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## **THE PRESIDENCY**

No. 428

17 April 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 74 of 2008: Mine Health and Safety Amendment Act, 2008.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)  
(Assented to 15 April 2009.)

**ACT**

To amend the Mine Health and Safety Act, 1996, so as to review and strengthen enforcement provisions; to simplify the administrative system for the issuing of fines; to reinforce offences and penalties; to substitute, add and remove ambiguities in certain definitions and expressions; and to effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 2 of Act 29 of 1996, as amended by section 1 of Act 72 of 1997**

1. Section 2 of the Mine Health and Safety Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) The *employer* of a *mine* that is not being worked, but in respect of which a closure certificate in terms of the [**Minerals Act**] Minerals and Petroleum Resources and Development Act has not been issued, must take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the *mine*.”. 10

**Amendment of section 2A of Act 29 of 1996, as amended by section 2 of Act 72 of 1997**

2. Section 2A of the principal Act is hereby amended by the addition of the following subsection: 15

“(6)(a) The *employer* must inform the *Chief Inspector of Mines*, in writing, within seven days of the appointment of the *chief executive officer*.”.

(b) The information to the *Chief Inspector of Mines* include—

- (i) the name of the *chief executive officer*;
- (ii) the nature of such person's function; and
- (iii) the name of persons who are *managers* under the supervision of the *chief executive officer*. 20

**Amendment of section 10 of Act 29 of 1996**

3. Section 10 of the principal Act is hereby amended by the addition of the following subsections:

“(4) The *employer* must keep a record of all formal training provided in respect of each *employee* in terms of subsection (2). 5

(5) All *mines* must submit a workplace skills plan and the annual training reports to the Mining Qualifications Authority.”.

**Amendment of section 11 of Act 29 of 1996**

4. Section 11 of the principal Act is hereby amended—

(a) by the insertion in subsection (5) after paragraph (a) of the following paragraph: 10

“(aA) commence an investigation referred to in paragraph (a) within 10 days from the date of such accident, *serious illness* or *health threatening occurrence*.”;

(b) by the substitution in subsection (5)(d) for subparagraph (i) of the following subparagraph: 15

“(i) [**whenever possible,**] identifies the causes and the underlying causes of the accident, *serious illness* or *health-threatening occurrence*.”;

(c) by the substitution in subsection (5) for paragraph (e) of the following paragraph: 20

“(e) deliver a copy of the report referred to in paragraph (d) [**to the Health and Safety committee**] within 30 days from the date of the accident, *serious illness* or *health-threatening occurrence* being investigated to the *Principal Inspector of Mines* and the *health and safety committee*. If there is no *health and safety committee* the employer must deliver a copy of the report to the health and safety representative responsible for the *working place*.”; 25

(d) by the insertion after subsection (5) of the following subsections:

“(5A) An investigation in terms of subsection (5) must be completed within 30 days after the accident, *serious illness* or *health-threatening occurrence* being investigated or such longer period as the *Principal Inspector of Mines* may permit. 30

(5B) The *employer* must notify the *Principal Inspector of Mines* of any accident or occurrence at a mine that results in— 35

(a) the serious injury;

(b) illness; or

(c) death,

of any person, in order to allow the *Principal Inspector of Mines* to instruct an *Inspector* to conduct an investigation simultaneously with the employer as required in section 11(5)(a).”; and 40

(e) by the addition of the following subsection:

“(8) In the event of an incident in which a person died, or was injured to such an extent that he or she is likely to die, or suffered the loss of a limb or part of a limb, no person may without the consent of the *Principal Inspector of Mines* disturb the site at which the incident occurred or remove any article or substance involved in the incident: Provided that an article or substance may only be removed if it is necessary to— 45

(a) prevent any further incident; 50

(b) remove the injured or dead; or

(c) rescue any person from danger.”

**Amendment of section 13 of Act 29 of 1996**

5. Section 13 of the principal Act is hereby amended—

(a) by the deletion in subsection (3)(a) of subparagraph (ii); 55

(b) by the deletion of subsection (4); and

(c) by the insertion after subsection (4) of the following subsections:

“(4A) The *employer* must inform the *Principal Inspector of Mines*, in writing, within seven days of the appointment of the *occupational medical practitioner*.”

