



Draft regulations on hazardous work done by children in South Africa

July 2006

*As approved by the Employment
Conditions Commission
and for consideration by the Advisory
Council on Occupational Health & Safety*



REPUBLIC OF SOUTH AFRICA



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Programme *Towards the Elimination of the worst forms of Child
Labour* (TECL) / ILO

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Notice to extend definition of 'employee' for child labour provisions

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

Notice in terms of section 83 of the Basic Conditions of Employment Act, 1997

1. Widened definition of employee

The Minister of Labour, on the advice of the Employment Conditions Commission, deems that for the purposes of sections 43 to 47 of the Act and any regulations made in terms of section 44 or 45 of the Basic Conditions of Employment Act, 1997—

- (1) any child under 18 years of age who does not fall within the definition of an employee in section 1 of the Basic Conditions of Employment Act, 1997 but assists in the carrying on the business of any person, is deemed to be an employee;
- (2) any person who requires or permits a child to work in the circumstances contemplated by sub-regulation (1) is deemed to be the employer of that child.

2. Application

Clause 1 applies regardless of the form of the agreement or arrangement in terms of which that work is performed, and includes work by an independent contractor.

3. Exclusions

This notice does not apply to —

- (1) work performed as part of a child's schooling;
- (2) the collection of contributions on behalf of a fund-raising organisation registered in terms of the Fund- Raising Act, 1978 (Act No. 107 of 1978);
- (3) voluntary work for a church, charitable organisation or amateur sports club, and
- (4) any other work performed by a child who is not an employee as defined in section 1 of the Basic Conditions of Employment Act, 1997 that is appropriate for a person of that age or which does not place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

BCEA Regulations

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

The Minister of Labour has, on the advice of the Employment Conditions Commission, made the following regulations in terms of section 44 and 45 of the Basic Conditions of Employment Act, 1997.

1. Purpose and interpretation

- (1) In these regulations, unless the context indicates otherwise –
 - (a) “child” means a person under eighteen years of age who is an employee or to who is deemed to be an employee for the purposes of these regulations by a notice issued in terms of section 83 of the Act;
 - (b) the Act means the Basic Conditions of Employment Act, 1997, and any word or phrase that is assigned a meaning in the Act bears the same meaning in these regulations;
 - (c) “worst form of child labour” means any work by a child in an activity listed in regulation 8.
- (2) The purpose of these regulations is to –
 - (a) place conditions on the work that may be performed by children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law;
 - (b) place conditions on the work that may be performed by children who are under 15 years of age and are subject to compulsory schooling in terms of any law, where such work would otherwise be permitted because the children are not employees as defined in section 1 of the Basic Conditions of Employment Act, 1997, and where the definition of employee has not been extended through a notice issued in terms of section 83 of the Basic Conditions of Employment Act, 1997;
 - (c) prohibit any person from permitting or requiring such children to perform particular types of work specified in the regulations.
- (3) No provision in these regulations may be interpreted as –
 - (a) permitting the employment of any child who is under 15 years of age or is subject to compulsory schooling in terms of any law;
 - (b) reducing any other condition of employment or prohibition applicable to the employment of any person in the Act or any other law insofar as it applies to the employment of a child who is at least 15 years of age and no longer subject to compulsory schooling.
- (4) These regulations must be interpreted in accordance with International Labour Organisation's Minimum Age Convention, 1973 and the Worst Forms of Child Labour Convention, 1999.

- (5) To the extent that any sectoral determination establishes a basic condition of employment that applies specifically to children employed in that sector, the provisions of that determination shall have precedence over these regulations; provided that the provisions in these regulations on the worst forms of child labour shall always apply unless specifically excluded by the sectoral determination.

2. Access to nutrition, health care and educational services

Every employer who employs a child must ensure that their employment does not interfere with their access to -

- (a) adequate nutrition;
- (b) adequate primary health care services; and
- (c) education, if the child is enrolled at a school or other educational institution.

3. Work away from parents or legal guardian

- (1) It is an offence for any person to require or permit a child to perform work which will result in the child being away overnight from their parents or legal guardian unless that person has the written consent of the child's parent or legal guardian and provided that –
- (a) the child is not enrolled in school or, if the child is enrolled in school, the child's schooling is not adversely affected;
 - (b) full details of the accommodation arrangements are supplied to, and approved by, the parent or legal guardian of the child;
 - (c) the employer provides accommodation to the child that –
 - (i) is free of charge to the child;
 - (ii) is clean, comfortable, suitable and safe for the child;
 - (iii) is not occupied by any adult other than the parent, legal guardian or a child minder appointed by parent of the child, if they accompany the child; and
 - (iv) has sufficient bedding, lavatories and washing facilities for the child;
 - (d) the employer supplies the child with nutritious food or, if the child is able to purchase such food within a reasonable distance from his or her place of work or accommodation, the employer provides the child with an allowance sufficient to purchase such food at intervals that enable such purchase.
- (2) It is an offence for any person to recruit a child to perform work in violation of sub-regulation (1).

