

WHO IS ACCOUNTABLE – 03

It has been well established that all employees who are exposed to 'hazards' in the workplace should undergo medical surveillance and participate in a medical surveillance program (Section 8 (1) (2)(b) & (d) & 9 of the Occupational Health & Safety Act no 85 of 1993 (OHSA), Employment Equity Act no 55 of 1998, Chapter II, Section 7).

Medical surveillance is a crucial part of the OHSA (amongst others) therefore it is important to make oneself aware of the accountability and liability of non-compliance.

RESPONSIBILITY AND ACCOUNTABILITY

The primary responsibility for ensuring a safe and healthy work environment is placed on the Chief Executive Officer or the person deemed to be the Chief Executive Officer of the organisation. Section 1 of the OHS Act defines the Chief Executive Officer as follows:

(1) *"chief executive officer", in relation to a body corporate ...means the person who is responsible for the overall management and control of the business of such body corporate or enterprise;*

Section 16(1) of the OHSA, appoints the CEO as the accountable person who should provide and maintain a safe and healthy work environment that is without risk to employees and others.

16. Chief executive officer charged with certain duties

(1) *Every chief executive officer shall as far as is reasonably practicable ensure that the duties of his employer as contemplated in this Act, are properly discharged."*

Section 16(2) follows:

(2) *Without derogating from his responsibility or liability in terms of subsection (1), a chief executive officer may assign any duty contemplated in the said subsection, to any person under his control, which person shall act subject to the control and directions of the chief executive officer.*

Thus, Section 16(2) appointee(s) will be responsible for the management of occupational health and safety matters at the designated area of appointment. After appointment they will be legally bound to help and assist the CEO with safety management over these designated areas.

The delegation of the above mentioned does not include the accountability, which is squarely placed at the CEO's feet. This is stated in Section 16 (3):

16 (3) The provisions of subsection (1) shall not, subject to the provisions of section 37, relieve an employer of any responsibility or liability under this Act.

OFFENCES & PENALTIES

Section 38 of the OHS Act is clear about the penalties for non-compliance:

- (1) Any person who-
 - (a) contravenes or fails to comply with a provision of section 7, 8, 9, 10 (1), (2) or (3), 12, 13, 14, 15, 16 (1) or (2), 17 (1), (2) or (5), 18 (3), 19 (1), 20 (2) or (4), 22, 23, 24 (1) or (2), 25, 26, 29 (3), 30 (2) or (6), 34 or 36... (p)... **shall be guilty of an offence and on conviction be liable to a fine not exceeding R50000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.**
- (2) Any employer who does or omits to do an act, thereby causing any person to be injured at a workplace, or, in the case of a person employed by him, to be injured at any place in the course of his employment,

or any user who does or omits to do an act in connection with the use of plant or machinery, thereby causing any person to be injured, shall be guilty of an offence if that employer or user, as the case may be,

would in respect of that act or omission have been guilty of the offence of culpable homicide had that act or omission caused the death of the said person, irrespective of whether or not the injury could have led to the death of such person, **and on conviction be liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.**

Make sure your company understands the risks and liabilities of non-compliance, but most important of all, keep your employees safe.

Kind Regards

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