefrom**;

- "**remuneration**" means any payment in money or in kind or both in money and in kind, made or owing to any person in pursuance of such person's employment;
- "**risk**" means the probability that injury or damage will occur;
- "**safe**" means free from any hazard;

- "work" means work as an **employee** **or** as a **self-employed person**,
 - and for such purpose an employee ***is deemed to be at work*** during the time **that he is in the course of his employment**,
 - and a self-employed person is deemed to be at work during such time as he devotes to work as a self-employed person;
- "workplace" means **any premises *or* place** **where a person performs work** in the **course of his employment**.

Section 1(2)

- The Minister may by notice in the Gazette declare that a person belonging to a category of persons specified in the notice shall for the purposes of this Act or any provision thereof be deemed to be an employee, and thereupon any person vested and charged with the control and supervision of the said person shall for the said purposes be deemed to be the employer of such person.

SECTION 8:

General duties of employers to their employees

(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 of his employees.

Section 8(2)

- Without derogating from the generality of an employer's duties under subsection (1), **the matters to which those *duties* refer include** in particular-
 - the provision and maintenance of systems of work;
 - taking such steps to eliminate or mitigate any hazard or potential hazard to the h or s of employees, before resorting to PPE;
 - making arrangements for ensuring, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;

.... EXTRACTS – REMOVED REASONABLY PRACTICABLE

- **establishing** what hazards to the health or safety of persons are attached to any work which is performed in his business, and he shall further **establish** what precautionary measures should be taken with respect to such work, *in order* to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;
- **providing** such information, instructions, training and supervision *as may be necessary* to ensure, the health and safety at work of his employees;
- **not permitting** any employee to do any work unless the precautionary measures contemplated in paragraphs (b) and (d), **or any other precautionary measures which may be prescribed**, have been taken;

(a) **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;

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

(a) 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

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

General duties of employers and self-employed persons to persons other than their employees

- Every employer shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, **that persons other than those in his employment** who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

General duties of employees at work

- Every employee shall at work-
 - take reasonable care for the health and safety **of himself** and **of other persons** who may be affected by his acts or omissions;
 - **as regards any duty or requirement imposed on his employer** or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;

- **carry out any lawful order given** to him, and **obey the health and safety rules and procedures laid down** by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;
- if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer;
and

- **if he is involved in any incident** which may affect his health or which has caused an injury to himself, **report such incident to his employer** or to anyone authorized thereto by the employer, or to his health and safety representative, **as soon as practicable but not later than the end of the particular shift during which the incident occurred**, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.

Section 20: Functions of health and safety committees

- (1) A health and safety committee-
 - (a) **may make recommendations to the employer** or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the workplace **or any section thereof** for which such committee has been established;
 - (b) **shall discuss any incident at the workplace or section thereof** in which or **in consequence of which any person was injured, became ill or died**, and may in writing report on the incident to an inspector; and
 - (c) shall perform such other functions as may be prescribed.

Report to inspector regarding certain incidents

– 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-**

- 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;

Section 24(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 therefrom:
- 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.

– The provisions of subsections (1) and (2) shall not apply in respect of-

- an incident occurring in a private household, **provided the householder forthwith reports the incident to the South African Police;**

or

- A member of the SAPS to whom an incident was reported in terms of subsection (3) (b), **shall forthwith notify an inspector** thereof.

Section 31 - Investigations

- An inspector may investigate the circumstances of any incident which has occurred at or originated from a workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of any person in order to determine whether it is necessary to hold a formal investigation in terms of section 32

Existing structures

- Health and Safety representatives and committees to be involved in this process.
- The Compliance Officer to be involved in this set up.

Consent of Employee and the legality of that consent

- This of course is the sticky bit that may, if not already tested will be tested under current conditions given the limitation of the Act and its regulations and the extent to which these matters may be considered.
- Are we stretching things a bit legally?
- Maybe we are, time will be the judge of that and in the meantime we will refine our current position on the matter with the review of the OHS Bill at the moment as well as the review of the Regulations for Hazardous Biological Agents.

