

Jesbra Group (Pty) Ltd

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16.1

According to the Act:

- 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.
- Without derogating from his responsibility or liability, 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.
- The provisions of this section shall not, subject to the provisions of section 37, relieve an employer of any responsibility or liability under this Act.

Although there is only one CEO, the Act allows this person to appoint another person or persons as a 16.2. (It is impossible to imagine that the 16.1 will have the time to ensure that all the tasks in the workplace and being performed safely.) Therefore, the 16.2 shall act subject to the control and directions of the chief executive officer.

The responsibility and liability remains with the CEO who must ensure, that the duties imposed by this Act on the employer, are properly discharged. The legislator clearly wants to ensure that these health and safety duties are properly delegated by the CEO. The CEO can delegate responsibilities to the 16.2 but cannot delegate accountability.

Section 16(3) makes provision for the CEO to be relieved of his or her responsibility and liability under certain circumstances as stipulated in section 37. Section 37 basically regulates who is liable in the case where an employee or mandatory (including contractors) does not comply with the requirements of the Act.

It is therefore, advisable to introduce a 37(2) contract if you have contractors on your site and that your employees fully understand the scope of their duties and that everything reasonably practicable has been done to ensure the health and safety of the workers. Section 37(2) will be dealt with in a later issue. In the meantime stay safe!

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Here is a question for all CEO's:

Is your Health and Safety Policy current, documented and communicated to all workers in the workplace as well as available to those who may visit your workplace? ...If not call SKILLS and we will assist you.

A **legal appointment** is not a paper exercise, it is a formal acceptance of **legal** responsibility. It is essentially a contract and requires that the **appointed** person understands the objectives of the legislation, and the requirements imposed by the Act.

Most CEO's and managers have at some time opened their Occupational Health and Safety Act and read Section 16 and then perhaps not given it another thought?

In order to prevent unfortunate incidents which may lead to criminal or civil liability, let's unpack what the Act says to really understand.

The OHS Act states:

16. Chief Executive Officer charged with certain duties

16.1. 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.

16.2. 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.

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.

16.4. For the purpose of subsection (1), the head of department of any department of State shall be deemed to be the chief executive officer of that department."

Safety issues in our workplaces are governed by South African legislation which must be complied with. Regardless how, important the CEO is, even the CEO has to comply with this legislation.

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So what if we have a board of directors, or if we have a body corporate? Who will be responsible for the health and safety in the workplace and might have to face the “long arm” of the law should an unfortunate incident occur?

Section 16.1 defines the CEO as the person who is responsible for the overall management and control of the business.

Therefore, if a company has a board of directors, the board must decide who will be the person with the most authority. The OHS Act will consider this person to be the 16.1 or the CEO as defined in Act.

16.2 APPOINTEES

What is a Letter of Appointment 16.2?

The Occupational health and Safety act no 85 of 1993 point number 16.1, simply specifies that the CEO of any operation is accountable for ensuring the health and safety of all its work employees and people who might visit the company at all times.

The act also clearly specifies that, for the purpose of sub sections, the head of that company or department is deemed to be CEO.

The CEO is accountable for health and safety being entrenched at all times. The CEO may appoint suitable staff who are responsible for continual maintenance of health and safety in the company.

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Extract from the act.

NO. 85 OF 1993: OCCUPATIONAL HEALTH AND SAFETY ACT

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. (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. (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. (4) For the purpose of subsection (1), the head of department of any department of State shall be deemed to be the chief executive officer of that department.

The appointment as a 16.2 simply means as per the Occupational health and Safety act no 85 of 1993 point number 16.2; that the CEO has appointed a senior staff member in the company / branch to ensure the OHS act is complied with and meets all legal requirements.

The 16.2, may now appoint a SHE Representative (Safety, Health and Environmental Representative) Who will carry out the day to day checks and report back to the 16.2 in the event of any potential risks regarding SHE.

