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BEST PRACTICES GUIDELINE –

RIGHTS AND OBLIGATIONS OF THE EMPLOYER & EMPLOYEE IN TERMS OF OHSA IN A WORKING ENVIRONMENT OUTSIDE THE PREMISES OF THE EMPLOYER

HEALTH & SAFETY

RIGHTS AND OBLIGATIONS OF THE EMPLOYER AND EMPLOYEE IN TERMS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 IN A WORKING ENVIRONMENT OUTSIDE THE PREMISES OF THE EMPLOYER

1. INTRODUCTION

In this paper, **SACAA** shares the rights and obligations of the employer and employee in terms of the Occupational Health and Safety Act 85 of 1993 in a working environment outside the premises of the employer. A need has arisen on the part of employers and employees to be advised of the legal position in this regard in view of the hazard of the current COVID-19 pandemic. **SACAA** does not only deal with the MHSA as many companies who are members, also have other facilities that fall under the Department of Labour.

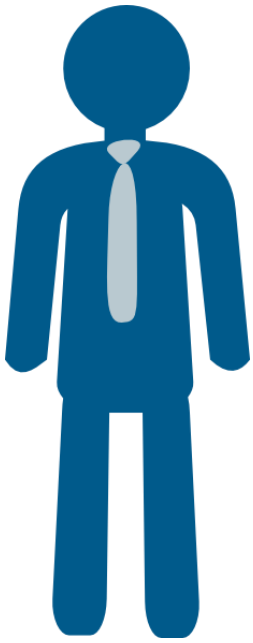
A number of the relevant legal principles and provisions have been dealt with comprehensively in the publication entitled *"Occupational Health and Safety Law",* authored by Willem le Roux, an Executive Consultant to ENSafrica (Edward Nathan Sonnenbergs Inc.) and co-authored by Pieter Colyn, a Director and Head of the Mine and Occupational Health and Safety Department of ENSafrica. Where relevant, these sections of the Occupational Health and Safety Law are repeated or referred to in this paper.

2. THE SCOPE OF APPLICATION OF THE OHSA AND THE DISASTER MANAGEMENT ACT 57 OF 2002

2.1. When applying provisions of the OHASA and the regulations which are binding in terms thereof, cognisance must be taken of the regulations and directions issued in terms of the Disaster Management Act 57 of 2002. Insofar as there is any conflict between the provisions of the two Acts and their regulations, preference must be given to the Disaster Management Act and its regulations. Regulations issued must comply with the principles of legality.

2.2. The preamble to the OHASA sets out in general terms its objective, viz.: "To *provide* for the *health and safety of persons at work and* for the health *and* safety *of persons* in connection with the use *of plant and machinery;* the protection of *persons other than persons at work against hazards* to *health and* safety *arising* out *of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety; and to provide for* matters *connected therewith."*

2.3. The OHASA is therefore a general statute which applies to all workplaces, except if such workplaces are excluded from the application of the Act. By virtue of the provisions of section 1(3) of the OHASA, the Act does not apply to a *"mine, a mining area or any works"* as defined in the Mine Health and Safety Act 29 of 1996 ("MHSA"), except if the MHSA provides otherwise. The only instance where the MHSA provides for the application of the OHASA is section 80 of the MHSA. This section provides that the Minister may by a notice in the Gazette declare any provision of the OHASA or any regulation made under that Act, or any provision of any other Act or regulation, applicable to a mine, after having consulted the council and the Minister.



2.4. In order to understand the rights and obligations of the employer and the employee, the definitions of those concepts are set out herein below. In addition, the terms *"health"* and *"safety"* are explained.

3. THE *"EMPLOYER"*

3.1. The word *"employer"* is defined in section 1 of the OHASA as meaning *"subject to* the *provisions of subsection (2), any person* who employs *or provides work* for *any person and remunerates that person or expressly or tacitly undertakes to remunerate him, but excludes* labour *broker as denned* in section 1(1) of *the Labour Relations* Act, 1956 (Act No. *28 of* 1956)".

3.2. In light of the provisions of section 12(1) of the Interpretation Act 33 of 1957, reference to the Labour Relations Act 28 of 1956 must be construed as a reference to the provisions of the Labour Relations Act 66 of 1995 (see Willem le Roux and Pieter Colyn, **Occupational Health and Safety Law,** Volume 1, pp 3 - 16 and 2 20 (looseleaf publication of LexisNexis, 2016, service issue 7, September 2019)). This publication is hereinafter referred to as **Le Roux & Colyn.**

3.3. In terms of section 1(2) of the OHASA, the Minister may by notice in the Gazette declare that a person belonging to a category of persons specified in the notice shall for the purposes of the Act or any provision thereof be deemed to be an employee. To date, no notice has been published in the Gazette in terms of section 1(2).

