

INSPECTION AND ENFORCEMENT SERVICES

Introduction to Occupational Health and Safety Act 85 of 1993 as Amended

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employment & labour

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OUTLINE

- Introduction
- Relevance of International instrumentsSouth African Occupational Health & Safety Framework
- OHS Legislation
- Conclusion
- Take home message



Introduction

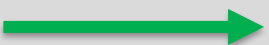
- ILO estimates that 4% of the world's Gross Domestic Product (GDP) is lost due to accidents and work-related diseases.
- The economic costs of poor occupational health and safety practices affects both the employer and the employee:
 - ✓ Employer – medical and rehabilitation costs
 - ✓ Employee – loss of income

DEL has never accepted the proposition that injury and disease
“go with the job”

This applies to the registered asbestos contractors

Relevance of International instruments



- June 2019 - ILO Centenary Declaration adopted & declared that "safe and healthy working conditions are fundamental to decent work"
- 10 June 2022 - All constituencies agreed to the decision that safety and health at work is a fundamental right
 - Technical  Fundamental conventions:
 - C 155 – Occupational Safety and Health Convention, 1981 (No. 155)
 - C187 – Promotional Framework for Occupational Safety and Health Convention, 2006
- The decision is even more significant today, as ensuring safety and health at work is indispensable; particularly when undertaking asbestos projects:
 - Fundamental principles and rights at have to be observed
 - Commitment to significant health & safety improvement beyond meeting legal requirements

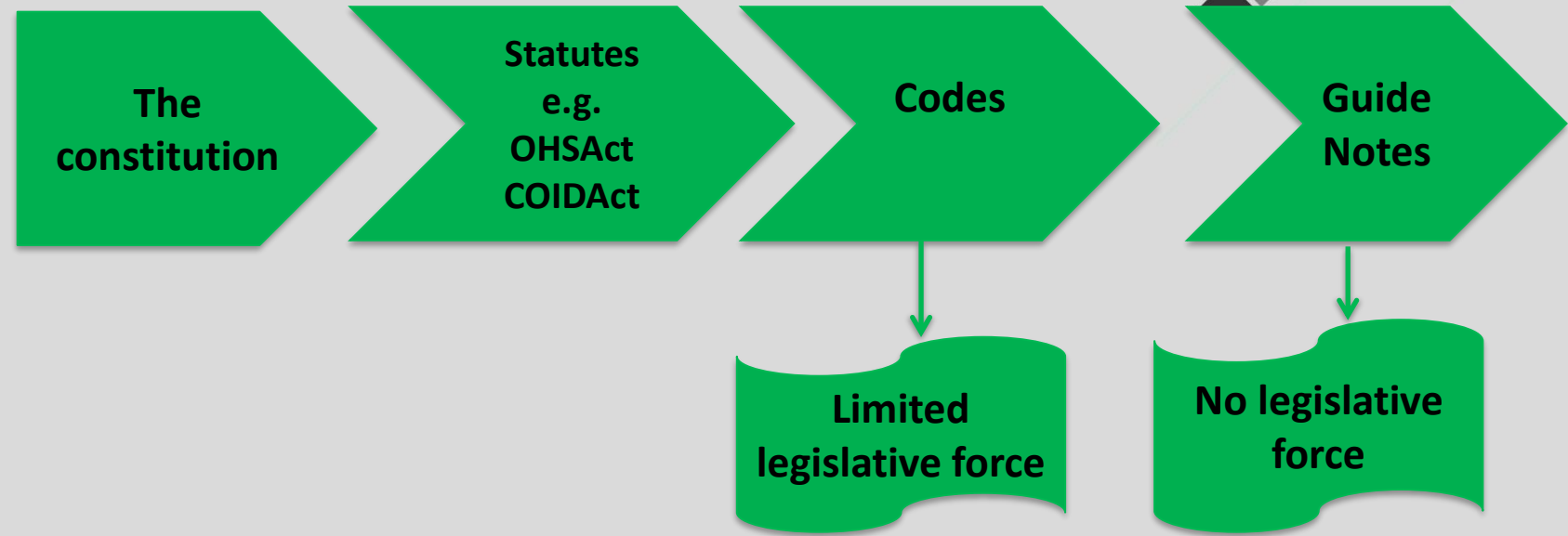
Relevance of International instruments



➤ **INTERNATIONAL LABOUR STANDARDS**

- ✓ The core values reflected in ILO standards on occupational safety and health are expressed in three main principles:
 - Work should take place in a safe and healthy working environment;
 - Conditions of work should be consistent with workers' wellbeing and human dignity; and
 - Work should offer real possibilities for personal achievement, self-fulfilment and service to society

