

Workshop 2



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MHSA Legal Appointments Workshop

Legal appointments in the mining industry have never been as critical as they are today. The need for appointment structures and appointment letters that adequately and accurately not only proves compliance but ultimately effective delegation must be addressed.



07th APRIL 2017, VENUE: BIRCHWOOD HOTEL BOKSBURG JHB- SOUTH AFRICA

Presented By: Braam Bezuidenhout
Advocate Health, Safety and Environment



Braam has worked in the fields of risk control, health, safety, and environment and management for the last 15 years, advocating the design and incorporation of management systems for assessing, monitoring and controlling potential losses and statutory non-compliances; within a wide array of organisations, including mines, the general manufacturing industry, the chemical industry, the vehicle manufacturing industry, the service industry and the retail industry. These projects have often required the design and presentation of training courses to all levels of the workforce. He has extensive experience in coordinating the input of various disciplines, aside from his own areas of expertise, namely legislative compliance and the representation of clients during governmental inquiries.

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Qualifications:

B.Comm Law (RAU), LLB & LLM (FY-UNISA)

Legal Appointments

Attended and report compiled by: Johan Keyser
SADPO Northern Cape National Committee member

Legal Rule: State vs Waglines9Pty) ltd 2003 (4) 1135 (SA) 1146

A Health and Safety appointment is a legally binding contractual agreement (allowed for by legislation, some instances required by legislation) entered into by two parties, either the employer or the manager and a specific employee.

An appointee must have the required authority to comply and enforce the duties and functions imposed upon him by his appointment. An appointee cannot be held responsible for legal duties or functions delegated, entrusted or assigned to him if he was not provided with the necessary authority and direct control over such legal duties or functions.

Interpreting Mining Legislation

Legislation

1. Mine Health and Safety ACT 29 of 1996
Section 103: The Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), is not applicable to any matter in respect of which any provision of this Act is applicable.
2. Mine health and Safety Amendment ACT 74 of 2008
3. Occupational Health and Safety ACT 85 of 1993
4. COP's, SOP's, SANS Codes, Construction Regulations, COID ACT, EEA ACT, BCEA ACT, LRA ACT, etc.

Definitions

1. Section 102 of the MHS ACT

Common Law

1. Vicarious Liability: Father – Son Principle. Accountability for the actions of another. Refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment.
2. Reasonable Person: Foresee and take all possible steps.
3. Delegation and Appointments

5 Resources of Mining Legislation

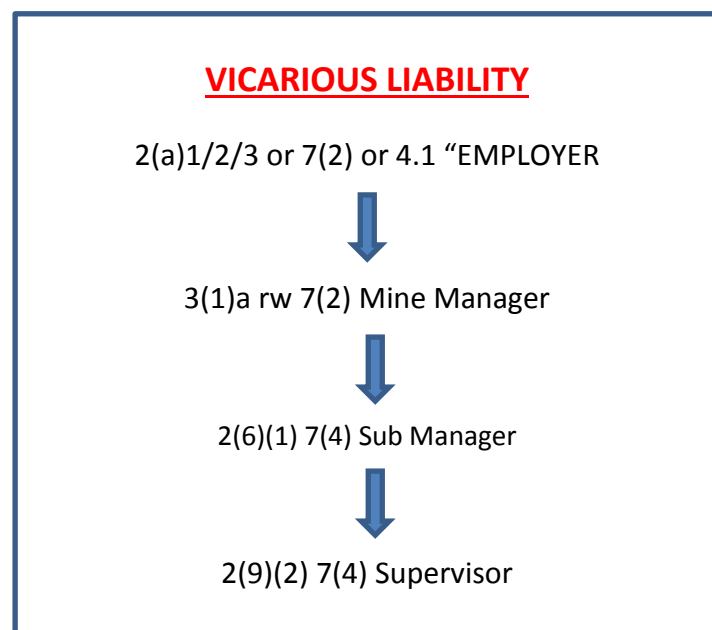
1. MHS Act 29 of 1996
2. MHS Act Regulations
3. Minerals Act Regulations
4. OHS Act Regulations
5. COP's, SOP's, SANS Codes and other Law's

Meaning of Act & Regulations

- Act: What you must do.
- Regulations: How to do it.

Competence

- The idea of the MHS ACT is to create **COMPETANCE**.
- **COMPETANCE**: To get rid of Vicarious Liability.



