



# SAIOHS

## Are you ready?

### The OHS Amendment Bill

## Ernst van Biljon







**LEGISLATIVE COMPLIANCE SPECIALISTS**

REG NO. 2003/057520/23



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**Specialist Court Prosecutor  
responsible for...**

**Occupational  
Health & Safety prosecutions**

No  
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# Legislation

**Factories, Machinery and Building Works Act 1941**

**Machinery and Occupational Safety Act. 1983**

**Occupational Health and Safety Act 1994**

**OHS Bill 2024**

# Legislation

**Mines and Works Act, Act 27 of 1956**

**Minerals Act, Act 50 of 1991**

**Mines Health and Safety Act, Act 29 of 1996**



# Child lost hand on Big Wheel: Firm sentenced

By Sandra Lieberum

A JOHANNESBURG Magistrate's Court imposed a suspended fine of R10 000 yesterday for an incident on October 7, 1994 when a 12-year-old child lost his left hand while riding the Big Wheel at the Gold Reef City entertainment complex.

Buffalo Food Corporation (Pty) Limited trading as Gold Reef City pleaded guilty before Mr V Hawkins to having contravened Section 38 (11) of the Occupational Health and Safety Act of 1993.

Defence Counsel admitted on behalf of the concerned that the cable drive of the Big Wheel had been without a cover.

On behalf of the company he expressed condolences to the child, and

the child's family pointing out that the company had immediately fully compensated in accordance with our "normal law of delict for the loss of the hand".

He said that "a substantial amount" had been paid over and invested to take care of the child's future needs.

The State prosecutor, Mr Ernest van Biljon argued that everyone had the right to a normal life but on October 7, 1994 the child's dreams were shattered when he went to Gold Reef City for a pleasurable day.

A trip on the Big Wheel ended in tragedy.

He assured the court that guards had now been installed in the danger

areas and submitted that the entertainment complex was largely used by children often unattended, and that it was "a known fact one can expect anything from children".

Mr Hellens informed the court that the machinery that constituted the Big Wheel had been in operation for 20 years, 17 of which were in the Cape, and had been inspected "both here and in the Cape by the relevant inspectorate", and no danger of difficulty with the machinery was evidenced.

He said a section of the cable drive was insufficiently guarded.

"The negligence was there."

If a person extended a hand to the left outside the normal area in which ones hands were expected to be kept there was a possibility that for one or two seconds the hand would be trapped.

This was foreseeable, but foreseeable with some difficulty, therefore the degree of moral blame worthiness was lessened.

Also, the company had been loath to subjecting the victim to relieve the trauma by giving evidence in a trial and had pleaded guilty.

The defence urged the court in passing sentence, to take into account that the concerned provided services to the public on a day to day basis and that conviction "weights heavily with the company".

The prosecutor said that if the machinery was in operation "for 20 years then for 20 years they have been lucky".

Mr Van Biljon drew the courts attention to the penalty clause, which is R100 000 alternatively two years' imprisonment or both.

In passing a suspended sentence of R10 000 the magistrate said that the foreseeability of the accident happening "was very remote".

## Senegal pres appeals for SA investments

AT the end of a two-day State visit to South Africa, Senegalese President Abdou Diouf yesterday called on private South African investors to invest in all sectors of Senegalese

all the sectors which will provide growth for Senegal," Pres Diouf said at a lunch at Eskom head office in Sandton.

Addressing Gauteng Premier Tokyo Sexwale, Eskom employees and trade unionists, Pres Diouf said South Africa

accessible electricity to the majority of South Africans.

"We want to know how you are able to come up with a company that is so successful," he said.

Pres Diouf said there was an open debate in

# toe oor nalatige optrede

Barbara Steynberg

'N TEGNIKUS van Kempton Park is tot twee jaar tronkstraf gevonnissen omdat hy verantwoordelik was vir 'n foutiewe brandblusser wat op 9 November 1994 'n man ernstig beseer het toe hy dit tydens 'n brand wou gebruik.