South African Occupational Health & Safety Framework



Occupational Health & Safety Act 85 of 1993

OHS Legislation



OHS ACT 85 OF 1993		
Construction Regs Driven Machinery Regs Explosive Regs	Electrical Installation Regs Electrical Machinery Regs Regulations for Certificate of Competency	General Machinery Regs Lift Escalators & Passenger Conveyor Regs Major Hazardous Installation Regs
General Administrative Regs General Safety Regs Regs for Health & Safety of Children at Work	Regulations (Section 43(1)(a))	Environmental Regulations for Workplaces Ergonomics Regulations Facilities Regs
Lead Regulations Noise Induced Hearing Loss Regs Commercial Diving Regs	Pressure Equipment Regulations	Regs for Hazardous Biological Agents Regulations for Hazardous Chemical Agents Asbestos Abatement Regs
PREVENT ACCIDENTS, INJURIES, ILLNESSES, DISEASES		

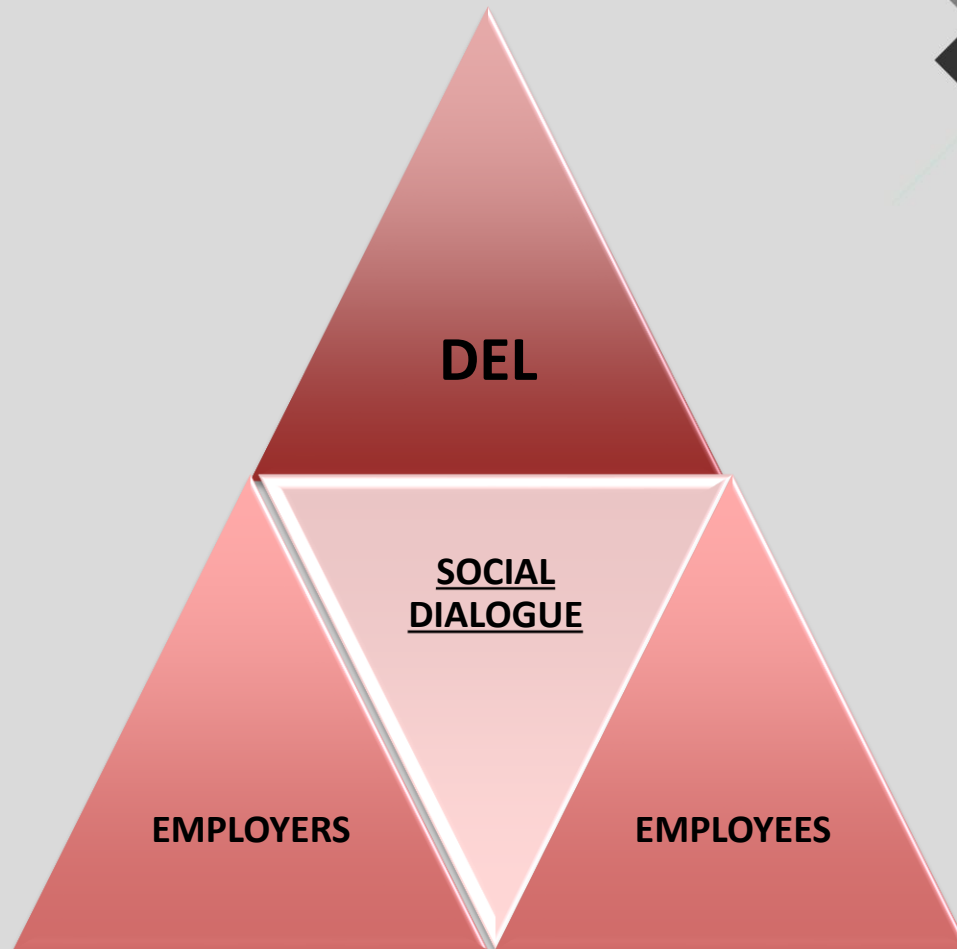
OHSACT, Act 85/ 1993

PURPOSE

- Provision for the health and safety of persons at work
- Provision for the health & safety of persons in connection with the use of plant (equipment) and machinery;
- the protection of persons other than persons at work (public) against hazards to h & s arising out of or in connection with activities of persons at work;
- to establish and advisory council for occupational health and safety; and to provide for matters connected therewith.