Protection of Constitution

- While the Constitution does offer the homeowner protection, in order to meet his/her obligations as employers, the employee would need to concede on certain issues in exchange for working from home.
- The employer will carry an obligation of sorts in allowing workers to work from home.
- OSHA will be updated in relation to refining the current position in relation to “working from home”.

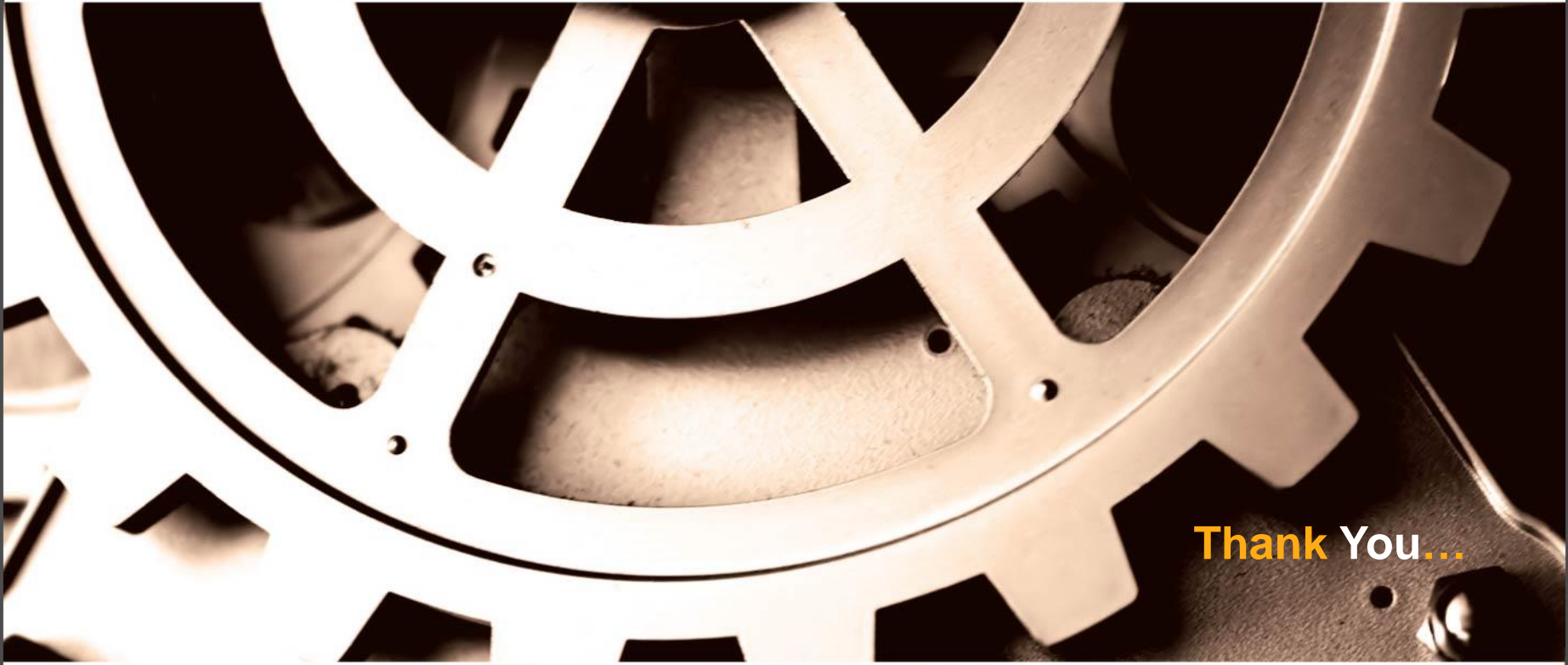
Courts will eventually decide ...

- As with every other legal aspect that has been in the public domain up until now, this legislation is no different and will in all probability be put to the test at some stage in relation to this new concept of “working from home”.



Q&A





Thank You...