EMPLOYER TO ENSURE SAFETY

Appointments

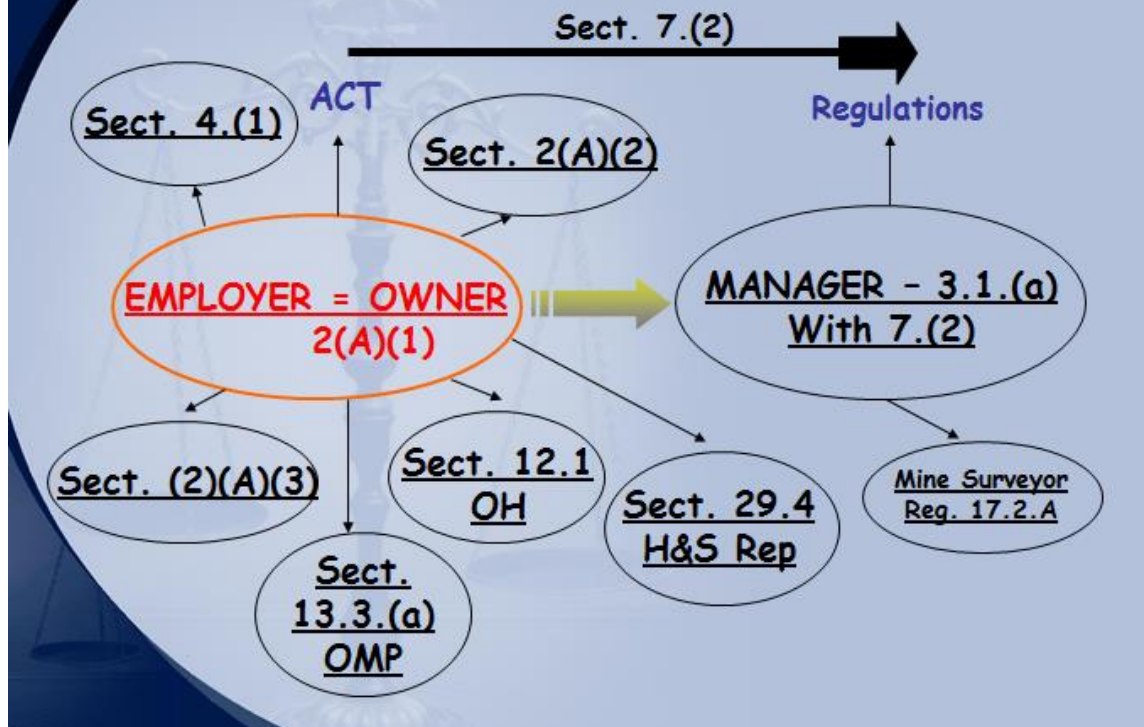
- 2(a) CEO of the Board: Every CEO must take reasonable steps to ensure that the functions of the employer are properly performed.
- 2(a)2 Appointee is Not a Board Director: The CEO may entrust any function to any person under the control of the chief executive officer.

- 2(a)3 Appointee is a Board Director: If the employer is a body corporate, the functions of the chief executive officer may be performed by a member of the board.
- 3(1)a Manager: The employer of every mine that is being worked must appoint one or more managers with qualifications as may be prescribed, to be responsible for the day to day management and operation of the mine, and if more than one manager is appointed, ensure that the manager's functions do not overlap.
- 4.1 Employer may appoint any person except a manager to perform any function entrusted to the employer.
- 7(2) Employer may appoint any person with qualifications as may be prescribed to perform any function of the employer in terms of the MHSA.
- 7(4) The manager may appoint any person with qualifications as may be prescribed to perform any function of the manager in terms of the MHSA.
- 2(6)(1) Subordinate Manager: The manager may appoint one or more competent persons as subordinate managers to assist him in the control, management and direction of the mine or of the works and every such person shall, to an extent to be clearly defined in his letter of appointment, have the same responsibilities under the regulations as the manager: Provided that the appointment of such persons shall not be taken to relieve the manager of any personal responsibility under the regulations.
- 2(9)(2) Supervisor: The manager shall appoint such persons as may be necessary to assist him in enforcing such observations of the regulations.

