

WIETA				
	Code Principle	Safe and Healthy Work Environment	Date	April 2016
	Subject	Extract form OHS Act, 1993 and Regulations	Internal Ref	03.02(b)
	Legal reference	Section 16(2) Appointment		

### Health and Safety Representative System

#### Section 17. Health and safety representatives.—

- (1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his employment at any workplace, shall, within four months after the commencement of this Act or after commencing business, or from such time as the number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof.
- (2) An employer and the representatives of his employees recognized by him or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to a person mutually agreed upon, whose decision shall be final: Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final.
- (3) Arbitration in terms of subsection (2) shall not be subject to the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), and a failure of the consultation contemplated in that subsection shall not be deemed to be a dispute in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956): Provided that the Minister may prescribe the manner of arbitration and the remuneration of the arbitrator designated by the President of the Industrial Court.
- (4) Only those employees employed in a full-time capacity at a specific workplace and who are acquainted with conditions and activities at that workplace or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that workplace or section.
- (5) The number of health and safety representatives for a workplace or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other workplaces at least one health and safety representative for every 50 employees or part thereof: Provided that those employees

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performing work at a workplace other than that where they ordinarily report for duty, shall be deemed to be working at the workplace where they so report for duty.

- (6) If an inspector is of the opinion that the number of health and safety representatives for any workplace or section thereof, including a workplace or section with 20 or fewer employees, is inadequate, he may by notice in writing direct the employer to designate such number of employees as the inspector may determine as health and safety representatives for that workplace or section thereof in accordance with the arrangements and procedures referred to in subsection (2).
- (7) All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.

### **Section 18. Functions of health and safety representatives.**

- (1) A health and safety representative may perform the following functions in respect of the workplace or section of the workplace for which he has been designated, namely—
- (a) review the effectiveness of health and safety measures;
  - (b) identify potential hazards and potential major incidents at the workplace;
  - (c) in collaboration with his employer, examine the causes of incidents at the workplace;
  - (d) investigate complaints by any employee relating to that employee's health or safety at work;
  - (e) make representations to the employer or a health and safety committee on matters arising from paragraphs (a), (b), (c) or (d), or where such representations are unsuccessful, to an inspector;
  - (f) make representations to the employer on general matters affecting the health or safety of the employees at the workplace;
  - (g) inspect the workplace, including any article, substance, plant, machinery or health and safety equipment at that workplace with a view to the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of his

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intention to carry out such an inspection to the employer, who may be present during the inspection;

- (h) participate in consultations with inspectors at the workplace and accompany inspectors on inspections of the workplace;
- (i) receive information from inspectors as contemplated in section 36; and
- (j) in his capacity as a health and safety representative attend meetings of the health and safety committee of which he is a member, in connection with any of the above functions.

(2) A health and safety representative shall, in respect of the workplace or section of the workplace for which he has been designated be entitled to—

- (a) visit the site of an incident at all reasonable times and attend any inspection in loco;
- (b) attend any investigation or formal inquiry held in terms of this Act;
- (c) in so far as it is reasonably necessary for performing his functions, inspect any document which the employer is required to keep in terms of this Act;
- (d) accompany an inspector on any inspection;
- (e) with the approval of the employer (which approval shall not be unreasonably withheld), be accompanied by a technical adviser, on any inspection; and
- (f) participate in any internal health or safety audit.

(3) An employer shall provide such facilities, assistance and training as a health and safety representative may reasonably require and as have been agreed upon for the carrying out of his functions.

(4) A health and safety representative shall not incur any civil liability by reason of the fact only that he failed to do anything which he may do or is required to do in terms of this Act.

### **Section 19. Health and safety committees.**

(1) An employer shall in respect of each workplace where two or more health and safety representatives have been designated, establish one or more health and safety committees and, at every meeting of such a committee as contemplated in subsection (4), consult with the committee with a view to initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.