4. Prohibition of piece-work and task work

- (1) It is an offence for any person to require or permit a child to perform piece work or task work.

- (2) For the purposes of this regulation,
 - (a) "piece work" means work in terms of which the remuneration of the employee is based mainly on the quantity of work done;
 - (b) "task work" means work in terms of which the remuneration of employee is based mainly on the completion of set tasks; and
 - (c) "employer" includes the person who contracts or benefits from the contracting of a labour broker or a supplier of piece-work or task work who employs a child.
- (3) This regulation does not prevent the payment of a commission or an incentive payment on the completion of a task to a child provided that —
 - (a) the child is paid the minimum wage prescribed for that work in terms of any sectoral determination or bargaining council agreement;
 - (b) if no such minimum wage is prescribed, the child, in addition to any commission or incentive payment received, is paid a basic wage, calculated on the basis of time worked, and this wage is more than the commission or incentive payment received and is calculated on a consistent basis.

5. Maximum daily and weekly working time

- (1) It is an offence for any person to require or permit a child to work —
 - (a) for more than 40 hours of work in any week or,
 - (b) if a child is enrolled at school, for more than 20 hours in any week during which the child is required to attend school on one or more days;
- (2) It is an offence for any person to require or permit child to work -
 - (a) on more than 8 hours on any day; or,
 - (b) if the child is enrolled in school, for more than —
 - (i) two hours on any day on which a child is expected to be at school; or
 - (ii) six hours on any day on which a child is expected to be at school but is not expected to be at school the following day;
 - (c) before 5 am or after 6 pm on any day.

6. Night work

- (1) It is an offence for any person to require or permit a child to work —
 - (a) before 5 am on any day;
 - (b) after 6 pm on any day; or
 - (c) in breach of sub-regulations (2) and (3).

- (2) A child, other than a child who is expected to be at school the following day, may work between 6pm and 11 pm –
 - (a) in a restaurant, cinema, theatre or shop provided that there is adequate adult supervision; or
 - (b) for the purposes of baby-sitting or child minding.
- (3) Unless the parent or legal guardian agrees otherwise in writing, any person who requires or permits a child to work after 6pm on any day in terms of sub-regulation (2) must provide that child with safe transport to the child's home at the end of the child's shift at no cost to the child, or the child's parent or care-giver.

7. Prohibited work

- (1) It is an offence for any person to require or permit a child to work in any of the following –
 - (a) deep sea fishing;
 - (b) commercial diving or other hazardous work underwater;
 - (c) slaughtering of animals;
 - (d) meat, poultry, or seafood processing;
 - (e) the manufacture or packing of tobacco products or any other work in which there is exposure to tobacco dust;
 - (f) logging;
 - (g) the protecting or safeguarding of any person or property;
 - (h) the refining of petroleum products;
 - (i) filling cars with fuel at a filling station;
 - (j) the manufacturing of any liquid containing alcohol;
 - (k) work in a bar, shebeen, tavern or pub;
 - (l) the manufacture or application of tar or asphalt;
 - (m) work involving an exposure, or potential exposure, to blood-borne pathogens;
 - (n) work in health care or a related facility, in circumstances where there is likely exposure to biological agents, tuberculosis, anaesthetics, or addictive drugs;
 - (o) work involving exposure any of the following –
 - (i) hazardous chemicals;
 - (ii) silica, coal dust or other hazardous dusts;
 - (iii) pesticides;
 - (iv) pressurised gases;
 - (p) the production, transport, handling, storage, use of or other work involving exposure to explosives or flammable substances;

- (q) work in a casino or other gambling establishment;
- (r) electrical work involving high voltage cables or other power sources in excess of 250 volts;
- (s) welding or soldering;
- (t) stone crushing;
- (u) the operation of vibrating equipment such as rock drills and riveters;
- (v) operating tractors, winches, forklift vehicles, front end loaders, earth moving equipment or similar heavy equipment;
- (w) driving of any motor vehicles;
- (x) work in vehicles transporting passengers or heavy goods;
- (y) work in a confined space.