Mark Anthony Lambert (38) is gister in die Kempton Parkse landdroshof skuldig bevind aan oortreding van die Beroepsge-sondheid- en Veiligheidswet.

Sy skuldigbevinding spruit uit 'n voorval twee jaar gelede toe mnr. Petrus Koester ernstig beseer is toe hy 'n brand by die Francois Jooste en Seun-skroot-werf in Kempton Park, waar hy gewerk het, probeer blus het. Die kop van die brandblusser het los-geskiet en hom in die gesig getref.

Lambert, wat 'n eenmansaak bedryf, het vroeër dié brandblusser by die skrootwerf gediens en gesê dit is in 'n goeie toestand. Onderdele van 'n ander fabrikaat is egter op die silinder gebruik, wat die ongeluk veroorsaak het.

Dr. Herman Edeling, 'n neuro-chirurg van die Milpark-Hospi-taal, het getuig dat mnr. Koester na dié voorval aan geheueverlies en erge breinbeserings lei. Hy het ook gedragsprobleme getoon. Dr. Edeling het mnr. Koester na 'n sielkundige inligting verwys.

Mrs Koester se vrou het getuig dat hy ná die voorval anders by die huis en teenoor hul vier kin-ders optree.

Mnr. Ernst van Biljon, staats-aanklaer, het gesê dit is die ergste vonnis waarvan hy weet vir 'n oortreding van beroepsge-sondheid- en veiligheids-wetgewing.

# Bail bid likely

## Court Reporter

Fire extinguisher technician, Mark Anthony Lambert, who has been jailed under the Occupational Health and Safety Act after a fire extinguisher head flew off and cost an employee his eye, and necessitated the reconstruction of part of his skull, is considering an application for bail pending appeal.

The maximum sentence the magistrate's court can impose after conviction under this Act is R100 000 (or two years' imprisonment), or both.

Convicting Lambert, magistrate Mrs E K Duffy jailed him for two years after finding he had been grossly negligent, and that it was "a miracle" the victim, Mr Petrus Koster, a middle-aged Kempton Park resident, survived.

Lambert had denied negligence, but admitted servicing the fire extinguishers during May 1994 at Francis Jooste and Sons in the Kempton Park area.

On November 9, 1994, according to evidence during the trial in the Kempton Park Magistrate's Court, a fire broke out at the company.

Mr Koster, an employee, grabbed a fire extinguisher and pressed the knob.

Evidence was that the incorrect head was on the extinguisher, causing the top to separate from the cylinder, blowing out Mr Koster's right eye, and part of his brain before landing in the void 20 metres away.

## Change

The prosecutor, Mr Ernest van Biljon, placed before the court evidence by Dr Herman Edeling, a neurosurgeon from the Millpark Hospital in Johannesburg.

The evidence was that Mr Koster had undergone a total personality change following the brain injury and reconstruction of his skull. Further operations were required, but there was a danger, the court heard, that these could prove fatal.

Lambert said that when he serviced the fire extinguishers, they were already fitted with heads, and he was unsure whether they were suitable.

The State proved that Lambert had nevertheless certified the fire extinguishers as safe for use, instead of withdrawing them from service, or

drawing the attention of the company management to the problem.

Mrs Duffy refused bail pending appeal against the jail sentence.

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# Huge Frustration!

## I prosecuted people like you!!!



**LEGISLATIVE COMPLIANCE SPECIALISTS**

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**Please help me!!!!**  
**I don't want to go to jail!!**

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**Why are there so many  
workplace accidents?**

**Plenty Hazards and risks**

# Hazard

## Definition Section 1

**A hazard means a source of, or exposure to danger**

# Risk

## Definition Section 1

**A risk means, the probability that injury or damage will occur**



**The most dangerous  
hazard?**

**The human!!!!**

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# Humans are strange creatures

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# The human

**One can expect anything from the human!**

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# The human hazard

**Use your common sense!!**

# The human hazard

**At work!!**

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# The human hazard

**Work safely**

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# The human hazard

## Wear your PPE

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# The human hazard

## Don't be intoxicated

# The human hazard

## Side effects of medication

# The human hazard

**Be careful**

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# The human hazard

**Wear your safety harness**

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**The Human is  
the most dangerous  
hazard!!!**

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# Humans need rules!!!!