4. THE *"EMPLOYEE"*

4.1. The word *"employee"* is defined in section 1 of the OHASA as meaning *"subject* to the provisions of *subsection (2), any* person *who is employed by or works for an* employer *and who receives or is* entitled to *receive any remuneration or who works under the direction or supervision of any* employer *or any other* person".

4.2. It is clear from the above definition that a multi - faceted approach is therefore adopted to determine when a person is an "employee". It is not only the issue of remuneration which will determine whether a person is regarded as an employee, but also whether a person works under the direction or supervision of an employer or any other person. See **Midway Two Engineering & Construction Services v Transnet Bpk** 1998 (3) SA 17 (SCA); **Rofdo (Pty) Limited t/a Castle Crane Hire v B & E Quarries (Pty) Ltd** 1999 (3) SA 941 (SE). See **Le Roux & Colyn** op. cit para 3.2.9.

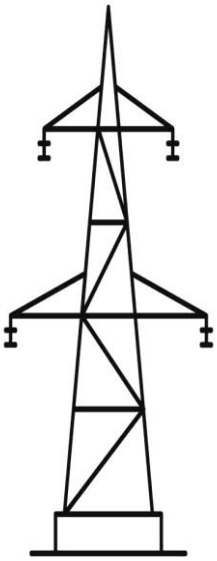
5. SECTION 8: GENERAL DUTIES OF EMPLOYERS TO THEIR EMPLOYEES

5.1. **8. General duties of employers to their employees**

5.1.1. Every *employer* shall provide *and maintain, as far as is reasonably practicable, a working environment* that is *safe and without* risk to *the health* of the employees.

5.1.2. *Without derogating from the generality* of *an* employer's duties under *subsection* (1), the *matters to which those duties refer include in particular:*

- *the provision and maintenance* of *systems of work,* plant *and machinery that, as far as is reasonably* practicable, *are safe and* without *risks to health;*
- *taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting* to personal *protective equipment;*
- *making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of* risks to *health in connection with the production, processing, use, handling, storage or transport of articles or* substances;
- *establishing, as far as is reasonably practicable, what hazards* to the *health or safety of persons are attached to any work which is performed, any* article *or substance which is produced, processed, used, handled, stored or transported and any plant or machinery, which is used* in his *business, and he shall, as far as is reasonably practicable,* further *establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order* to protect the *health and safety of persons, and he shall provide the necessary means* to apply *such* precautionary *measure;*
- providing *such information,* instructions, *training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;*
- *as far as is reasonably practicable,* not *permitting* any employee to *do any work or* to *produce,* process, *use, handle, store* or transport any article *or substance or to operate any plant or machinery, unless the precautionary measures* contemplated *in paragraphs (b) and*
- *or any* other *precautionary measures which may be prescribed, have been taken;*



- *taking all necessary measures to ensure* that *the requirements of this* Act *are complied with by every person in his employment or on premises under his control where plant or machinery is used;*
- *enforcing* such *measures as may be necessary in the interest of health and* safety;
- *ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with* it *and who* has the *authority* to *ensure that precautionary measures taken by the* employer *are implemented; and causing all employees* to *be informed regarding the scope of their authority as contemplated in section* 37(1)(b)."

5.2. The heading of this particular provision makes it clear that section 8 only deals with the general duties of employers to their own employees. The obligation of the employer to "provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees" is an extensive obligation, which must also be read together with the more specific duties as detailed in section 8(2) of the OHASA.

6. THE MEANING OF THE WORDS *"WORKING ENVIRONMENT'* AS CONTAINED IN SEC8(1) OF THE OHASA

6.1. The primary duty of the employer is to provide and maintain, as far as reasonably practicable, *'a working environment that is safe and* without *risk* to the *health* of the *employees':* The *words "working environment"* are not defined in the OHASA. Obviously, the environment which constitutes a *"working environment",* is an environment where *"work"* is performed. The word "work" is defined in section 1 of the OHASA as meaning "work *as an employee or as a self-employed* person, *and for such purpose an employee is deemed to be at work during the time that he is in the course of his employment, and a self-employed person is deemed to be at work* during *such time as he devotes* to *work as a self-employed person".*

