

OHS101S

October/November 2017

OCCUPATIONAL HEALTH AND SAFETY LAW I

Duration 2 Hours

100 Marks

EXAMINERSFIRST
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- 1 The following Acts hereinafter are cited as
OHSA = Occupational Health and Safety Act 85 of 1993
MHSA= Mine Health and Safety Act 29 of 1996
2. Answer all the questions
- 3 This paper is set in English only Note however that you may answer in either Afrikaans or English
- 4 This is NOT an open book examination No study material or notes are permitted to be taken into the examination hall
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6. This is a two-hour examination Use your time productively

QUESTION 1

ANSWER THE FOLLOWING QUESTIONS BY INDICATING WHETHER THEY ARE TRUE OR FALSE:

- 1.1 It is common cause that all types of work carry risks to the health and safety of employees. With this in mind, the South African law does not recognise the duty of employers to take reasonable care for the safety and health of their employees. (2)
- 1.2 The OHSA applies to all the people employed in South Africa. (2)
- 1.3 In terms of the OHSA, the employer may deviate from his duties. (2)
- 1.4 The number of health and safety representatives for a workplace shall be at least ten health and safety representatives for every 100 employees in the case of shops and offices. (2)
- 1.5 In terms of the OHSA, an inspector has no right or is not allowed to enter the workplace premises, to question any person on the premises or summon a person to appear before him/her, seize any book, record or other document on the premises and make enquiry about it, examine it or make a copy thereof. (2)
- 1.6 The purpose of Unemployment Insurance Act is to establish an unemployment insurance fund to which only employers contribute and from which employees who become unemployed or their beneficiaries, are entitled to benefit and in so doing to alleviate the harmful economic and social effects of being employed (2)
- 1.7 The Unemployment Insurance Act applies to all the employees working in South Africa, irrespective of whether the employee is employed for less than 24 hours a month with a particular employer. (2)
- 1.8 In terms of the Unemployment Insurance Contributions Act, the contributions to the fund are made only by the employer and collected by the Commissioner of the South African Revenue Service. (2)

1.9 The unemployment insurance protection is based on the principle of non-contribution by the employer and employee (2)

1.10 Not all employers and employees as defined by the Unemployment Insurance Act are required to contribute equally on a monthly basis to the Unemployment Insurance Fund (2)

[20]

QUESTION 2

2.1 List and discuss the specific duties of the employer in terms of the OHSA (15)

2.2 The OHSA does not apply to certain persons. Who are they? (4)

2.3 Is there an absolute duty on an employer to provide safety measures for every possible hazard or risk in terms of the OHSA? Discuss (6)

[25]

QUESTION 3

3.1 You are an inspector for the Department of Mineral and Energy Affairs. On inspection at a mine, you notice that the cables used to hoist a mine car are badly damaged and that this poses an immediate threat to the safety of the mineworkers. What must and may you do in terms of the MHSA to ensure the safety of the mineworkers? Discuss fully. In your discussion, also reflect on the general power an inspector has, in terms of the MHSA, once he has entered the mine (15)

3.2 When may and must a Chief Inspector instruct an inspector to hold an inquiry into an account? (5)

3.3 What are the duties of an employee at a mine in terms of the MHSA? (10)

[30]

QUESTION 4

4.1 Bongani works at Driekoppe Gold Mine, where he is employed as a miner. One day he was called to assist a few miners in lowering a diesel engine down a 30-metre shaft. The engineering contractor and the health and safety representative for the area were both present. While they were lowering the engine down the shaft, the weight of the engine became too much for Bongani and he let go of the rope, causing the other miners to let go of the rope too. The rope, which had been rolled into a loop, writhed with the momentum of the falling engine and whipped a miner down the shaft. Consequently the miner died.

There are no work standing orders on the correct procedure for the lowering of articles down a shaft at the Driekoppe Gold Mine.

A week after the accident the Driekoppe Gold Mine appointed a new contractor who continued lowering diesel engines, using the same dangerous method.

4.1.1 Has the employer at the mine fulfilled its duties in terms of the MHSA? Discuss with reference to the given facts. (12)

4.1.2 Is the engineer, as a contractor, criminally liable for the accident in terms of the MHSA? Discuss briefly. (6)

4.2 Mungo is employed at the Rondeklop Goldmine. He accidentally crushed and killed a fellow employee whilst driving a mine car underground.

4.2.1 Must the chief inspector of mines instruct an inspector to hold an inquiry into the accident? (2)

4.2.2 May the wife of the deceased employee participate in the inquiry? (2)

4.2.3 Is Mungo entitled to legal representation at the inquiry? (1)

4.2 4 At the inquiry Mungo has the right to refuse to answer any question, which may be self-incriminating. Under which circumstance will he not have the right against self-incrimination? Discuss briefly.

(2)

[25]

TOTAL [100 marks]

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