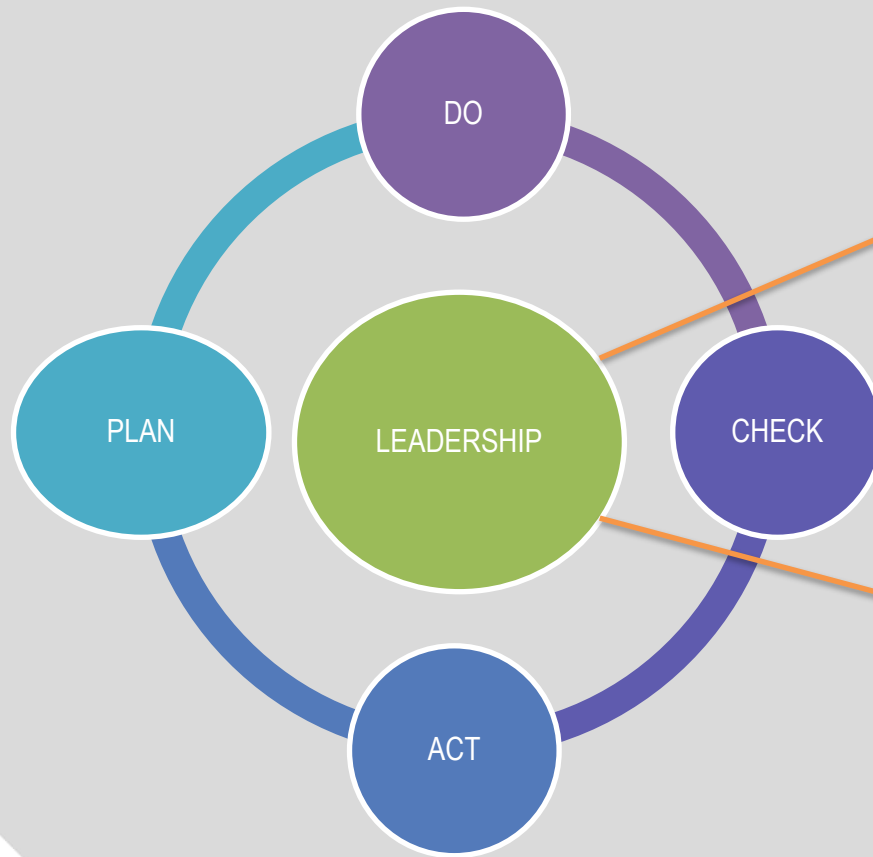
WHO SHOULD BE INVOLVED?



DUTIES OF EMPLOYERS(SEC 8)

- Every employer shall provide and maintain, as far as is reasonably practicable a working environment that is safe and without risks (Section 8(1))
- Section 8(2) – specific provisions
 - ✓ Section 8(2)(d) – starting point of a h & s management system (establish hazards & precautionary measures (**risk assessment**) to any work performed.
 - ✓ Expectation – employer to follow PDCA approach

DUTIES OF EMPLOYERS(SEC 8)



Leadership plays a crucial role in the successful implementation of a h & s management system

Commitment to significant h & s improvement goes beyond meeting legal requirements, but is an investment into the quality of life of the employees & in turn improves quality of work

DUTIES OF EMPLOYERS(SEC 8)

- Section 8(2) – specific provisions
 - ✓ Section 8(2)(e) –
 - ✓ Supervision - context of reasonably practicability. Level of competency (qualifications and training) of the supervisor
 - ✓ Training – Other specific regulations to be considered when training needs analysis is done & the employer has to decide on the following;
 - ✓ Is training essential prior to the commencement of any work – risks attached to the work to be considered
 - ✓ In-house training or outsourced?
 - ✓ What about training on how to act in danger situations?
 - ✓ Is the training achieving its goal?