8. Worst forms of child labour

- (1) In addition to any prohibition contained in regulation (6) it is an offence for any person to –
 - (a) require or permit a child to work in any of the following -
 - (i) underground mining;
 - (ii) work in connection with the operation of a smelter or furnace;
 - (iii) in the production of aluminium or coke;
 - (iv) in the manufacture of auramine, isopropanol or magenta;
 - (v) in the gasification of coal;
 - (vi) diving operations covered by the Diving Regulations, made in terms of the Occupational Health and Safety Act, 1993, irrespective of whether or not the child is an employee as defined in the Diving Regulations;
 - (vii) free diving below 10 metres;
 - (viii) work in which there is a reasonably foreseeable risk of exposure to blood-borne pathogens;
 - (ix) work involving an exposure to ionising radiation or a hazardous substance or agent;
 - (x) working between 1h00 and 4h00 on any day;
 - (xi) working for more than 55 hours in any one week;
 - (xii) doing any work in an environment in which the actual dry-bulb temperature is below 18 °C;
 - (xiii) working for a period of longer than 15 minutes in any hour in an environment in which the time-weighted average WBGT index, as defined in the Environmental Regulations for Workplaces, made in terms of the Occupational Health and Safety Act, 1993, determined over a period of one hour, is greater than 36 °C;
 - (xiv) work in circumstances in which it is reasonably foreseeable that the child will be exposed to physical, psychological or sexual abuse;

- (b) employ a child in circumstances in which the child is unreasonably confined to the employer premises;
 - (c) require or permit a child to work for that person's benefit in one of following activities when this work is performed by a child as part of an organised business activity conducted by that person –
 - (i) begging;
 - (ii) scavenging or collecting waste from garbage or waste dumps; or
 - (d) use, recruit, procure or offer a child for the commission of any offence listed in Schedule 1 or Schedule 2 of the Criminal Procedure Act, 1977.
- (2) For the purposes of regulation (1) a hazardous substance or agent is any one –
- (a) listed in Schedule One of the Regulations for Hazardous Chemical Substances, made in terms of the Occupational Health and Safety Act, 1993;
 - (b) listed in Annexure B of the Regulations for Hazardous Biological Agents, made in terms of the Occupational Health and Safety Act, 1993;
 - (c) registered with the Department of Agriculture as a Hazard Group I or II pesticide; or
 - (d) listed in the Schedule to these regulations.
- (3) Any form of work listed in this regulation shall constitute a worst form of child labour as contemplated in the Worst Forms of Child Labour Convention, 1999, adopted by the International Labour Organisation.

9. Investigation and prosecution of alleged offences concerning worst forms of child labour

- (1) A labour inspector, who receives a complaint that any person has required or permitted a child to perform a worst form of child labour, or who in the performance of their duties observes any circumstances that may constitute work by a child in a worst form of labour must –
- (a) investigate the alleged offence forthwith; or
 - (b) if the labour inspector is not authorised to investigate the contravention, refer it to a labour inspector who is so authorised.
- (2) A labour inspector who investigates an allegation that a person has required or permitted a child to perform a worst form of child labour must -
- (a) conduct the investigation thoroughly and expeditiously;
 - (b) prepare a written report that must be filed with the Director-General.
- (3) The report prepared in terms of sub-regulation (3) must contain a recommendation as to whether or not –
- (a) the alleged offence constitutes a worst form of child labour;
 - (b) a prosecution should be initiated in terms of this regulation or any other regulation or law.

- (4) The Director-General must forward a copy of the report to the relevant prosecuting authority unless the investigation establishes no evidence of any offence.
- (5) For the purposes of these regulations, a labour inspector includes any public servant or any designated agent of a bargaining council who has been designated by the Minister in terms of section 63(1)(b) of the Basic Conditions of Employment Act for the purpose of enforcing this regulation.

10. Medical examinations

- (1) A labour inspector who has reason to believe that a child is employed in any work that may endanger his or her health may issue a written instruction to the employer requiring that the child be examined by a medical practitioner chosen by the child or a parent of the child or by the inspector.
- (2) The costs of an examination in terms of this regulation shall be borne by the employer.

