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OUR REF: MD/update_march22	YOUR REF:	4 April 2022
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**ENVIRONMENTAL, HEALTH AND SAFETY AND FOODSTUFFS LEGAL UPDATE REPORT  
(SOUTH AFRICA)  
MARCH 2022**

Dear Clients,

Below please find a summary of selected relevant environmental, health and safety and foodstuffs legal developments that took place during March 2022.

**NATIONAL LEGISLATION**

**1) Waste Act**

- **DRAFT Waste Tyre Management Plan**

After the various previous plans and schemes were withdrawn by the Minister over the years a new DRAFT industry waste management plan was published (this time by the CSIR) for public comment. The plan, just like the earlier ones, is aimed primarily at the tyre industry, and not generators of waste tyres. Without going into details, as the draft plan is fairly lengthy, the industry is required to come up with systems for the collection, handling, treating and processing of waste tyres. Generators of waste tyres would be indirectly affected, and mainly through a tyre levy system.

The disposal of whole tyres to landfill sites became illegal in August 2013 already, while quartered tyres could only be disposed until August 2018.

## **2) Merchant Shipping Act**

- **Construction and Equipment of Fishing Vessels of 24 metres in length and over – DRAFT Regulations**

Very extensive draft Regulations were published for public comment.

## **3) International Health Regulations Act**

- **Draft Regulations relating to Public Health Measures in Points of Entry**

These draft Regulations were published for public comment.

## **4) National Health Act**

- **Regulations relating to the Surveillance and the Control of Notifiable Medical Conditions - Amendment**

Draft amendments to the existing 2017 Regulations were published for comment.

- **Draft Regulations relating to the Management of Human Remains**

These draft Regulations were published. Should they enter into force they will repeal the 2013 Regulations.

- **DRAFT Regulations relating to Environmental Health**

These DRAFT Regulations were published for public comment. They are very similar to environmental health/public health by-laws already in place in many municipalities. Presumably their aim is to standardise the legal approach for environmental/public health and to fill the gap where municipalities do not have such a by-law. Among various requirements they also propose to introduce a list of so-called offensive trades which may only be engaged in if a permit was issued by the municipality.

## **5) Employment Equity Act**

- **Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace**

This new Code of Good Practice replaces the 2005 Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace and applies to all employers and employees.

Since it deals with harassment, and not just sexual harassment, its scope is much wider than the repealed 2005 Code. Racial, ethnic or social origin harassment is also included.

In terms of section 60 of the Employment Equity Act employers must take proactive and remedial steps to prevent all forms of harassment in the workplace. An employer is therefore required to adopt a harassment policy which should follow the provisions of this Code. The content of the policy must then be communicated effectively to all employees.

Employers must also develop clear procedures to deal with harassment in terms of the Act, and a reporting mechanism will have to be implemented. The policy should further specify the range of disciplinary sanctions that may be imposed on a perpetrator.

## **6) Occupational Health and Safety Act**

- **Hazardous Biological Agents Regulations**

These new Regulations replace the 2001 Regulations.

They categorise hazardous biological agents (HBAs) into four risk groups according to their hazard and categories of contaminant.

As with the repealed Regulations, an employer is required to control the exposure to HBAs in the workplace through various reasonably practicable measures.

While the bulk of requirements imposed by the Regulations is probably more applicable to eg. laboratories, research institutes, hospitals etc, the inclusion of SARS CoV2 (Covid-19) as a group 3 HBA is important. A group 3 HBA is defined as a HBA that “may cause severe human disease, which presents a serious hazard to exposed persons and which may present a risk of spreading to the community, but for which effective prophylaxis and treatment is available”.

Reg 10 deals with the prevention and control of exposure to HBAs (PPE, limiting the number of employees, physical barriers, ventilation, procedures etc). Of particular importance is that this includes "making available effective vaccines for those employees who are not immune to the biological agent to which they are exposed or are liable to be exposed" (Reg 10(4)(g)). Besides the Department of Employment and Labour's Consolidated Workplace Directions from June 2021 which already permit an employer to insist on vaccination, Reg 10(4)(d) provides additional justification for an employer.

Besides Reg 10, the Occupational Health and Safety Act sets out various employer duties in section 8 which include taking reasonably practicable steps to provide a safe working environment. Requiring employees to be vaccinated would most likely fall into this.