DUTIES OF EMPLOYERS(SEC 8)

- Section 8(2) – specific provisions
 - ✓ Section 8(2)(e) –
 - ✓ Information – should be read with Section 13 (Duty to inform)
 - ✓ Employee has to be made conversant with any hazards attached to any work carried out by the employee and precautionary measures to be taken.
 - ✓ Conversant implies that such information has to be understood by the employee.
 - ✓ Information should be complete and in an understandable form.



DUTIES OF EMPLOYERS(SEC 8)

- Section 8(2) – specific provisions
 - ✓ Section 8(2)(f) – implementation of precautionary measures
- Section 8(2) – specific provisions
 - ✓ Section 8(2)(g) –
 - ✓ addresses employees as well as any other persons on the premises of the employers over which they have *control*.
 - ✓ Requires that persons other than employees of that employer, who are on these premises, also comply with the relevant provisions of this Act.



DUTIES OF EMPLOYERS(SEC 8)

- Section 8(2) – specific provisions
 - ✓ Section 8(2)(f) – implementation of precautionary measures
- Section 8(2) – specific provisions
 - ✓ Section 8(2)(g) –
 - ✓ It means that the employer has to establish what *supervision, training, instructions and information* are necessary to ensure compliance with such provisions.
 - ✓ This is of paramount importance, contractors who are covered by a contract in terms of Section 37(2) of this Act.



DUTIES OF EMPLOYERS(SEC 8)

- Section 8(2) – specific provisions
 - ✓ Section 8(2)(h) –
 - ✓ Enforcement of all the measures necessary in the interest of health and safety.
 - ✓ The employers have to devise their own in house methods of enforcement of policies or measures.
 - ✓ In house method to be reasonable, just, fair, in line with the Constitution, LRA and BCEA and not in conflict with the fundamental rights of the employee.
 - ✓ It should be clearly understood that if employers do not enforce policies or measures they do not fully comply with the provisions of this Act.



DUTIES OF EMPLOYERS(SEC 8)

- Section 8(2) – specific provisions
 - ✓ Section 8(2)(i) –
 - ✓ Supervision should not be confused with general supervision. If specific supervision is necessary, then it has to be implemented and not be regarded as a general issue.
 - ✓ The aspect of authority implies that the employer has to give such supervisor the necessary authority by means of a job description, performance agreement, etc.





DUTIES OF EMPLOYEES @WORK (SEC 14)

- Take reasonable care of their own H&S and of others who may be affected by their acts or omissions;
 - Co-operate with the employer to enable him/her to comply with the Act;
 - Carry out any lawful order, and obey the H&S rules;
 - Report any unsafe situation to the employer or to the H&S rep;
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H&S REPRESENTATIVES(17)

- More than 20 employees, negotiate and consult before designation of H&S reps.
- H & S reps to be appointed for a particular workplace/ workstation/ department.
- Only full time employees
- Period of office
- Provide facilities, training and assistance to H&S reps
- Investigate circumstance of any incident

H&S REPRESENTATIVES(17)

GAR 6

- Negotiations
- Nominations/ Election
- Term of office
- Manner to remove
- How functions are performed
- Facilities, training and assistance
- Collective agreement
- Disputes – Refer to CCMA



FUNCTIONS OF H&S (18)



- May review H&S measures
- Identify potential hazards at the workplace
- Examine the cause of incidents at the workplace
- Investigate complaints by any employee
- Make representations to the employer or H & S committee if unsuccessful, to a Labour Inspector
- Inspect the workplace, at agreed intervals;
- Attend meetings of the H&S committee.

ENTITLEMENT OF H&S REPS (18)

- H&S rep shall be entitled to-
 - ✓ Visit the site of an incident
 - ✓ Attend any inspection
 - ✓ Attend any investigation or formal inquiry held by an inspector
 - ✓ Inspect any H&S document
 - ✓ Accompany an inspector on any inspection
 - ✓ Accompany any technical adviser; and
 - ✓ Participate in any internal Health or Safety Audit.
 - ✓ The employer shall provide facilities, and training.