11. Offences and Penalties

- (1) Any person who requires or permits a child to work for them in contravention of these regulations commits an offence.
- (2) Any person who is convicted of an offence in terms of these regulations may be sentenced to a fine or to imprisonment for a period of up to three years.
- (3) If any person is charged with an offence in terms of which it is alleged that that person permitted a child to work in breach of any provision of these regulations it is an defence if that person can establish that the child –
 - (a) was not an employee of that person; and
 - (b) did not in any manner assist in carrying on or conducting the business of that person.
- (4) Where any person is prosecuted for any offence involving the causing of injury to, or the death of, a child or any offence for a breach of any law regulating health and safety at work and a labour inspector is of the view that the person being prosecuted may have required or permitted a child to perform any work that constituted a worst form of child labour as contemplated in these regulations, the labour inspector must bring such information to the attention of the relevant prosecuting authority.
- (5) If a person is convicted of a offence, including an offence in terms of sub-regulation (4) in terms of which that person required or permitted a child to perform a worst form of child labour, the court on convicting that person and determining a sentence must take into account that –
 - (a) that South Africa has ratified the Worst Forms of Child Labour Convention, 1999;

- (b) that the offence constitutes a worst form of child labour in terms of that Convention.

12. Exemptions

- (1) The Minister may exempt work performed by a child who is 15 years or older from the application of these regulations on application by an employer or, in the case of work performed in terms of a learnership or approved vocational training programme, a sector education and training authority.
- (2) The Minister may not grant an exemption in terms of this regulation, unless the Minister is satisfied the child will not be exposed to a significant risk of hazards that may affect the child's health or development.

13. Summary

Any person who employs a child must display the prescribed summary of these regulations, which may include a summary of other relevant regulations and laws, in their workplace.

14. Short title

These regulations shall be known as the Regulations on Hazardous Work by Children.

Schedule

Hazardous substances and agents referred to in regulation 7(2)(d):

4-Aminobiphenyl	Mustard gas (Sulfur mustard)
Arsenic and arsenic compounds	2-Naphthylamine
Asbestos	Nickel compounds
Benzene	Phosphorus-32, as phosphate
Benzidine	Plutonium-239 and its decay products, as aerosols
Beryllium and beryllium compounds	Radioiodines, short-lived isotopes, including iodine-131
N,N-Bis(2-chloroethyl)-2-naphthylamine	Radionuclides, a-particle-emitting, internally deposited
(Chlornaphazine)	Radionuclides, b-particle-emitting, internally deposited
Bis(chloromethyl)ether and chloromethyl methyl ether	Radium-224, -226, -228, and their decay products
1,4-Butanediol dimethanesulfonate (Busulphan; Myleran)	Radon-222 and its decay products
Cadmium and cadmium compounds	Shale-oils
1-(2-Chloroethyl)-3-(4-methylcyclohexyl)-1-nitrosourea (Methyl-CCNU; Semustine)	Silica, crystalline
Chromium [VI] compounds	Soots
Coal-tars	Sulfuric acid, strong-inorganic-acid mists containing
Erionite	Talc containing asbestiform fibres
Ethylene oxide	2,3,7,8-Tetrachlorodibenzo-para-dioxin
Formaldehyde	Thiotepa
Gallium arsenide	Treosulfan
Lead	Vinyl chloride
Mercury	
Mineral oils, untreated and mildly treated	

Occupational health and safety regulations

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

The Minister of Labour, on the recommendation of the Occupational Health and Safety Advisory Council, has in terms of section 43(1) made the following regulations.

1. Purpose and interpretation

- (1) The purpose of these regulations is to place conditions upon work by children which is not prohibited in terms of any law.
- (2) No provision in these regulations may be interpreted as permitting—
 - (a) any work by a child who is under 15 years of age;
 - (b) any work by a child who is 15 years of age or older which is prohibited in terms of any law.
- (3) Any person who requires or permits a child to work must comply with these regulations in addition to any other provisions of this Act, its regulations or any other law applicable to such work.
- (4) For the purposes of these regulations a child is a person under the age of 18 years.
- (5) These regulations must be interpreted in accordance with International Labour Organisation's Worst Forms of Child Labour Convention, 1999.

2. Risk assessment

- (1) Every employer who employs, or provides work to, a child or permits any child to work at any place under their control or with any machinery under their control must in respect of such work undertake a risk assessment process to –
 - (a) establish, with specific regard to the health and safety of a child, any risk associated with any hazard attached to any work that that the child is to perform;
 - (b) identify and take such steps as may be required by section 8(2)(b) of the Act to remove, reduce or control any hazard or potential hazard to the health and safety of a child.
- (2) Without limitation to the obligations in terms of sub-regulation (1), an employer must for the purposes of complying with sub-regulation (1) take into account, to the extent that they are relevant to any work, the following factors –
 - (a) the increased biological sensitivity of children to chemicals, biological agents, carcinogens and hormone disruptors;

- (b) the increased vulnerability of children to sleep disruption;
- (c) the vulnerability of children to direct and indirect coercion or abuse from any person, particularly when working alone;
- (d) the relative lack of experience and maturity of children in making safety judgments;
- (e) the reduced ability of children to adapt to inflexible work routines;
- (f) the reduced ability of children to perceive dangers correctly;
- (g) the reduced capacity of children to understand safety messages;
- (h) whether the design of any machinery, tools, equipment and protective equipment is appropriate for children's stature;
- (i) the implications of children working at the period when their skeletal structures and bones are still developing;
- (j) children's physical development in relation to ergonomics, in order to ensure a healthy and safe working environment;
- (k) the physiological, hormonal and other vulnerabilities of children at puberty.