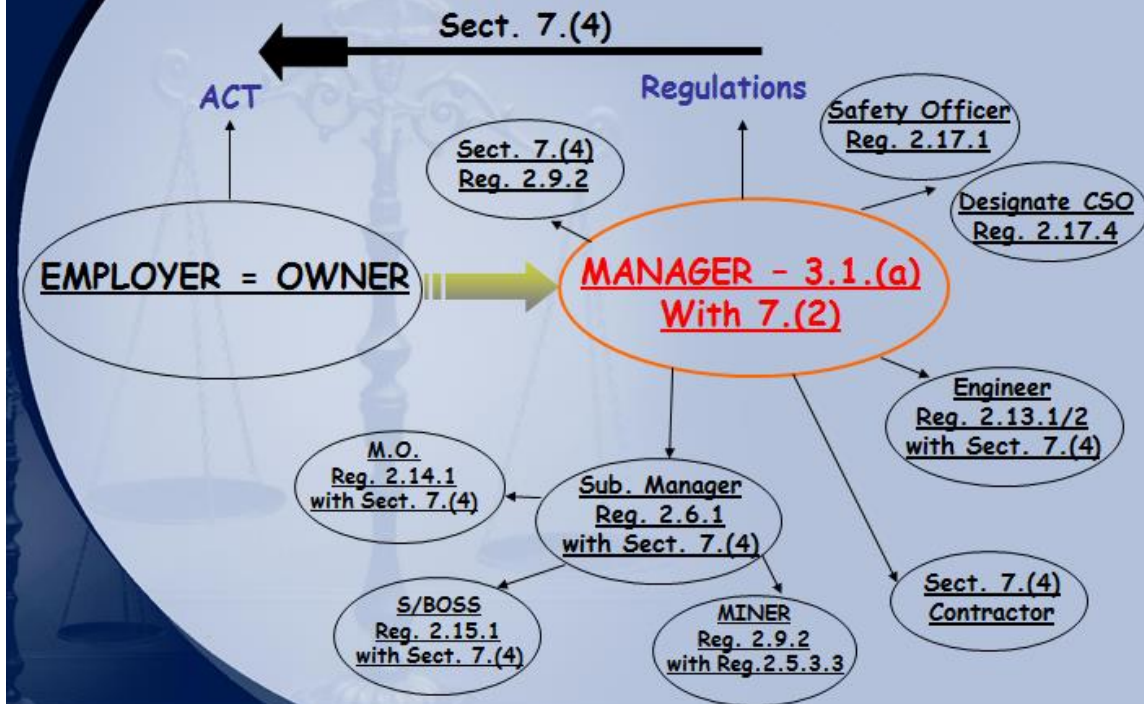
The appointment of a person under subsection (2) does not relieve the employer of any duty imposed on employers by this Act.

The appointment of a person under subsection (4) does not relieve the manager of any duty imposed on managers by this Act.

LEGAL APPOINTMENT - EMPLOYER



LEGAL APPOINTMENT - MANAGER



DMR Guideline 2016

The tables below are a guideline of what is required. Mine Managers are requested to refrain from submitting every appointment to the Principal Inspector. The following appointments may be posted or hand delivered to the Regional Office of the DMR:

Mine Health and Safety Act			
Occupation	Appointment	Notification to DMR	Time Frame to Notify PI
Chief Executive Officer	Not Stipulated	Section 2A(6)a	7 days
Employer Representative	Section 4(1)	Section 4(2)	7 days
Mine Manager	Section 3(1)a	Reg 2.5.2.1	Recommended to be submitted asap
Occupational Hygienist	Section 12	Recommended	Recommended to be submitted asap
Occupational Medical Practitioner	Section 13(3)a	Section 13(4)a	7 days
Safety Representative	Section 29(4) & Reg 6(9)		
Mine Surveyor	Reg 17(2)a	Reg 17(2)b	7 days

Minerals Act			
Occupation	Appointment	Notification to DMR	Time Frame to Notify PI
Owners Representative	Regulation 2.3.1	Regulation 2.3.2	Not Stipulated
Mine Manager	Regulation 2.5.2.1	Regulation 2.5.6	3 days
Sub-ordinate Manager	Regulation	Regulation	3 days
Certificated Engineer	Regulation	Regulation	3 days
Uncertificated Engineer	Regulation	Regulation	3 days
Safety Officer	Regulation	Regulation	5 days