

Construction regulations

New construction regulations stipulate more stringent safety obligations

Extract from Mining Weekly, Article compiled by: Anine Vermeulen

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Labour Minister Mildred Oliphant published a notice under Section 43 of the Occupational Health and Safety Act (OHSA) this month containing the new construction regulations that repeal the old construction regulations of 2003.

The new regulations place more stringent health and safety obligations on a wide range of parties who are involved in construction work, including the client (a person for whom construction work is being performed), the contractor (an employer who performs construction work), the designer (which includes an architect or engineer) and the principal contractor (an employer appointed by the client to perform construction work).

“In South Africa, the occupational health and safety environment outside the mining industry is primarily regulated by the OHSA, as well as the regulations promulgated thereunder,” says law firm ENSafrica’s Mine and Occupational Health and Safety



director and joint head Pieter Colyn, adding that, principally, this statutory and regulatory framework creates obligations for employers to ensure, as far as is reasonably practicable, the health and safety of employees while they are working. He notes that the OHSA also contains the regulations that apply to construction work and regulate the relevant activities in the construction and building industries.

“A client must now prepare a baseline risk assessment to identify the major

occupational health and safety risks, as well as establish priorities and a programme for future risk control for an intended construction work project. A suitable, sufficiently documented and coherent site-specific health and safety specification for the intended construction work, based on such baseline risk assessment, must then be prepared,” he points out.

Colyn comments that such baseline risk assessment will ensure a proper analysis of all the activities at the construction site to identify the high-risk activities that must be addressed in the health and safety plans of the principal contractor and other contractors.

He adds that the previous construction regulations of 2003 required, in specified circumstances, that only the relevant provincial director of the Department of Labour be notified before any construction work was to be carried out.

“The new construction regulations provide that, in some specified circumstances, it is still required to notify the relevant provincial director, but in other specified circumstances, the client is obliged to apply in writing to the relevant provincial director for a construction work permit to perform the intended construction work.

In such circumstances, it would be impermissible for construction work to proceed without a construction work permit,” Colyn says.

It is important to note that the particular regulation dealing with an application for a construction work permit will come into effect only 18 months after February 7, the commencement date of the new construction regulations.

Similarly, he states, the requirement that an agent be registered with a statutory body approved by the chief inspector as qualified to perform the required functions will also come into effect only 18 months after February 7.

These extended periods for implementation afford the government an opportunity to create the required infrastructure to enforce the new provisions.

Colyn says the biggest challenge for the successful implementation of the new construction regulations will be to ensure that the offices of the relevant provincial director are properly equipped to speedily process applications for construction work permits. It is critical during this process that there is a consistent application of the relevant requirements to create certainty in the construction and building industries.

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"The new construction regulations [have] amended several definitions which form part of the old regulations.

"An important change is that an agent or designer may no longer be any person, but must be a competent person, who is required, amongst other things, to be a person with the required knowledge, training and experience, with the additional requirement that such a competent person must now also be a person who is familiar with the provisions of the OHS Act and the applicable regulations made under the OHS Act," he points out.

The new construction regulations also introduce new definitions.

"It is now a requirement for a construction manager to be appointed with the duty of managing all the construction work on a single site, including the duty of ensuring occupational health and safety compliance," says Colyn.

He cites that it is noteworthy that a designer must now also be a competent person and that several specific duties

are imposed on such designers under the new regulations.

The designer must, among other things, ensure that the relevant health and safety standards, such as industry best practices, are complied with in a design, take into consideration the health and safety specifications submitted by a client, inform a client in writing of any known or anticipated dangers or hazards relating to the construction work and make available all the relevant information required for the safe execution of the work upon being designed or when the design is subsequently altered.

The designer must also refrain from including anything in the design of the structure that necessitates the use of dangerous procedures or materials hazardous to the health and safety of people; this can be avoided by modifying the design or by substituting materials.

The new construction regulations clearly make designers more accountable, which may expose such designers to criminal liability for non-compliance," says Colyn.

Edited by: Martin Zhuwakinyu



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