3. Respiratory hazards

No employer may require or permit any child to undertake any work in respect of which a person over the age of 18 performing the same work would be required in terms of the Act to wear respiratory protection equipment.

4. Work in elevated position

- (1) No person may require or permit a child –
 - (a) to work in an elevated position unless the work is performed under the supervision of a competent adult employee or by the employer and fall protection that is reasonably practicable is provided;
 - (b) to work at higher than 5 metres.
- (2) For the purposes of this regulation, work in an elevated position, means work at a height of more than 2 metres from the ground.

5. Lifting of heavy weights

- (1) No person may require or permit a child to perform any work involving excessive lifting.
- (2) For the purposes of this regulation; excessive lifting means work involving –
 - (a) lifting objects weighing more than 7,5 kgs more than once per minute; or
 - (b) lifting objects weighing more than 15 kgs or more than 25 % of the child's body weight, whichever is the lower;
 - (c) continuous lifting for more than 2 hours.

6. Work in a cold environment

No person may require or permit a child to work in an environment below –

- (1) 0°C where the work involves repeated entry into, or presence for more than two minutes in such environment without suitable protective warm clothing;
- (2) 6°C where the work involves repeated entry into, or presence for more than one hour in such environment without suitable protective warm clothing.

7. Work in a hot environment

No person may require or permit a child to work perform hard manual labour where the time-weighted average WBGT index as defined in the Environmental Regulations for Workplaces, made in terms of the Occupational Health and Safety Act, 1993, determined over a period of one hour, exceeds 30°C unless the child –

- (1) has undergone heat acclimatisation;
- (2) has drinking breaks every 15 minutes; and
- (3) is cognisant of the need to drink 100 to 150ml of liquid every break, and the employer provides the child with the necessary liquids;
- (4) has access to first aid.

8. Work in noisy environment

No person may require or permit a child to perform any work involving an exposure to a noise level in excess of 80 dbA unless the child is supplied with hearing protective equipment that complies with regulation 12 of the Noise-Induced Hearing Loss Regulations, made in terms of the Occupational Health and Safety Act, 1993.

9. Power tools and cutting or grinding equipment

- (1) No person may require or permit a child to use any power tool, or any cutting or grinding equipment unless-
 - (a) they have conducted a risk assessment in terms of regulation 2 and have determined that it is safe and without significant risks for the child to use;
 - (b) if the risk assessment indicated that it is safe and without significant risks for the child to use if used with safety equipment or facilities, they provide the child with the necessary safety equipment and facilities in term of regulation 2 of the General Safety Regulations, made in terms of the Occupational Health and Safety Act, 1993, and instruct the child in the use, maintenance and limitations of such equipment.
- (2) Despite subregulation (1), no person may require or permit a child to use any power tool or other machinery if an inspector has issued a notice in terms of section 30(1) of the Act prohibiting the use by children of such tool or other machinery.

10. Offences and penalties

- (1) Any person who contravenes or fails to comply with any provision of these regulations shall be guilty of an offence and on conviction shall be liable to a fine or to imprisonment for a period of 12 months and, in the case of an continuing offence, to an additional fine of R200 or to additional imprisonment for each day on which the offence continues: Provided that the period of such additional imprisonment shall not exceed 90 days.
- (2) If a person is convicted of a offence under these regulations, and the action or omissions that constitutes the offence is also a worst form of child labour as defined in regulation 7 of the Regulations on Hazardous Work by Children, made in terms of the Basic Conditions of Employment Act, 1997, the court on convicting that person and determining a sentence must take into account that –
 - (a) that South Africa has ratified Worst Forms of Child Labour Convention, 1999;
 - (b) that the offence constitutes a worst form of child labour in terms of that Convention.

11. Summary

Any person who employs a child must display the prescribed summary of these regulations, which may include a summary of other relevant regulations and laws, in their workplace.

12. Short title

These regulations shall be known as the Health and Safety of Children at Work Regulations.