

FOOD SAFETY: THIRD-PARTY FOOD VENDORS AND EMPLOYER RESPONSIBILITIES



Food safety has become increasingly relevant following the recent spate of incidents in schools in Soweto, where 6 children reportedly passed away (*SABC News*, 2024), as well as several schools in the KwaZulu-Natal where 43 pupils fell ill after consuming snacks purchased from a vendor.

Another three pupils died in such incidents, while Gauteng has reported 207 cases since February, bringing the death toll to sixteen (*Makhanya*, 2024). The Department of Education has responded by issuing a directive instructing schools to verify the quality of food products sold by vendors inside and outside their premises.

In this article, we will discuss the applicable Health and Safety legislation with which employers should comply.

Application to Employers

While some employers provide a canteen service directly to their employees as part of their business, others decided to outsource this function to third-party vendors believing that it would indemnify them against any liability for injuries or illnesses resulting from this service and the products sold. This is not entirely true.

These third-party vendors operate from the areas that are allocated to them by the employer, provide food products, but the employer remains liable.

Legislation and regulations applicable to food production and management of contractors in the workplace

It is vital that employers understand that there are scores of laws and regulations that apply to food production, and other regulations that apply to the management of contractors on their premises.

Notable legislation includes, but is not limited to the following:

- *The Agricultural Products Standards Act* (Act No. 119 of 1990) regulates products derived directly from any type of agricultural source.
- *Foodstuffs, Cosmetics and Disinfectants Act* (Act No. 54 of 1972) deals with the handling of food products. It has several regulations pertaining to hygiene, transportation, labelling and advertising of food products.
- *Standards Act (Act No. 8 of 2008)* promotes the application of the South African National Standards (SANS). Several of these standards relate to food, for example:
 - SANS 241:2015 – Water Safety
 - SANS 10330 – Requirements for a HACCP system
 - SANS 10049 – Food safety management requirements.

Occupational Health and Safety legislation and third-party vendors

The Occupational Health and Safety Act 85 of 1993 includes third-party vendors under the definition of Mandatary.

This definition reads, *“Includes an agent, a contractor, or a subcontractor for work, but without derogating from his status in his own right as an employer or user.”* Section 37 of the Act states that where any employee or mandatory performs an action that could be deemed as a contravention of the Act, the employer would be held liable for such contravention unless there is a written agreement between the employer and the mandatory to ensure the mandatory’s adherence to the Act.

Mandatory Management

Employers of mandataries should therefore be advised to enter into agreements that place the responsibility for compliance on the mandatory, especially for food vendors.

This agreement, however, does not fully indemnify the employer against any liability. The vendor should provide the employer with their own safety file which sets out the procedures and plans that the vendor will implement to ensure basic compliance and adherence to quality standards. In addition to regular follow-ups, the employer should ensure that the vendor fully implements their plans and procedures, completes the required check sheets, and maintains the appropriate hygiene standards. In instances where it is found that the vendor does not comply, the employer should refer to the agreement to determine whether the vendor should continue providing the service.

Conclusion

Although many employers regard a service level agreement as a stone wall against liability, including the directive issued by the Department of Education requiring schools to verify the safety of food sold by vendors, the liability remains with the employer to ensure that the vendor fulfils their obligation. You can request a copy of a *Third-party Food Vendor Checklist* or if you are uncertain whether your vendors meet the required standards you can contact any of our nationwide offices.

*SERR Synergy assists businesses with **Occupational Health and Safety compliance** by developing the necessary risk assessments, policies, documentation, training, and support.* Our team of OHS Professionals can relieve the stress and concerns that might affect your business’s ability to remain operational.

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Sources:

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