The 16.2 will also appoint First aiders, Fire fighters and an incident investigator for the branch. These are the relevant appointments needed in the branches.

All letters of appointments must be dated and signed by the 16.2 and the delegate, and must be filed on the site where it is applicable in the ISO records file.

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In order to prevent unfortunate incidents which may lead to criminal or civil liability, let's unpack what the Act says to really understand.

OSH ACT 16.1 and 16.2

16. Chief Executive Officer charged with certain duties

16.1. 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.

16.2. 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.

Explanation

Section 16.1 places the responsibility and liability on the Chief Executive Officer to ensure that the duties imposed on the employer are properly discharged.

The implication hereof is that the Chief Executive Officer has to ensure that an Occupational Health and Safety Management System is implemented which will give effect to the provision of the act.

Section 16.2 makes provision for the Chief Executive Officer to assign their duties to any person under their control.

Furthermore this sub section makes it very clear that the person to whom duties have been assigned shall be under the direction and control of the Chief Executive Officers.

Chief Executive Officers cannot assign duties and be under the impression that they are released from all responsibilities. The act is very clear on this issue. The Chief Executive Officer has to direct and control the assignee. The Chief Executive Officers have to ensure that they are kept informed regarding the state of affairs regarding Occupational Health and Safety and furthermore ensure that all reasonable steps have been taken to ensure that Occupational Health and Safety is implemented at all levels in the company from top management to shop floor level.

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The most common question in this regard is, can the person to whom duties have been assigned in terms of section 16.2 also assign another person in terms of section 16.2?

The answer to that is no, because once the Chief Executive Officer has assigned a duty, that function has taken place and doesn't exist anymore.

However this does not mean that assignees cannot appoint other people to assist them in the carrying out of their duties. The most important aspect with regards to an appointment is that it should be specific in terms of the duties, scope of authority and physical areas of responsibility.

Another important principle to realize in this regard is the 'delegatus non potest delegare' rule, which means that the person to whom duties have been delegated cannot delegate those very same duties, further.

People must not be dogmatic as to who can be appointed when and where, but should rather look at effective appointments, which will ensure that occupational health and safety is properly implemented.

This section should be read in conjunction with section 37 of the Occupational Health and Safety Act. This section of the act makes all employees responsible for their acts and omissions regarding safety in the work place.

Looking at the responsibility and function of the 16.2 appointee, the responsibility of the 16.2 can be found in section 8 of the act.

- Provide and maintain a workplace that is safe and without risk to the health of their employees. One can regard this as a broad health and safety policy.
- To start a health and safety programme. This is established to identify what hazards to health and safety of persons are attached to any work, which is performed. These will be activities such as any article or substance, which is produced, processed, used, handled, stored or transported, and it then further refers to plant and machinery.
- The 16.2 must establish what precautionary measures are necessary to ensure an acceptable level of risk for the persons involved in the work, activities, or plant or machinery.

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- They will have to do training analysis to establish the training needs of the employees in their job functions. This will include questions such as; is training essential prior to the commencement of any work? – In other words are the risks attached to the work of such a nature that induction training is of utmost importance? Is training achieving its goal?
- They must ensure that all employees are informed about their scope of authority. That means that the employees are informed about the hazards involved in the actual work that has been carried out by the them
- They must ensure that all aspects of precautionary measures are implemented, regarding the hazards of all tasks in the workplace. This can be referred to as risk assessments.
- They must ensure that all inspections and audits are done and are up to date, regarding Occupational Health and Safety. This will include SHE reps, first aiders and fire equipment.
- The establishment of health and safety committees to drive the safety in the workplace.

This means that all documents pertaining to Health and Safety in the work place will have to be signed off by the 16.2.

Some of the document will be as follows.

- All safety standards
- Safety Representative monthly checklists
- Safety committee minutes
- Risk assessments
- Incident / accident investigation documents
- Legal appointments for all staff.
- Safety audits.