



Tutorial Letter 201/0/2018

Occupational Health And Safety Law

OHS101S

Year Course

Department of Mercantile Law

IMPORTANT INFORMATION:

This tutorial letter contains important information
about your module.

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Dear Student

By now, you should have received Tutorial Letter 101/2018. Please note that this is the last tutorial letter for this year. The aim of this tutorial letter is to provide you with a commentary on the compulsory assignments and the guidelines on how you should approach the examination. The previous exam papers must not be taken to imply or suggest that the paper will be based on it; it merely serves as an example of how questions will be asked in the examination. The examination questions will be based on the material covered in the prescribed textbook (Chapter 7), Acts and assignments. You are welcome to contact us for assistance with your exam preparation however; we will not be answering previous papers for students.

1. COMMENTARY ON ASSIGNMENT 01

For multiple-choice questions if your correct option is TRUE tick the number 1 and if your correct option is FALSE then tick the number 2.

QUESTION 1 (1)

1. **FALSE** Labour Relations Act is not the only source of employment relations in South Africa, there are other sources of law like the Basic Conditions of Employment act.

QUESTION 2 (1)

2. **FALSE** In terms of the Mine Health and Safety Act No. 29 of 1996 only the chief inspector has the powers to close a mine, if he believes that any occurrence, practice or condition at a mine may endanger the health and safety of any person at the mine.

QUESTION 3 (1)

3. **FALSE** Employees who are engaged in the provision of essential services are not permitted to strike in terms of section 65(1) (d) of the labour relations act.

QUESTION 4 (1)

4. **FALSE** In terms of section 187(2) (b) of the Labour Relations Act, 1995 employees' contract of employment can be terminated based on the agreed retirement age or when the employee has reached retirement age.

QUESTION 5 (1)

5. **FALSE** In terms of section 23 of MHPA an employee has a right to leave any workplace, which may compromise his/her health.

QUESTION 6 (1)

6. **FALSE** In terms of the basic conditions of employment act, an employee has a right to take leave on the birth, illness or death of a child, the death of the employee's spouse or life partner, parent and other immediate family members.

QUESTION 7 (1)

7. **FALSE** Employers have a common law duty to provide safety for its employees and it may include to transport or make transport available to employees' after being injured at work.

QUESTION 8 (1)

8. **FALSE** The Labour Relations Act requires that the dismissal of employees should not only be substantively fair but also procedurally fair.

QUESTION 9 (1)

9. **FALSE** An employer can be held accountable for the occupational diseases contracted by the employee after a period of 2 years during which the employee has left the occupation of the employer due to silicosis.

QUESTION 10 (1)

10. **FALSE** Employees do not have a right to participate in the formation of employer's organization; and right to be a member of employers' organization.

2. COMMENTARY ON ASSIGNMENT 02

(i) List and discuss the specific duties of the employer in terms of the Occupational Health and Safety.

ANSWER

- To provide and maintain systems of work, plant and machinery that are safe and without risks to health;
- To establish hazards in the workplace and to further establish what precautionary measures are necessary and to provide such measures.
- To provide information, instructions, training and supervision as may be necessary to ensure the health and safety of employees.
- Not to permit any employee to work unless certain precautionary measures have been taken;
- To take all necessary measures to ensure that the OHSA is complied with by every person in their employment or on premises under their control;
- To enforce such measures as may be necessary in the interest of health and safety;
- To ensure that work is performed and plant or machinery is used under general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employed are implemented;
- Cause all employees to be informed regarding the scope of their authority as contemplated in section 37 (1) (b) of the OHSA.
- Cause every employee to be conversant with the hazards to his health and safety attached to any work which he has to perform and the precautionary measures which would be taken with regard to those hazards;
- To inform health and safety representatives concerned beforehand of inspections, investigations and inquiries and of any application for exemption;
- To inform a health and safety representative of the occurrence of an incident in the workplace or section for which that safety representative has been designated.

(15)

(ii) The Occupational Health and Safety Act 85 of 1993 does not apply to certain people. Who are these people?

ANSWER

- Labour brokers
- persons in or on any load line ship, fishing boat, sealing boat and whaling boat as defined in section 2 of the Merchant Shipping Act or any floating crane.
- Employees specifically exempted from application of this Act in terms of section 40 of OHSA. The Act affords the Minister of Labour the power to either include or exclude persons within the scope of the Act. (4)

(iii) Is there an absolute duty on an employer to provide safety measures for every possible hazard or risk in terms of the Occupational Health and Safety Act 85 of 1993? Discuss.

ANSWER

- In terms of Section 8 of the Occupational Health and Safety Act 85 of 1993, employer has the following duties:
- General duty: every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.
- Specific duties: To provide and maintain systems of work, plant and machinery that are safe and without risks to health to establish the hazards to health and safety of persons in their activities in the business and to further establish what precautionary measures are necessary and to provide such measures to provide information, instructions, training and supervision as may be necessary to ensure the health and safety of employees; not to permit any employee to work unless the above precautionary measures have been taken to take all necessary measures to ensure that the Act is complied with by every person in their employment or on premises under their control to enforce such measures as may be necessary in the interest of health and safety to ensure that production, processing, use, handling, storage or transportation of any article or substance is done safely and without risks to health. To ensure that work is performed and plant or machinery is used under general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented. The duty on the employer is rather relative than absolute as far as reasonably practicable.

(6)

TOTAL [25]

3. EXAMINATION GUIDELINES FOR OCT/NOV 2018 EXAMINATION

It is important that you study the prescribed textbook for Occupational Health and Safety Law contained in Tutorial Letter 101/2018 together with all the activities therein. This will assist you to understand the work and will give you an indication of the type of questions that you can expect in the exam.

Also, note the following:

- The examination is closed book.
- The examination paper will total 100 marks.
- The duration of the examination paper will be two hours.
- You will have to answer all the questions; no choice will be offered.
- Students are advised to write neatly and eligibly.

Students will be assessed on the following key issues:

Firstly, the examination consists of five questions. The first question is a true or false question totalling 20 marks and will cover the entire prescribed matter. An example of this may be found in the first assignment. The other four questions requires you to study the following topics: duties of employees & Inspectors and the process involved in the investigation of accidents in terms of the MHSA. Further to that, study the duties of employer in terms of the OHSA and the liability of safety representatives and contractors. Lastly, your knowledge of the duties of the employer in terms of the MHSA and functions of other role players in terms of the MHSA will be tested.

We wish you all the best with your exam preparations.

Please contact us if you have any questions.

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