6.2. The word *"workplace"* is defined in section 1 of the OHASA as meaning "any premises *or place where a person performs work in the course of his employment".*

6.3. It is, therefore, clear that the "workplace", is not restricted to premises which are owned or controlled by the employer. Any premises or place where a person performs work in the course of his/her employment, will therefore constitute a *"workplace"* and a *"working environment".*

7. THE MEANING OF "SAFETY", "HEALTH" AND "HAZARD"

7.1. No definitions are provided in the OHASA for the concepts of *"health"* and *"safety'* and, accordingly, these concepts must be interpreted in light of the definitions of *"healthy"* and *"safe"* as contained in section 1(1) of the OHASA. The word "healthy" is defined in the OHASA as meaning *"free from illness* or *injury attributable* to *occupational causes".* The word *"safe"* is defined as meaning "free from *any hazard".*

7.2. The word *"hazard"* is defined in section 1 of the OHASA as meaning *"a source of or exposure* to *danger".*

7.3. The definitions of *"healthy"* and *"safe"* and the concepts of *"health"* and *"safety"* must be read together with the obligations imposed on the employer as detailed in section 8 of the OHASA.

7.4. It is also important to keep in mind that the OHASA refers to *"occupational health"* which is defined as including "occupational *hygiene, occupational medicine and biological monitoring".* See in this regard, **Le Roux *St* Colyn** op.cit para 3.2.32. The definition of *"occupational health"* finds application in respect of the obligations imposed in terms of the Regulation for Hazardous Biological Agents published in GNR.1390 of 27 December 2001. See in this regard, **Le Roux & Colyn** op.cit para 3.2.32.3.

8. THE STANDARD OF CARE REQUIRED OF THE EMPLOYER

8.1. As stated above, the employer is required to provide and maintain *"as far as* reasonably *practicable, a working environment that is safe and without risk to the health* of his *employees"* (see section 8(1) of the OHASA).

8.2. The words *"reasonably* practicable" are defined in section 1 of the OHASA as practicable having regard to

a) the severity and scope of *the hazard or risk concerned;*
b) the state of *knowledge reasonably available concerning that hazard* or risk *and of any means of removing or mitigating that hazard or risk;*
c) the *availability and suitability of means to* remove *or mitigate that hazard or risk; and*
d) the *cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom".*

8.3. It is therefore clear that absolute safety and occupational health are not required, but measures which are "reasonably practicable" as defined. See in this regard, **Le Roux & Colyn** op.cit paras 2.5.4 to 2.5.14.

8.4. An employer is therefore required to consider whether a working environment is, as far as reasonably practicable, safe and not hazardous to health, by referring to the 4 (four) requirements in the definition of the words *"reasonably* practicable". First, the severity and scope of the hazard (being the source of or exposure to danger) and the risk must be taken into account. The word *"risk"* is defined in section 1 of the OHASA as meaning *"the probability that injury or damage will occur".*
In other words, the extent of the hazard and the likelihood of the hazard occurring must be considered.

8.5. In addition, consideration must be given to the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk. The standard required by the OHASA is therefore a dynamic one, which may change from time to time as more knowledge is acquired of the hazard and risk. This is particularly of importance with the current hazard of COVID-19 infection.

The employer is therefore required to acquaint himself/herself of new information of COVID-19 as a hazard and measures to prevent and mitigate the risk of infection with COVID-19.

8.6. Furthermore, the availability and suitability of means to remove or mitigate the hazard or risk must be considered as well as the cost of removing or mitigating the hazard or risk in relation to the benefits deriving therefrom.

8.7. The appropriate way to determine measures which are *"reasonably practicable"* to maintain and provide safety and health, is to perform a risk assessment and in this regard to take into account the provisions of sections 8(2)(b) to (d) of the OHASA.

9. VARIOUS SPECIFIC DUTIES IMPOSED ON EMPLOYERS IN TERMS OF SECTION 8(2) OF THE OHASA

Section 8(2) of the OHASA imposes various specific duties on employers as follows:

9.1. The provision and maintenance of systems of work, plant and machinery (section 8(2)(a))

(a) In *terms* of *this particular provision, a* duty is imposed *on the employer* to *provide and maintain* systems of *work.*
(b) The words "work, plant and machinery" must be interpreted in accordance with the definitions as contained in section 1(1) *of* the OHASA.

