



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Vol. 342

CAPE TOWN, 29 DECEMBER 1993

No. 15369

KAAPSTAD, 29 DESEMBER 1993

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2471. 29 December 1993

No. 2471. 29 Desember 1993

It is hereby notified that the Acting State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Waarnemende Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 181 of 1993: Occupational Health and Safety Amendment Act, 1993.

No. 181 van 1993: Wysigingswet op Beroepsgesondheid en Veiligheid, 1993.

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- _____** Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Occupational Health and Safety Act, 1993, so as to define certain expressions; to further regulate the constitution of the Advisory Council for Occupational Health and Safety; to further regulate the duty not to interfere with or misuse things; to further regulate the appointment and functions of health and safety representatives; to delete the proviso in regard to certain deductions; to provide that an employee must be informed of an occupational disease which he has contracted; and to further regulate the prohibition on victimization; and to provide for matters connected therewith.

*(English text signed by the Acting State President.)
(Assented to 14 December 1993.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 85 of 1993

1. Section 1 of the Occupational Health and Safety Act, 1993 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion in subsection (1) after the definition of “employer” of the following definition:
- “‘employers’ organization’ means an employers’ organization as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);”; and
- (b) by the insertion in subsection (1) after the definition of “this Act” of the following definition:
- “‘trade union’ means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);”.

Amendment of section 4 of Act 85 of 1993

2. Section 4 of the principal Act is hereby amended by the substitution for paragraphs (f) and (g) of subsection (1) of the following paragraphs, respectively:
- (f) six persons to represent the interests of employers from a list of the names of persons nominated by employers’ organizations or federations of employers’ organizations;
- (g) six persons to represent the interests of employees from a list of the names of persons nominated by trade unions or federations of trade unions;

Substitution of section 15 of Act 85 of 1993

3. The following section is hereby substituted for section 15 of the principal Act:

“Duty not to interfere with, damage or misuse things

15. No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety.” 5

Amendment of section 17 of Act 85 of 1993

4. Section 17 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) An employer and the representatives of his employees recognized by him or [their], 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 **[an inspector, whose decision shall be final]** 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. 10 15 20

(3) Arbitration **[by an inspector]** 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.” 25

Amendment of section 18 of Act 85 of 1993

5. Section 18 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) A health and safety representative **[may]** 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*; 35
- (b) attend any investigation or formal inquiry held in terms of this Act;
- (c) in so far as it is reasonably necessary **[to perform]** 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; 40
- (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.”. 50

Substitution of section 23 of Act 85 of 1993 45

6. The following section is hereby substituted for section 23 of the principal Act:

“Certain deductions prohibited

23. No employer shall in respect of anything which he is in terms of this Act required to provide or to do in the interest of the health or safety of an employee, make any deduction from any employee’s 50

Act No. 181, 1993 OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT, 1993

remuneration or require or permit any employee to make any payment to him or any other person **[Provided that where an employee intentionally causes loss of or damage to health or safety equipment, his employer may, after a proper investigation, recover such loss or damage from that employee].**”

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Substitution of section 25 of Act 85 of 1993

7. The following section is hereby substituted for section 25 of the principal Act:

“Report to chief inspector regarding occupational disease

25. Any medical practitioner who examines or treats a person for a disease described in the Second Schedule to the Workmen’s Compensation Act, 1941 (Act No. 30 of 1941), or any other disease which he believes arose out of that person’s employment, shall within the prescribed period and in the prescribed manner report the case to the person’s employer and to the chief inspector, and inform that person accordingly.”

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Amendment of section 26 of Act 85 of 1993

8. Section 26 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) No employer shall unfairly dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the information that the employer has obtained regarding the results contemplated in section 12(2) or by reason of a report made to the employer in terms of section 25.”

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Short title and commencement

9. This Act shall be called the Occupational Health and Safety Amendment Act, 1993, and shall come into operation on 1 January 1994.