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# WHAT HAPPENS WHEN THINGS GO WRONG?

## The OHS Act

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# Reportable incidents

## Section 24

**WCL 2**

**Investigated why?**

**Annexure 1**

# Section 37

**Guilty until proven innocent**

# Interventions

Department of Employment and Labour

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# Department of Employment and Labour

## Section 31 Investigation Recommend a prosecution

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# Interventions

Department of Employment and Labour

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# Department of Employment and Labour

## Section 32 Inquiry

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# OHS Act

## Evidence required

# Basic evidence required

COMPLIANCE ?  
PREVENTING ACCIDENTS ?  
THE INQUIRY ?

**No1 sect 8 (2)(d)**  
**RISK ASSESSMENT**

**NO 2 sect 8(2)(a)**  
**SAFE WORK PROCEDURES**

**NO 3 sect 8(2)(e)& 13**  
**TRAINING**

**NO 4 sect 8(2)(f) &(g)**  
**TASK OBSERVATION**

**NO 5 sect 8(2)(h)**  
**ENFORCEMENT DISCIPLINARY**

*... R 50 000 and/or  
... 1 year imprisonment  
... per contravention*

Geographical, Work, Articles, Substances,  
Plant and Machinery.

# Interventions

Department of Employment and Labour

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# Department of Employment and Labour

## Section 29(1)(a) Inspection

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# **Department of Employment and Labour**

**Improvement notice  
Contravention notice  
Prohibition notice**

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# Department of Employment and Labour

## Section 29(1)(a) Inspection Recommend a prosecution

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**If the employer's negligence  
could have caused a serious  
injury to a person**

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## **SECTION 38(2)**

What if your negligence caused an accident?

**Employer  
Negligence**

**Caused an accident**

**Person could have died**

**R100.000 or 2 years or both**

# toe oor nalatige optrede

Barbara Steynberg

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# OHS amendment Bill

# OHS Amendment Bill

**Enforces stricter health and safety requirements**

**Focusing more on risks than hazards**

# **OHS Amendment Bill**

## **Section 7**

### **Health and safety policy**

### **Health and safety management system**

# **Health and Safety management system**

**A co-ordinated, comprehensive set of interrelated or interacting elements to establish occupational health and safety policy and objectives to optimally manage health and safety**

**What does it mean?**

# Health and Safety management system

**It will be required to formalise health and safety procedures with policies, objectives and measurement tools.**

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# OHS Amendment Bill

## Duties of the employer

### Section 8(1)

An 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 or her employees

**Stays the same**

# **OHS Amendment Bill**

## **Duties of the employer**

### **Section 8(2)(a)**

**Conducting a workplace specific risk assessment and thereafter developing and implementing a risk management plan in respect of every risk identified**

**By a competent person**

# **OHS Amendment Bill**

## **Duties of the employer**

### **Section 8(2)(a)**

**Ensuring that no work is undertaken unless the control measures contained in the risk management plan, are complied with**

