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EMPLOYMENT LAW ALERT

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A spill, a slip and a hospital trip: What you need to know about the potential merger of OHS legislation in South Africa

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A spill, a slip and a hospital trip: What you need to know about the potential merger of OHS legislation in South Africa

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The International Labour Organization (ILO) estimates that the losses incurred as a result of occupational injuries and diseases account for approximately 5% of the global gross national product. This figure may well underestimate the true economic and social costs.

The ILO Convention concerning the promotional framework for occupational safety and health (C187 – 2006) requires that each member state (South Africa is one) shall establish, maintain, progressively develop and periodically review a national system for occupational safety and health.

On 30 July 2021, the Deputy Minister of Employment and Labour, Boitumelo Moloi, announced plans to fast-track the merging of OHS legislation in South Africa. These comments came after a report titled *"The profile of occupational health and safety South Africa"* was released to the public. The report was jointly commissioned by the ILO and the Department of Employment and Labour.

Although South Africa has a comprehensive OHS framework, Deputy Minister Moloi stated that the current framework is *"fragmented"* and Government departments have in the past been guilty of working in silos with little to no collaboration between them and the regulatory agencies tasked with enforcing compliance with OHS standards and practices.

South Africa currently has four main pieces of legislation that regulate OHS:

1. The Occupational Health and Safety Act 85 of 1993 (OHSA), which is administered by the Department of Employment and Labour
2. The Compensation for Occupational Injuries and Diseases Act 130 of 1993, which is administered by the Department of Employment and Labour
3. The Mine Health and Safety Act 29 of 1996, which is administered by the Department of Mineral Resources and Energy
4. The Occupational Injuries and Diseases in the Mines and Works Act 78 of 1973, which is administered by the Department of Health

In addition, certain industries have OHS-specific legislation, such as the Railway Safety Regulator Act 16 of 2002 (RSRA), which provides for safety standards and regulatory practices for the protection of persons who work in the railway sector. The RSRA is administered by the Railway Safety Regulator.

A spill, a slip and a hospital trip: What you need to know about the potential merger of OHS legislation in South Africa...continued

The lack of collaboration between the different Government departments and regulating agencies and serious limitations in the capacity of inspectors has created a fertile breeding ground for non-compliance with OHS standards and practices.

It is clear from the above that South Africa has a comprehensive OHS legislative framework. However, the lack of collaboration between the different Government departments and regulating agencies and serious limitations in the capacity of inspectors has created a fertile breeding ground for non-compliance with OHS standards and practices. What is even more concerning is that there appears to be little consequence for this non-compliance by employers and health and safety committees established in the workplace.

In addressing these shortcomings, Deputy Minister Moloi echoed the report's recommendations to develop a national policy on OHS and to fast-track the merger of OHSA. It is also worth noting that the report identified that the current OHS legislative framework generally excludes the informal economy and domestic workers. This has the potential for disastrous consequences as research

has shown that the informal economy is growing at a rapid pace and yet is still outside the ambit of the current OHS regulatory framework.

The COVID-19 pandemic has undoubtedly shone a spotlight on OHS in South Africa and reinforced the need to have sensible regulatory frameworks to ensure the health and safety of persons at the workplace. However, OHS legislation and policies will not be worth the piece of paper they are written on if there is little to no enforcement of workplace health and safety standards and the biggest losers will continue to be employees.

Exactly what this merger will look like remains to be seen. It is however certain that the Department of Employment and Labour is now focusing on improving OHS compliance in South Africa.

Michael Yeates, Kgodisho Phashe and Thato Maruapula

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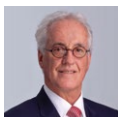
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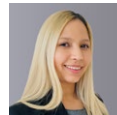
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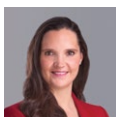
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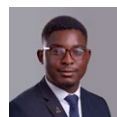
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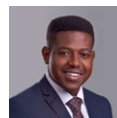
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