H&S COMMITTEE(19)

GAR 5

- 2 or more H&S reps, establish H&S committee.
- Employer nomination shall not exceed the number of H&S reps in the committee
- Suitable meeting place
- Records – at least 3 yrs



Functions of the H & S Committee (Sec 20)

- H&S committee may make:
 - ✓ Recommendations to the employer, where recommendations are not effected report to the inspector
 - ✓ Discuss incidents, cases of ill health or occupational diseases and may report such to an inspector
- Keep records of each recommendation made and reports given to an inspector
- Employer to ensure that committee holds the prescribed meetings and also performs the prescribed duties.

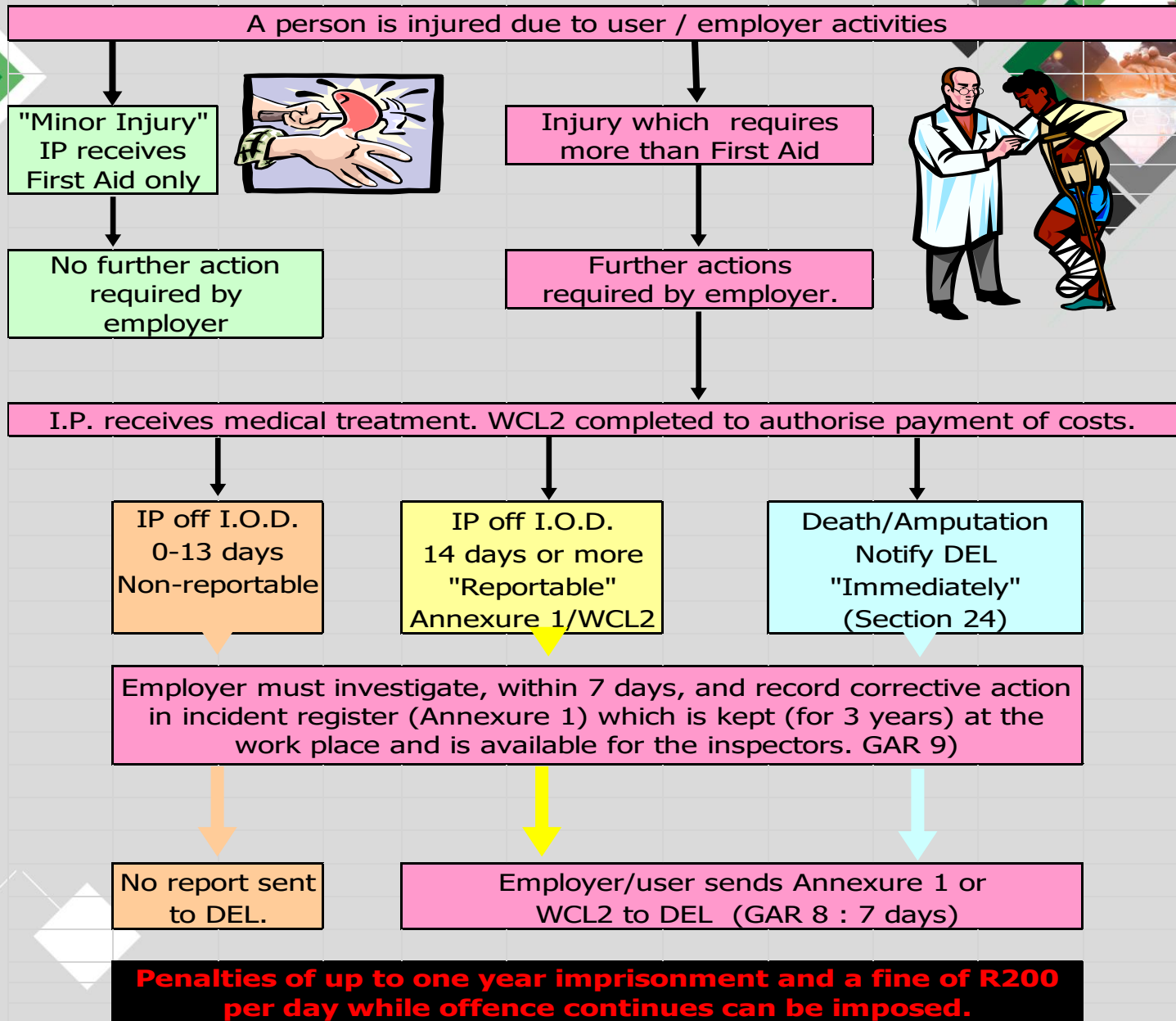
REPORTING OF H & S INCIDENT (SEC 24)