Further duties imposed on an employer in terms of the Regulations are, among others:

- Providing information, training and instruction to employees on the risks of the HBA and precautions to be taken
- Ensuring that a risk assessment is conducted and documented by a competent person
- Developing an action plan for the implementation of the recommendations identified in the risk assessment and informing all employees, health and safety representatives and the health and safety committee of the results of the risk assessment, and inviting them to comment thereon
- Establishing and maintaining an exposure monitoring program
- Establishing and maintaining a medical surveillance system which is overseen by an occupational health practitioner (arguable whether this is needed in the Covid-19 context)
- Keeping records (including the risk assessment) for at least forty years
- Preventing and controlling the HBA exposure in the workplace.

In so far as Covid-19 is concerned, many of the above already form part of existing requirements.

The failure to comply with the Regulations is an offence and may result in a fine or imprisonment not exceeding twelve months.

## **7) Disaster Management Act**

- **Code of Practice: Managing Exposure to SARS-COV-2 in the Workplace, 2022**

The Department of Employment and Labour initially published this new Code of Practice in the Government Gazette of 15 February 2022, although the Minister post-dated the notice to 15 March 2022. At that time (February) it was expected that the national state of disaster would end in March.

The initial notice was replaced on 15 March 2022, presumably to clear up any confusion created.

The Code will ONLY enter into force once the state of disaster is lifted. When it does become effective it will replace the current Direction on Occupational Health and Safety Measures in Certain Workplaces which the Department published in 2021.

## **PROVINCIAL LEGISLATION**

No relevant provincial legislation was published during this month.

## **MUNICIPAL LEGISLATION**

### **8) City of Tshwane**

- **Air Quality Management By-law**

The City finally promulgated an air quality management by-law.

The following are the more relevant provisions affecting most companies or industries:

There is a duty of care to prevent any potential air pollution from occurring, and to mitigate, as far as reasonably possible, any air pollution that may occur. Where this is not done, the municipality may order the person/company to comply. In the event of non-compliance, the municipality can take reasonable measures to remedy the situation or apply to court for relief. Alternatively, criminal charges can be laid. If the municipality takes measures costs may be recovered from the:

- person responsible for the air pollution
- land owner at the time, or new owner
- person in control of the land, or user
- person who negligently failed to prevent compliance.

These are essentially the same requirements as found in section 28 of the National Environmental Management Act.

Emissions causing a nuisance must also be prevented.

The municipality can set local emission standards.

Compressed ignition vehicles may not emit dark smoke or other visible toxic gases.

Fuel-burning equipment may not emit dark smoke (which is measured according to the Ringelmann Chart in Schedule 3 of the by-law) for more than three minutes during any continuous period of thirty minutes. This excludes equipment start up during the first twenty minutes. Equipment that is non-compliant for more than 24 hours must be reported to the municipality.

Written authorisation to install, alter, extend or replace any fuel-burning equipment with a nett heat input  $\geq 2\text{Mw}$  but  $< 50\text{Mw}$  is required. An annual emissions report must be submitted, and where the equipment also triggers the atmospheric emission licence process under the Air Quality Act a further report is required (as provided for in the Act).

Where authorisation was previously not needed this must be obtained within three years together with an operating permit. The annual report must then be submitted within four years.

Dust emissions must be prevented or minimised. Sand blasting, shot blasting, grinding, finishing or similar activities must have dust extraction control measures or alternative approved measures.

Open burning is prohibited, unless permitted by the by-law.

Spray-painting facilities must be authorised and need to comply with the General Safety Regulations under the Occupational Health and Safety Act. A person with a facility that did

not need an authorisation must apply for same within three years and obtain an operating permit.

**9) Theewaterskloof Local Municipality**

The By-law on Municipal Land Use Planning was passed. This repeals the 2015 Municipal Land Use Planning By-law.

**10) Karoo Hoogland Municipality**

The By-law on the Control over Keeping of Animals, Poultry and Bees was published.

**11) Langeberg Local Municipality**

The Integrated Waste Management By-law was published.

**12) Kouga Local Municipality**

The Outdoor Advertising and Signage By-law was published.

**13) Bitou Local Municipality**

The By-law on Municipal Land Use Planning was amended.

If you have any questions please feel free to contact us.

Kind regards

**MARK DITKE**