(c) *It is specifically required that* the *provision and maintenance of systems* of *work must "as far as is reasonably practicable" be* safe *and* without risks to *health and must therefore be considered against* the *background of paragraph 8 above.*

9.2. Hazard elimination or mitigation, as well as production, processing, use, handling, storage or transport of articles or substances (section 8(2)(b) to (d))

a) *The* prevention *of injuries and disease and the improvement of health and safety form the core* of the *obligations contained in the OHASA. Risk assessment is nothing more than a careful examination of what* could *cause harm* to *persons, so* that *one can weigh up whether sufficient precautions have been taken to prevent* or *minimise harm. The relevant provisions dealing with* risk *assessment are contained in section 8(2)(b), (c) and (d) of the* OHASA.

b) *In terms* of *the* OHASA, the duty to *perform* risk *assessment and the steps following such assessment rests* upon *the employer.* Although *no* particular *provision is made in the* OHASA *as* to how the *assessment* must *be done,* particular *regulations exist which* require the employer to carry out *inspections and to perform risk assessment.* The *purpose* of *these inspections is of a preventative and pro-active nature.*

c) *In the* process or *risk assessment the employer must, by virtue* or *the requirement of reasonable practicability (also see paragraph 8 above) have regard to:*
   (i) the *severity and scope of the hazard or risk;*
   (ii) *the amount* of *available knowledge concerning the risk or hazard and the means of removing or mitigating the same;*
   (iii) *the cost of removing or mitigating the hazard or risk in relation to the benefits derived therefrom.*

d) This *approach is a realistic and practical one.*

e) *Risk assessment can be done by way of a number of techniques, which include physical inspections, management and employee discussions, safety audits, job safety analyses, hazard and* operability *studies and accident* statistics.

f) A *baseline risk assessment is a generic identification of hazards and assessment of* the *associated risks. The hazards should be classified in order of* priority *(e.g. hazards which require immediate, short-term, medium-term or long-term attention). In this process the elements contained in the definition of* the *words "reasonably practicable" should be taken* into *account. A baseline* risk *assessment* usually *precedes an issue-based risk assessment.*

g) *An issue-based risk assessment comprises of the consideration* of *a particular situation and* the *identification* of *the hazards and associated risks, for example, the particular hazards associated with* the *movement of machinery and the level of risk that such hazards may* occur.
Flowing from such an identification and assessment, reasonably practicable measures must be taken to eliminate the hazards, alternatively if this is not reasonably practicable, measures must be taken to reduce the *likelihood of such hazards occurring. Lastly, the employer may* resort to *personal protective equipment.*

h) *Continuous risk assessment, which should rather be referred* to *as "regular informal riskassessment", usually comprises of an informal procedure, e.g., in the form of regular inspections by* supervisors or *safety representatives.*

i) *Hazard identification is another type* of *informal risk assessment known in* the industry. This *usually comprises* of *inspections and* the *recording of certain* relevant *risks and hazards. In certain* cases, risk *ratings are recorded.*

9.3. Information, instructions, training and supervision (section 8(2)(e))

a) *This particular* duty *must* be *complied with by the employer in conjunction with the specific* duty to *inform employees, as envisaged in section* 13 of the OHASA.

b) Proper *records should be* kept by *the employer in* this *regard,* such *as training modules, assessments* (both *theoretical and practical) and training documentation signed off by* the *relevant employees, as well as appropriate legal appointment* letters *in* terms *of which* supervisory *employees are specifically appointed to* properly supervise *the activities of* employees *"as may be necessary" as required in terms of section 8(2)(e)* of *the* OHASA.

c) *It is furthermore important to note that this duty must be complied with to ensure "as far as is reasonably practicable,* the *health and safety at* work" of *employees and must therefore be seen against the background of the discussion in paragraph 8 above.*

9.4. Precautionary measures (section 8(2)(f))

a) *A* specific duty is *imposed on* the *employer* not to *permit any employee to perform the activities as detailed in section 8(2)(f) unless* the *precautionary measures as referred* to *in paragraph 9.2 above, or any* other *precautionary measures which may have been prescribed, have been taken.*

b) In this *regard it is required of an employer to implement a system in terms of which* employees *are required to complete* pre-use (or pre-start) checklists to *confirm* that *such* precautionary *measures have been taken before they* perform *the activities as detailed in* this particular provision.

c) This duty must *be discharged by* the employer *"as far as is reasonably practicable" and must be considered against background of the discussion in paragraph 8 above.*

9.5. Taking of all necessary measures and the enforcement of such measures (section 8(2)(g) and (h))

a) This *particular provision imposes a general* duty on *employers, which may be discharged by employers through the implementation and enforcement of policies, safe work procedures and* the *implementation of a system of over-inspection.*

b) *The aim* of *these provisions are to ensure that all necessary measures are taken:*

