

Sections 22 & 23 of the MHSA Employee Responsibilities and the Right to Leave Dangerous Work

An Organised Labour Perspective

WHY SECTIONS 22 AND 23 MATTER

Mining remains a high-risk industry

Workers may be exposed to:

- Fall-of-ground
- Mobile machinery
- Transport hazards
- Explosives
- Dust and occupational disease
- Noise
- Heat
- Chemicals
- Fires and explosions
- Fatigue

WHY SECTIONS 22 AND 23 MATTER

The fundamental question:

What must a worker do when danger is identified?

SECTION 22: EMPLOYEE DUTIES

- Section 22 requires employees to:
- (a) Take reasonable care of their own health and safety.
- (b) Protect others from risks arising from their acts or omissions.
- (c) Properly use PPE and safety equipment.
- (d) Promptly report dangerous situations.
- (e) Co-operate with persons performing duties under the MHSA.
- (f) Comply with prescribed health and safety measures.

"REASONABLE CARE"

Section 22 uses the standard of:

"Reasonable care"

This differs from the employer's obligation of:

"Reasonably practicable"

"REASONABLE CARE"

The worker normally does not control:

- Mine design
- Engineering systems
- Production planning
- Staffing
- Safety budgets
- Machinery selection
- Ground-support design
- Responsibility must correspond with control.

SECTION 22(b): ACTS AND OMISSIONS

Employees must take reasonable care regarding:
ACTS

What they do.

OMISSIONS

What they fail to do.

But:

Not every omission automatically creates liability.

SECTION 22(b): ACTS AND OMISSIONS

A legal duty to act must exist.

Possible sources of a legal duty:

- Statute
- Common law
- Court order
- Contract
- Assumption of responsibility
- Previous positive act

RESPONSIBILITY FOLLOWS CONTROL

Who controls the risk?

A worker may:

- Identify a hazard
- Warn colleagues
- Report the danger
- Withdraw from danger

RESPONSIBILITY FOLLOWS CONTROL

But may not have authority to:

- Redesign the workplace
- Change engineering systems
- Approve support designs
- Allocate resources
- Change mine plans
- Responsibility must follow control.

SECTION 23: THE RIGHT TO LEAVE

Section 23(1)

An employee may leave a working place when:

1. Circumstances arise which, with reasonable justification, appear to pose a:

SERIOUS DANGER to the employee's health or safety;

OR

2. The Health and Safety Representative directs the employee to leave.

"REASONABLE JUSTIFICATION" AND "SERIOUS DANGER"

Section 23 does not mean:

"I don't want to work here."

It means:

Reasonable justification

AND

Serious danger must exist.

The purpose is:

**PREVENTION — NOT
WAITING FOR AN
ACCIDENT!!!**

SECTIONS 22 AND 23 WORK TOGETHER

SECTION 22

Employee Responsibility

"Take reasonable care."

SECTION 23

Employee Protection

"You have a right to leave serious danger."

Together:

RESPONSIBILITY + RIGHTS = SAFETY

THE ROLE OF THE HEALTH & SAFETY REPRESENTATIVE

The H&S Representative is critical

The H&S representative should:

- Listen to workers
- Identify hazards
- Investigate concerns
- Support workers
- Participate in resolution
- Escalate unresolved dangers
- Monitor corrective action
- Prevent intimidation and victimisation
- Worker → H&S Rep → Management → Inspectorate

SECTION 23(2): EFFECTIVE PROCEDURES

The employer must establish procedures after consultation with the H&S committee.

Procedures must provide for:

- Notification of supervisors and H&S representatives
- Employer and employee participation
- Inspector or technical adviser involvement where necessary
- Suitable alternative work where appropriate
- Notification of other affected employees
- A right without a procedure can become a right without protection.

WHEN A WORKER LEAVES A DANGEROUS WORKPLACE

A practical process:

1. Identify the hazard
2. Assess whether serious danger exists
3. Report the danger
4. Leave/barricade the dangerous area where appropriate
5. H&S Representative participates
6. Supervisor investigates
7. Escalate unresolved disputes
8. Obtain technical/inspector assistance where necessary

THE REALITY: FEAR OF SPEAKING UP

Workers may fear:

- Disciplinary action
- Victimisation
- Being labelled a troublemaker
- Loss of production bonuses
- Pressure from supervisors
- Production targets
- Peer pressure
- Being accused of refusing to work

If workers are afraid to exercise section 23, the right becomes meaningless.

UNSAFE PRODUCTION IS NOT ACCEPTABLE PRODUCTION

A production target cannot justify:

- Exposing workers to serious danger
- Ignoring safety concerns
- Suppressing legitimate safety complaints
- Circumventing safety procedures

Production can recover, a lost life cannot!!!

WHAT SHOULD SECTION 23 MEAN IN PRACTICE?

A worker should be able to say:

"I believe this workplace presents a serious danger."

The response should be:

"Let's investigate it."

WHAT SHOULD SECTION 23 MEAN IN PRACTICE?

NOT:

"Get back to work."

"Production is behind."

"You're refusing to work."

"You're causing problems."

The safety question must come first!!!

FIVE PRINCIPLES FOR ORGANISED LABOUR

1. Prevention before tragedy
2. Accountability follows control
3. Safety rights must be protected
4. Worker participation must be meaningful
5. Worker empowerment is essential to zero harm

A SAFETY PARTNERSHIP

WORKER

Take reasonable care.

SUPERVISOR

Respond to hazards.

MANAGEMENT

Eliminate and control risks.

H&S REPRESENTATIVE

Represent workers.

ORGANISED LABOUR

Protect safety rights.

INSPECTORATE

Provide regulatory oversight.

STATE

Enforce the law.

CORE MESSAGE

**SECTION 22
GIVES THE
WORKER A
RESPONSIBILITY.**

**SECTION 23
GIVES THE
WORKER A
VOICE.**

**TOGETHER THEY
GIVE US A
SAFETY
PARTNERSHIP.**

CONCLUSION

**A MINERWORKER MUST NEVER HAVE TO CHOOSE
BETWEEN A PAYCHEQUE AND THEIR LIFE.**

- Your life matters.
- Your health matters.
- Your voice matters.
- Safety rights must be exercised without fear.

"Stop. This is not safe."

Thank you.

Get to know the presenter

Mr. De Wet Blaauw



is a Senior Occupational Health and Safety Practitioner at Solidarity's Health and Safety Department and an admitted Attorney of the High Court of South Africa. He has extensive experience in occupational health and safety, labour relations, investigations, and litigation. Before joining Solidarity, he practiced as an attorney and represented clients in various courts and legal forums on matters relating to criminal law, labour law, and general litigation.

He also served in the South African Police Service for 22 years, attaining the rank of Captain. In his current role, De Wet specializes in the management and handling of occupational health and safety (OHS) and injury-on-duty (IOD) investigations and hearings, member representation, training, research, and the promotion of workplace health and safety.

He currently serves on various committees of the Mine Health and Safety Council (MHSC), including its Board.

Every mine worker returning from work unharmed every day. Striving for zero harm in our lifetime.



MHSC
Mine Health and Safety Council