


WIETA				
	Code Principle	Safe and Healthy Work Environment	Date	April 2016
	Subject	Contractors Agreement	Internal Ref	03.02(e) and (f)
	Legal reference	Section 37(2)		

Validity of Indemnities

In accordance with Section 41 of the OHS Act an employer may not indemnify himself from any provisions of the OHS Act. An employer who allows an employee to work in a safety shoe area without safety shoes will still be held liable even if the employer can prove that the employee gave him a letter in which the employee indemnifies him from any action which may result from an incident as a result of him not wearing his safety shoes.


The Act makes it possible for employers to indemnify themselves only in the following instances:

1. Section 10 (4) allows for a person who design, manufacture, import, sell or supply an article or substance to another person to indemnify himself by obtaining a written undertaking from the buyer indicating that the buyer will take reasonable care to ensure that the item will comply with all the prescribed requirements and will be safe when properly used; and
2. Section 37 (2) gives employers the right to require sub-contractors to sign a written undertaking in which the sub-contractor undertakes to comply with all the requirements of the OHS Act while working on the premises of the employer. This undertaking will effectively indemnify the employer from the actions of the sub-contractor.

Section 37 as promulgated under the Occupational Health and Safety Act, 1993 - Acts or omissions by employees or mandataries.

- (1) Whenever an employee does or omits to do any act which it would be an offence in terms of this Act for the employer of such employee or a user to do or omit to do, then, unless it is proved that—
- (a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;
 - (b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do an act, whether lawful or unlawful, of the character of the act or omission charged; and
 - (c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question, the employer or any such user himself shall be

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presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect thereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

- (2) The provisions of subsection (1) shall mutatis mutandis apply in the case of a mandatary of any employer or user, except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the mandatary with the provisions of this Act.