

What is my legal liability and the implications of legislative compliance in the workplace?



'Why should I'? Discussing the question of legal liability for suppliers and contractors and the widespread implications of legislative compliance in the workplace.

- ***A contractor is replacing the light bulbs in my offices. Why should I be liable?***
- ***The water was delivered to my workplace and the employees did not wear the appropriate safety gear. Why should I be liable?***
- ***A truck of mine was involved in an accident. Why should I be liable?***

In our series on *occupational health and safety in the workplace*, we discussed various concerns, implications and consequences regarding *non-compliance with the provisions of the Occupational Health and Safety Act, Act 85 of 1993 (OHSA)* for both the employer and employee and yet **'Why should I?'** still forms part of many questions posed by employers, management, contractors, etc. in relation to legislative compliance.

What is the definition of liability?

In order to answer the 'Why should I?' question, it is imperative to understand the definition, meaning and implications of liability.

According to the online dictionary, liability can be briefly defined as the-

- o *'state of being legally responsible for something'*

or

- o *'a person or a thing whose presence or behaviour is likely to put one at a disadvantage'.*

Liability is therefore a position in which an individual or company finds themselves as a consequence of a person or a thing – including legislation – imposing a responsibility and/or obligation on such individual or company.

What is liability in the workplace?

Within a business and in everyday life, there are certain obligations that employers, employees, citizens, etc. have to meet. Failure to fulfil these legal responsibilities could be prosecuted both civilly and criminally, which may result in fines and/or even imprisonment.

The practice of occupational health and safety, as well as the OHSA, is one of those '*things*' which impose responsibilities and/or obligations on employers and, by ignoring those duties, employers continuously put themselves at risk.

Section 8 of the OHSA clearly sets forth and imposes legal duties on an employer, which include the following:

- o Section 8(1): EVERY employer shall provide and maintain, as far as reasonably practicable, a working environment that is safe and without risk to the health of his employees;
- o Section 8(2): Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include, but are not limited to–

'(d) establishing, as far as reasonably practicable, what hazards to the health or safety of **persons** are attached to any work which is performed...'

(g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on **his premises** under his control where plant or machinery is used'

‘(h) enforcing such measures as may be necessary in the interest of health and safety’.

As highlighted above, the responsibilities of the employer or company are not limited to their employees, but include those who might be affected by the work conducted by the employer or the company and any work conducted by external parties that might affect the safety and health of the employees. Section 37 of the OHSA states that in certain circumstances, liability can shift from the employer to the employee, or any other party with whom an agreement is concluded.

Furthermore, the Act imposes hefty sanctions on employers and companies for non-compliance. After a thorough investigation, the court may impose any of the following sanctions:

- Imprisonment of 1 to 2 years for contravention of the OHSA;
- Separately from or jointly with the above, fines to the value of R50 000 to R100 000 per infringement of the OHSA;
- Up to 10 years’ imprisonment in terms of section 332 of the Criminal Procedures Act, Act 51 of 1977.

Proof to be supplied by contractors and suppliers:

SERR Synergy’s integrated approach to legislative compliance assists employers to ensure that they are not only compliant with the OHS Act 85 of 1993 and its applicable regulations, but also with the Compensation for Occupational Injury and Diseases Act No 130 of 1993. SERR Synergy has a dedicated *Occupational Health and Safety department* which assists with compensation claims, submissions and annual return of earnings to obtain a valid Letter of Good Standing. If you require assistance with compliance orders, please *contact us* for guidance.

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