GAR 8 & 9

- Within 7 days
- Section 24
- Name/s of employees/s
- Address of IP
- Name & address of user, employer or self employed person



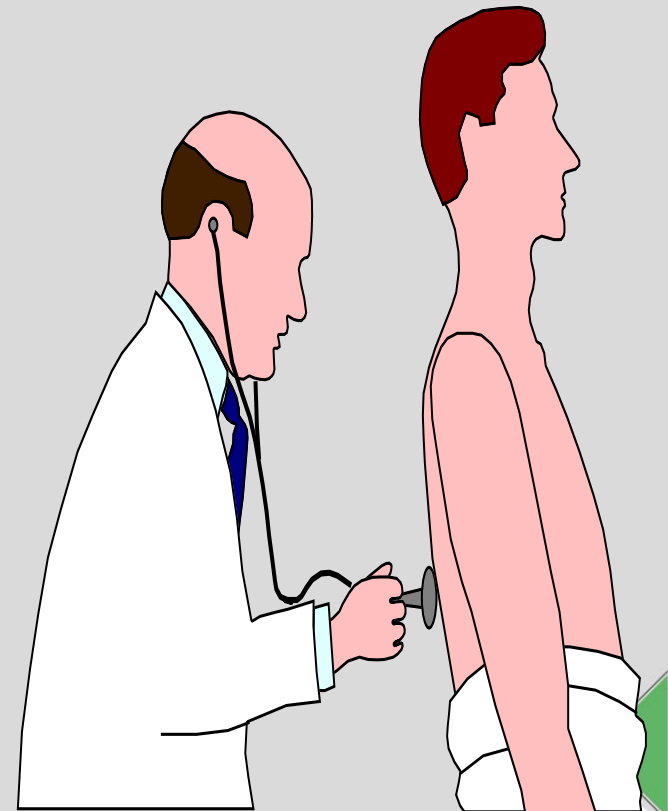
EVERY EMPLOYER OR USER MUST COMPLY WITH THE PROCEDURES BELOW



REPORTING OF DISEASES (SEC 25)

GAR 8

- Medical Practitioner to report within 14 days



Victimization (Sec 26)

- Provision for employees not to be intimidated by the employer should they comply with provisions as stipulated in Section 14.
- The employer is not allowed to do the following:
 - ✓ *Dismiss an employee*
 - ✓ *Reduce the rate of remuneration*
 - ✓ *Alter the terms of their employment to less favourable ones*
 - ✓ *Alter the position of an employee relative to other employee to his or her disadvantage*
- The employer is also prohibited from using medical surveillance results which will cause him or her to take the above-mentioned intimidating actions
- All the above should be in line with the requirements of LRA, BCEA and EEA

ASBESTOS ABATEMENT REGULATIONS

Regulation 12 – Duties of registered asbestos contractors for asbestos work

- In the case of type 2 and type 3 asbestos work, the registered asbestos contractor must:
- (a)...
- (b) appoint an occupational health and safety representative as contemplated in section 17 of the Act;



Conclusion



:

- ✓ Ensure realization of the full potential of employees as their quality of life is not negatively affected.



Conclusion

- OHS programmes in the workplace promote positive culture :
 - ✓ Contribute to the shared goals of business performance,
 - ✓ Ensure the fundamental right to health and safety
- Benefits of OHS programmes:
 - ✓ Fewer injuries and illnesses.
 - ✓ Reduced costs for workers' compensation claims.
 - ✓ Reduced disruption of operations.
 - ✓ Higher return-to-work rates following injury or illness.
 - ✓ Improved work practices, leading to increased efficiency, productivity and competitiveness.
 - ✓ Improved job satisfaction, morale, and employee retention.
 - ✓ Reduced absenteeism.

Take home message

A predominant factor for ensuring a safe and healthy working environment is cooperation:



Collective ownership & interactive collaboration in the implementation of initiatives & interventions in the workplace.

Asante Sana...



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