(i) to ensure *that the requirements of "this* Act" *(meaning* the OHASA *and* the regulations - *see the discussion in* ***Le Roux & Colyn*** *op.cit para 3.2.53) are complied with; and*

(ii) *in* the *interest of health and safety.*

c) *The duty must be seen against the background* of the discussion *in paragraph 8 above, as far as the definitions of "safe" and "healthy" are concerned, although the criterion* of *reasonable practicability is* not *referred to* in respect *of these particular duties imposed* in terms *of section 8(2)(g) and (h)* of the OHASA.

9.6. General supervision (section 8(2)(i))

a) *This particular obligation* must *be read together with the "supervision" required "to ensure, as far as is reasonably practicable, the health and safety at work of* his *employees" as detailed in section 8(2)(e) of* the OHASA.
b) *In section 8(2)(i) reference is made* to the *provision of "general supervision' It is also envisaged that the person who provides such "general supervision" must have been trained* to *"understand* the *hazards associated" with* the *work that is performed and* must *also "have the* authority to *ensure that precautionary measures taken by the employer are implemented".*

9.7. Informed employees (section 8(2)(j))

The employer may be held vicariously liable for the conduct of employees unless the employer proves compliance with the matters referred to in section 37(1)(a) to (c) (see the provisions as quoted in **Le Roux & Colyn** op. cit para 14.1). Section 37(1)(b) refers to the scope of authority of the employee. If the employer proves compliance with section 37(1)(a) and (c), and further that the conduct complained of on the part of the employee fell outside the scope of authority of the employee, then the employer may not be held vicariously liable. In view thereof section 8(2)(j) requires the employer to inform employees of their scope of authority.

10. GENERAL DUTIES OF EMPLOYEES AT WORK

10.1 When considering whether or not the working environment that is provided to the employee is reasonably practicably safe and not hazardous to health, the duty of the employee in this regard is also relevant. Section 14 of the OHASA provides as follows:

Every *employee shall at work* -

a) *take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;*
b) *as regards any duty or requirement imposed on his employer or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;*
c) *carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;*
d) *if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his workplace or section thereof, as the case may be, who shall report it to the employer; and*



e) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter".

10.2 In terms of this provision, every employee must therefore while he or she is at "work":

10.2.1 first, take "reasonable care" for his or her own health and safety;
and:

10.2.2 second, take "reasonable care" for the health and safety of other persons (not limited to "employees" as defined in section 1(1) of the OHASA).

10.3 In respect of the above obligations, the standard of care that must be taken is the more general one, namely *"reasonable care"* as opposed to care required by the health and safety criterion of *"reasonable practicability".* This is the more acceptable approach, as it is inappropriate to require of an employee generally to take into account the various elements of the definition of *"reasonably practicable"* as contained in section 1(1) of the OHASA. See **Le Roux & Colyn** op.cit para 6.1.1.

11. MEASURES WHICH MUST BE TAKEN BY THE EMPLOYER TO, MAINTAIN AND PROVIDE A SAFE AND HEALTHY WORKING ENVIRONMENT AT ITS OWN PREMISES

As stated above, the measures taken by the employer must be safe and healthy as far as reasonably practicable. See in this regard, paragraph 8 above. As stated, the employee also has a duty to take reasonable care for his/her own health and safety and the health and safety of others.

Apart from the provisions of the OHASA, specific regulations which are binding in terms of the Act, may be relevant. See in this regard, e.g. the Construction Regulations published in GNR.84 of 07 February 2014; Electrical Machinery Regulations published in GNR.250 of 25 March 2011; Environmental Regulations for Workplaces published in GNR.2281 of 16 October 1987; Facilities Regulations published in GNR.924 of 03 August 2004; General Machinery Regulations published in GNR.1521 of 05 August 1988; General Safety Regulations published in GNR.1031 of 30 May 1986; and Hazardous Biological Agents Regulations published in GNR.1390 of 27 December 2001; and Health and Safety of Children at Work Regulations published in GNR.7 of 15 January 2010.

