

MBA BOLAND

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MBA BOLAND NEWSLETTER

We would like to share some valuable information regarding urgent matters in the Construction Industry with you. It became evident that the Department of Labour and some of the Labour Unions are quite active in the field pointing out some of the Contractors who do not provide appropriate Personal Protective Equipment or as we know it PPE. It can leave you with a red face if all of the employees on your construction site have not been provided with PPE as instructed in terms of the OHS Act and the related Regulations referring to PPE.

Once again I want to draw your attention to this important issue to prevent you from facing a "Notice of Non-conformance" from the Department of Labour with regards to PPE amongst other possible findings by DoL. I therefore want to point out to you the relevant legislation to explain in clear terms what the OHS Act 85 of 1993 and applicable Regulations say on this matter.

1. Firstly it is highly recommendable that every company must have a Health & Safety Policy which clearly states their commitment towards health and safety in the workplace for example:
 - The Employer shall provide and maintain, as far as is reasonably practical, a safe working environment in terms of the OHS Act without risk to the health and safety of his employees in the Construction Industry.
 - The Employer shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practical, that all persons other than those in his employment who may be directly affected by his activities, are not thereby exposed to hazards to their health or safety.

- All employees have the right to a safe and healthy workplace.
 - The Employer as well as his employees, Sub-Contractors and their employees, shall strive to maintain a safe and healthy workplace.
 - The Employer undertakes to ensure that the requirements and provisions of the OHS Act and regulations shall be complied with. This includes the provision and implementation of needed documentation and plans which shall be maintained according to legal standards.
 - The Employer shall ensure that all employees undergo health and safety induction pertaining to the hazards prevalent on the building site.
 - The Employer, or any Sub-Contractor, shall not allow or force employees to work contrary to required health and safety measures.
 - Employees of the Employer as well as employees of Sub-Contractors shall be responsible for conducting their work in a safe and healthy manner for themselves and for their fellow workers.
 - The Employer is committed to continuous improvement with regards to Health & Safety which entails that all policies, plans and risk assessments are reviewed on a continuous basis to remain relevant and appropriate to legislation and the company's activities.
2. Secondly every company must have a PPE - policy clearly stating the objectives supporting the Health & Safety Policy for example;
The Company understands and acknowledges its responsibility towards the supplying of PPE (Personal Protective Equipment) in terms of the OSH Act 85 of 1993 Articles 8, 13, 14, 15 and 22. We will strive where practicable to minimize, mitigate or eliminate hazardous situations to the health and safety of employees. The Company will therefore see to the following aspects regarding PPE:
- To supply PPE free of charge to employees according to The Company's rules (GSR 2(2))

- To provide training, instruction, information and the necessary supervision, to ensure the correct usage of PPE in the applicable work areas (OHS Act Art. 8 & 13).
- To enforce the wearing of PPE by all employees in the applicable work areas (OHS Act Art. 8 & 13 & GSR 2(3)).
- To do regular inspections on PPE to ensure that PPE is up to standard and able to fulfil its purpose in terms of health and safety protection (OHS Act Art. 8 & 13 and GSR 2(3)).
- The Company will continuously review and improve this Policy regarding the supply of PPE, with the view to new technology PPE which may become available.
- When PPE is damaged deliberately the employee will be liable for the payment of PPE in the replacement thereof (OHS Act Art. 15 & 22 and GSR 2(3)).
- No substitution of hearing protection will be tolerated with music earphones or headphones (GSR 2(3)).
- This policy can only be implemented successfully with the active co-operation of all employees. Management believes that it is the responsibility of all employees to look after his / her own safety at all times. The Company believes that safety begins at each individual.

I would like to highlight once again that all PPE shall be issued free of charge to all employees as stated above in terms of GSR 2(2). If the company will charge the employees for the PPE provided, you will transgress the law in terms of the OHS Act and the Regulations and will be addressed by means of a Notice of "Non-conformance" by DoL. Many Sub-contractors do not issue their employees with PPE, because the Principal Contractor will deem them to be responsible for the provision for their own PPE. It must be clearly stated that the Principal Contractor will be deemed responsible for the non-conformance in case of a finding by the DoL. Therefore it is still the responsibility of the Principal Contractor to enforce the provisions of the OHS Act on site onto Sub-Contractors.

I also want to highlight the importance of appropriate Risk Assessments in terms of Construction Regulation 9 where it clearly

states that every Contractor shall perform proper Risk Assessments before and during commencement of construction work. The Risk Assessment must clearly point out what PPE must be worn in order to guarantee the health and safety of employees. Once again the responsibility resides at the Principal Contractor to ensure that the Sub-Contractors comply with this. Therefore the Risk Assessment will clearly instruct what PPE will be worn by employees.

3. Thirdly I would like to highlight it again that since the new Construction Regulations was promulgated early February 2014 all personnel must have a "Medical Certificate of Fitness" before commencing with construction activities on site. This can become a major issue, because any Inspector of Labour has the right to stop your site if the "Medical Certificate of Fitness" for your personnel is not in place or available on site. From 7 August 2015 there will be no more excuses for non-compliance on this matter. Once again many Principal Contractors will reluctantly accept that it is the duty of the Sub-Contractors to comply with this provision for their own employees. However the Inspector of DoL will show no mercy in this regard, because they will deem this the duty of the Principal Contractor to see to it that all Sub-Contractors must comply with this provision. Medical Certificates must be renewed annually and be readily available on site or copies thereof. Good advice will be to make provision therefore when contracting Sub-Contractors either by means of contractual obligations or costing thereof if the Sub-Contractor cannot make provision thereof in itself.
4. Lastly the whole question and debate on competence is not necessarily addressed in the new Construction Regulations but can be clearly referred to the promulgation of the SACPCMP publication where competency is clearly defined. From 7 August 2015 all Safety personnel will be expected to be registered at the SACPCMP or be in the process of registration. Proof thereof will be expected. Safety personnel will either have to be registered as Construction Safety Officers or Construction Safety Managers (mainly applicable on large construction sites). Information on registration can be acquired from their website at <http://www.sacpcmp.org.za/>. Please contact us for assistance in this regard.

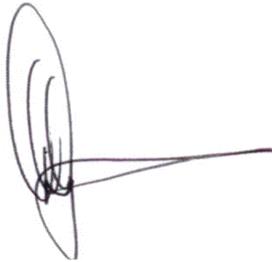
Please take note that all Client Agents must also be registered or be in the process of registration from 7 August 2015. I have heard of some instances where Client Agents who simply stopped all construction activities due to non-compliances in terms of the OHS

Act and Regulations. The implications in terms of finances in such drastic steps are quite extensive. But before any Client Agent can or will stop any construction site, the Principal Contractor must ensure that the Client Agent is either registered with the SACPCMP or is practicing under a registered Client Agent. Once again if there is any uncertainty, please contact us in this regard. It is advisable to maintain a good working relationship with your Client Agent and rather working with the Client Agent than working against him / her. In many instances it can lead to a better understanding and implementation of practicable solutions with regards to the OHS Act and Regulations.

I hope that the above mentioned information will clear up some of the misinterpretations and I invite you to contact us at MBA Boland to be of assistance in order to help you in terms of compliance of the OHS Act and the Regulations.

Good luck and remember "Build with the Best" - Build with MBA Boland.

MBA Boland regards

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

DANIËL UYS
EXECUTIVE DIRECTOR
MBA BOLAND