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# OHS Amendment Bill

## Duties of the employer

### Section 8(2)(a)

**Ensuring communication of the relevant components of the Risk Management plan to every employee**

**Training Section 13 the same**

# Risk Management Plan

**No definition!!!**

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# OHS Amendment Bill

## Section 9(1)

**Duty towards people other than your employees**

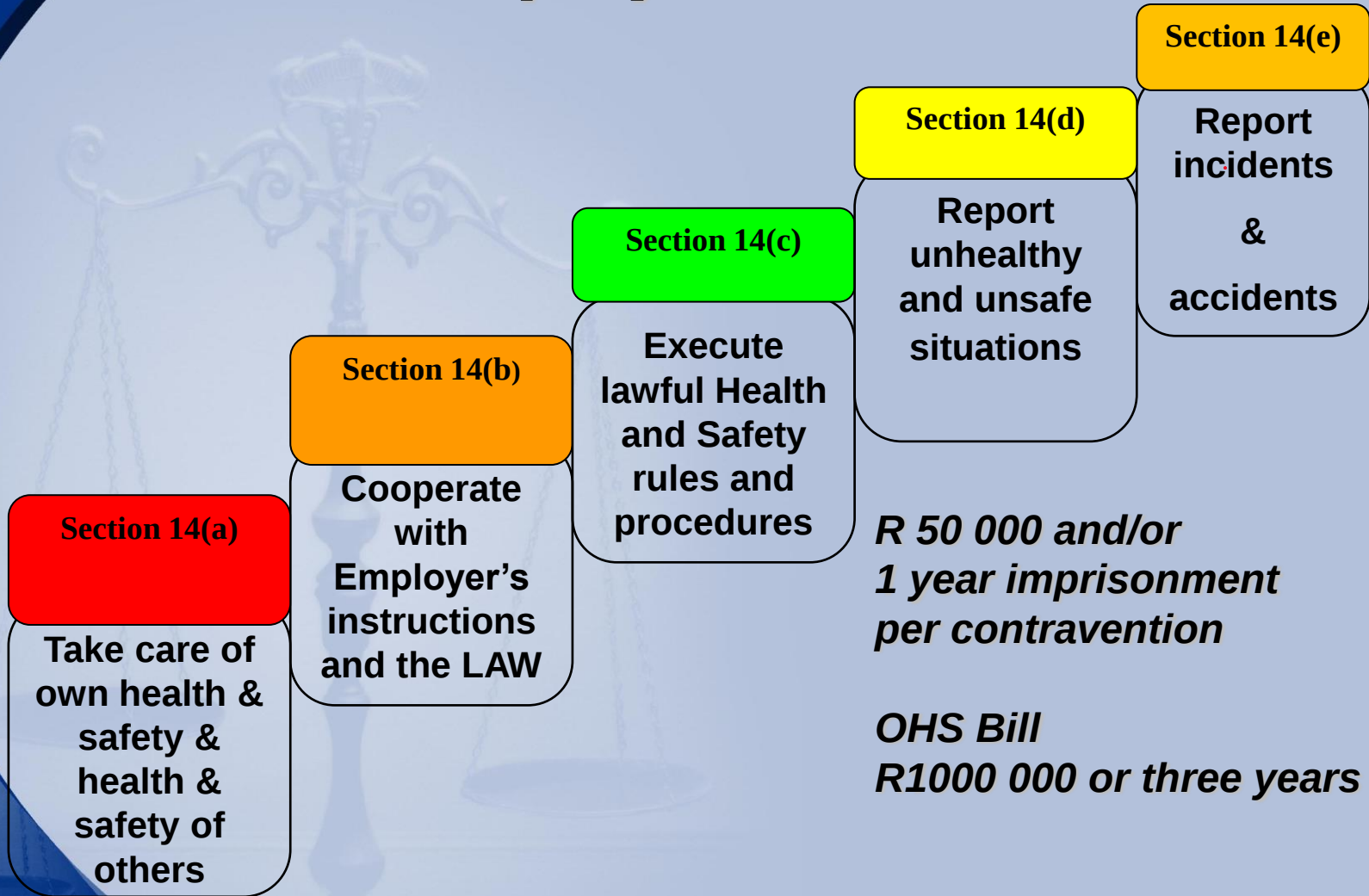
**Ensure that the risk posed by identified hazards to people other than those in the direct employ, who may be directly affected, are not exposed to hazards and the risk is managed in line with the Risk Management plan.**