12. THE DUTY OF THE EMPLOYER TO ENSURE AS FAR AS REASONABLY PRACTICABLE THAT THE WORKING ENVIRONMENT OUTSIDE THE EMPLOYER'S OWN PREMISES, WHERE THE EMPLOYEE IS REQUIRED TO WORK, IS SAFE AND HEALTY




12.1 As indicated above, the health and safety obligations of the employer are not restricted to the employer's own premises. Wherever the employee is required by the employer to work, the employer carries the obligations referred to in section 8 of the OHASA and applicable regulations which are binding in terms thereof. In order to alleviate the onerous obligation, which is based on the employer, the employer may obtain undertakings from the person in control of such other premises where the employee is required to work, to ensure health and safety. This may take the form of a mandatary agreement in terms of section 37 of the OHASA. The word “mandatary” is defined in section 1 of the OHASA as including "an agent, a contractor or a sub-contractor for work, but without derogating from his status in his own right as an employer or a user". Such an agreement must be reduced to writing and set out the arrangements and the procedures between the employer or any user on the one hand and the mandatary on the other hand. The health and safety obligations of the employer or user must therefore be performed by the mandatary. See the detailed discussion in this regard in **Le Roux & Colyn** op.cit para 14.1. It must be borne in mind, that apart from the fact that the employer where the work is performed by the employee of another, the employee remains responsible to take reasonable care for his/her own health and safety and the health and safety of others.

12.2 It must also be borne in mind that if the employee of employer "A" is required by the latter to perform work at the premises of employer "B", "B" is required in terms of section 9 of OHASA to ensure as far as reasonably practicable the safety and health of the employee of "A". Section 9 provides as follows:

General duties of employers *and* self-employed persons to persons other than *their employees:*

12.2.1 Every employer *shall conduct his undertaking in such a manner as* to *ensure, as far as is reasonably practicable, that persons other than those in his employment who may be* directly *affected by his activities are* not thereby *exposed to hazards to their health or safety.*

12.2.2 Every *self-employed person shall* conduct *his undertaking in such a manner as to ensure, as far as is reasonably practicable, that he and other persons who may be directly affected* by *his* activities *are* not thereby *exposed to hazards to their health or safety'*

13. THE HEALTH AND SAFETY OBLIGATIONS OF THE EMPLOYER WHERE THE EMPLOYEE IS REQUIRED TO WORK AT HOME

13.1 Where the employer requires the employee to work at home, the area where the work is performed at home, will be regarded as the "working environment".

The working environment must be such that it is as far as reasonably practicable healthy and safe. In order to determine what measures must be taken to ensure compliance with this requirement, a risk assessment must be done.

Depending on the scope of the hazard and risk in the work environment and of the work involved, an informal or formal risk assessment should be done.

If the work involves work which is not hazardous, it should be practicable to require the employee to perform such informal risk assessment, by completing a risk assessment which provides, for example, for the following:

13.1.1 the type *of work* to be *performed;*

13.1.2 *hours of* work;

13.1.3 *circumstances under which work is performed;*

13.1.4 *the hazards associated with the* work;

13.1.5 the *likelihood of the hazards occurring;*

13.1.6 *measures to be taken* to *eliminate, alternatively mitigate any such hazard and risk.*

13.2 It is important that the employer must provide information and training to the employee to assist him/her to perform such risk assessment himself/herself. Ultimately, the employer is responsible for providing and maintaining a healthy and safe work environment.

14. TOO ONEROUS HEALTH AND SAFETY DUTIES: EXEMPTION

Although the provisions of the OHASA referred to above, are extensive enough to cover the situation where employees are required to work at home, the OHASA and the regulations which are binding thereunder, have not been drafted with home work in mind or taking into account many aspects thereof. Therefore, if the duties are too onerous, an employer may apply to the Minister to be exempted from certain provisions thereof or regulations which are binding in terms of the OHASA or the provisions of a notice or direction which is issued under the Act (see section 40(1) of the OHASA).

15. INTERNATIONAL LABOUR ORGANISATION: HOME WORK

In many countries, home work is performed by employees in terms of agreements with employers. This occurs to a great extent in the textile and other industries in Asia and elsewhere. The economic advantage for the employer is one of saving the costs of infrastructure. In order to attempt to prevent the abuse thereof, the International Labour Organisation adopted the Home Work Convention 177 of 1996 and a Home Work Recommendation 184 of 1996. A convention is binding on member countries that ratify the convention. Each state that ratifies a convention is required to, amongst others, ensure that its legislation accords therewith. It would appear that the home work convention has not been ratified by South Africa.

The home work convention provides, amongst others, for the protection of occupational safety and health of home workers.

FOR MORE GUIDANCE AND ADVICE, VISIT SACAA's WEBSITE ON:
www.sacaa.co.za