(4B) The information submitted in terms of subsection (4A) must include—

(a) the name of a *occupational medical practitioner*;

(b) his or her practice number; and

(c) whether the occupational medical practitioner is engaged full time or part time.”.

**Amendment of section 17 of Act 29 of 1996, as amended by section 10 of Act 72 of 1997**

6. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The examination referred to in subsection (1) must be held before, or [as soon as possible] within 30 days after, termination of employment.”.

**Amendment of section 20 of Act 29 of 1996, as amended by section 11 of Act 72 of 1997**

7. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

“(7) An *employee* lodging an appeal under subsection (1) may not be dismissed on any grounds relating to unfitness to perform work, pending the outcome of the appeal.”.

**Amendment of section 23 of Act 29 of 1996, as amended by section 12 of Act 72 of 1997**

8. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

“(4) The *Minister*, by notice in the *Gazette*, must determine minimum requirements for the procedures contemplated in subsection (2).”.

**Amendment of section 41 of Act 29 of 1996, as amended by section 17 of Act 72 of 1997**

9. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“[The following permanent committees of the Council are hereby established] A committee, ad hoc committee or subcommittee may when necessary be established, which committee may include—”.

**Amendment of section 42 of Act 29 of 1996, as amended by section 18 of Act 72 of 1997**

10. Section 42 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The *Minister* must appoint the members of the Council [and the permanent committees of the Council] in accordance with the regulations.”;

(b) by the substitution for subsection (2A) of the following subsection:

“(2A) The *Council* may appoint members to committees, ad hoc [and], subcommittees [,] and other committees, for any period of time and on any conditions.”; and

(c) by the insertion after subsection (2A) of the following subsection:

“(2B) The structure and functions of any committee contemplated in subsection (2A) must be provided for in the constitution contemplated in section 97(3).”.

**Amendment of section 43 of Act 29 of 1996, as amended by section 19 of Act 72 of 1997**

11. Section 43 of the principal Act is hereby amended by the substitution for subparagraph (eA) of the following paragraph:

“(eA) annually **[consider an overall programme for]** advise the Minister on relevant [health and safety] research [for approval as prescribed and deliver a copy to the Minister of Finance for consideration] relating to health and safety at mines; and”.

**Repeal of section 44 of Act 29 of 1996**

12. Section 44 of the principal Act is hereby repealed. 10

**Amendment of section 47 of Act 29 of 1996**

13. Section 47 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) A juristic person to be known as the Mine Health and Safety Inspectorate is hereby established. 15  
(b) The Public Finance Management Act, 1999 ( Act No. 1 of 1999), applies to the Inspectorate.”.

**Amendment of section 49 of Act 29 of 1996**

14. Section 49 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (j) of the following paragraph: 20

“(j) complete a report on *health and safety at mines* and the activities of the Mine Health and Safety Inspectorate for each year and submit the report to the *Minister* within three months of the end of the year concerned; **[and]**”; 25

(b) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

“(k) perform any duties relating to *health or safety at mines* that the *Minister* directs or prescribes[.]”; 30

(c) by the addition to subsection (1) of the following paragraphs: 30

(l) develop and maintain an integrated *mine health and safety* database and reporting system;  
(m) conduct or commission relevant research and evaluate and publish the results of the research; and  
(n) provide logistical, administrative and technical support to the *Council*.; 35

(d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Despite the provisions of the **[Minerals Act]** *Minerals and Petroleum Resources Development Act* or any other law, the *Chief Inspector of Mines*—”; 40

(e) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) must consult with the appropriate officer appointed in terms of [section 4 of the Minerals Act] the *Minerals and Petroleum Resources Development Act* concerning the exercise of those powers.”; 45

(f) by the substitution for subsection 4 of the following subsection:

“(4) To further the objectives of this Act the *Chief Inspector of Mines* may— 50

(a) enter into agreements with other persons;**[and]**

(b) authorise a competent independent person to perform any or all the functions of an *inspector*[.];

(c) perform any act, whether in the Republic or elsewhere, that is calculated, directly or indirectly, to enhance the value of the 55