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- (2) A health and safety committee shall consist of such number of members as the employer may from time to time determine: Provided that—
- (a) if one health and safety committee has been established in respect of a workplace, all the health and safety representatives for that workplace shall be members of the committee;
  - (b) if two or more health and safety committees have been established in respect of a workplace, each health and safety representative for that workplace shall be a member of at least one of those committees; and
  - (c) the number of persons nominated by an employer on any health and safety committee established in terms of this section shall not exceed the number of health and safety representatives on that committee.
- (3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by him, while the health and safety representatives shall be members of the committee for the period of their designation in terms of section 17 (1).
- (4) A health and safety committee shall hold meetings as often as may be necessary, but at least once every three months, at a time and place determined by the committee: Provided that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him: Provided further that, if more than 10 per cent of the employees at a specific workplace has handed a written request to an inspector, the inspector may by written notice direct that such a meeting be held.
- (5) The procedure at meetings of a health and safety committee shall be determined by the committee.
- (6) (a) A health and safety committee may co-opt one or more persons by reason of his or their particular knowledge of health or safety matters as an advisory member or as advisory members of the committee.
- (b) An advisory member shall not be entitled to vote on any matter before the committee.
- (7) If an inspector is of the opinion that the number of health and safety committees established for any particular workplace is inadequate, he may in writing direct the employer to establish for such workplace such number of health and safety committees as the inspector may determine.

### **Section 20. Functions of health and safety committees.**

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- (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.
- (2) A health and safety committee shall keep record of each recommendation made to an employer in terms of subsection (1) (a) and of any report made to an inspector in terms of subsection (1) (b).
- (3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he failed to do anything which it or he may or is required to do in terms of this Act.
- (4) An employer shall take the prescribed steps to ensure that a health and safety committee complies with the provisions of section 19 (4) and performs the duties assigned to it by subsections (1) and (2).

**General Administrative Regulation 6. Negotiations and consultations before designation of health and safety representatives.**

- (1) The employer shall, in any workplace where there must be a health and safety representative in terms of section 17 (1) of the Act and within four months after the commencement of these regulations or after commencing business, meet with the registered trade unions of that workplace in order to consult or bargain in good faith and conclude an agreement concerning the—
- (a) nomination or election of health and safety representatives;
  - (b) terms of office of health and safety representatives and the circumstances and the prescribed manner in which they may be removed as health and safety representatives;
  - (c) manner in which vacancies are to be filled;

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- (d) manner in which health and safety representatives must perform their functions in terms of the Act; and
- (e) facilities, training and assistance that must be provided to a health and safety representative in terms of section 18 (3) of the Act:

Provided that, where there is no registered trade union, the employer shall enter into consultation with all employee representatives in that workplace in order to conclude an agreement with regard to subregulation (1).

- (2) An agreement referred to in subregulation (1) may include two or more employers as parties to the agreement.
- (3) The conditions applicable to collective agreements in terms of the Labour Relations Act, read with the changes required by the context, shall apply to agreements concluded in terms of subregulation (1).
- (4) A dispute shall exist if no agreement in terms of subregulation (1) is concluded on the arrangement and procedures for the nomination and the election of health and safety representatives at a workplace.
- (5) If a dispute exists in terms of subregulation (4), any party to the dispute may refer the dispute to the CCMA or Bargaining Council.
- (6) If a dispute is referred to the CCMA or Bargaining Council under subregulation (5), the CCMA shall attempt to resolve it through conciliation.
- (7) If a dispute remains unresolved, any party to the dispute may request that it be resolved through arbitration, in which case the CCMA shall, taking into account the objectives of the Act and the proposals of the parties, determine the arrangement and procedures for the nomination or the election of the health and safety representatives.

**General Administrative Regulation 7. Designation of health and safety representatives.**

An employer shall ensure that the designation of health and safety representatives is in accordance with the agreement contemplated in regulation 6.