# OHS Amendment Bill

## Section 14

### General duties of employees at work

# ***General Duties of the Employee: Section 14***



# **OHS Amendment Bill**

## **Reportable incidents**

**Section 24 No major differences**

**Section 24 (5)(a)**

**Provide the Department with incident statistics on the first day of March..**

**Include statistics for contractors while working on the site of the employer**

# OHS Amendment Bill

## Section 37A

### Administrative fines

**Do you know the new fines?**

## Administrative fines Schedule 2

| Column 1<br>Section contravened                                                                                                                | Column 2<br>Maximum fine |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 7 Health and Safety policy. Not a universal requirement.                                                                                       | R 50 000                 |
| 19 (1); Health and safety committees                                                                                                           | R 50 000                 |
| 20 (4); An employer shall take the prescribed steps to ensure that a health and safety committee complies with the provisions of section 19(4) | R 50 000                 |
| 21; General prohibitions                                                                                                                       | R 50 000                 |
| 24(1);(2) Reporting of incidents                                                                                                               | R 25 000                 |
| 25; Medical practitioners duty to occupational disease                                                                                         | R 50 000                 |
| 29(3); Functions of Inspectors??????? 31??                                                                                                     | R 25 000                 |
| 30(6) Prohibition Failure by employer to bring Notice to the attention of employees.                                                           | R50 000                  |

| Column 1<br>Section under which convicted<br><b>ILLOGICAL!!!!</b> | Column 2<br>Maximum fine and period of Imprisonment |
|-------------------------------------------------------------------|-----------------------------------------------------|
| 2B Huh?                                                           | R 1 000 000 or 3 years imprisonment                 |
| 8 Duties of employers to employees                                | <b>R 5 000 000 or 5 years Imprisonment</b>          |
| 9 Duties of employers to non-employees                            | R 5 000 000 or 5 years imprisonment                 |
| 10 ????????? Manufacturers etc.                                   | <b>R 1 000 000 or 3 years Imprisonment</b>          |
| 12 ??? Listed Work                                                | R 1 000 000 or 3 years imprisonment                 |
| 13 (hazard conversancy) ???                                       | <b>R 200 000 or 2 years Imprisonment</b>            |
| 14 (Employees better start saving)!                               | R 1 000 000 or 3 years imprisonment                 |
| 15 Interference / misuse                                          | R 1 000 000 or 3 years imprisonment                 |
| 16 Duty of a CEO?                                                 | R 1 000 000 or 3 years imprisonment                 |
| 17 (1) ; 17 (4) H & S Reps                                        | R 1 000 000 or 3 years imprisonment                 |
| 18 (3) facilities for H & S Reps                                  | R 1 000 000 or 3 years imprisonment                 |
| 22 sale of certain articles prohibited                            | R 500 000 or 3 years imprisonment                   |
| 30 (2) Inspector my barricade / employer comply                   | R 500 000 or 3 years imprisonment                   |
| 31(1B) Lesser penalty for homicide???                             | <b>R 1 000 000 or 3 years Imprisonment</b>          |
| 34 Obstruction                                                    | R 5 000 000 or 5 years imprisonment                 |
| 36 Disclosure of Information                                      | R 500 000 or 3 years imprisonment                   |
| 37 ???? 37(2) not compulsory                                      | R 5 000 000 or 5 years imprisonment                 |
| 38 Offences                                                       | R 5 000 000 or 5 years imprisonment                 |
| 40 Exemptions                                                     | R 1 000 000 or 3 years imprisonment                 |
| 41 Acts not affected by agreements                                | R 1 000 000 or 3 years imprisonment                 |
| 42??? Minister may promulgate regulations????                     | R 1 000 000 or 3 years imprisonment                 |

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# What is your liability?

## Someone died because of the injuries

# Culpable homicide

**Wrongful  
Negligent  
Killing  
Human being**

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**Could you be prosecuted for  
Murder?**

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# Murder

**Wrongful  
Intentional  
Killing  
Human being**

# Nevertheless, carried on...

# Murder!!!!

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**How will you feel?**

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**Compliance should never  
be driven by fear!!!!**

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**If you see  
my mum or  
dad doing  
something  
unsafe please  
stop them.**



# Thank you

**Ernst van Biljon**

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