

- (b) their access to adequate primary health care services; and
- (c) the education of a child worker who is enrolled at a school or at any other educational institution.

6. Work away from parents or legal guardian

- (1) A child worker may only perform work which will result in its being away overnight from its parents or legal guardian –
 - (a) if the child's parent or legal guardian consents in writing;
 - (b) if the child is enrolled in school, the schooling of a school going child is not adversely affected.
- (2) In addition, the employer must provide –
 - (a) full details of the accommodation arrangements to the parent or legal guardian of the child worker for their approval;
 - (b) free of charge to the child, accommodation that –
 - (i) is clean, comfortable, suitable and safe for the child;
 - (ii) is not occupied by any adult other than the parent, legal guardian or a child worker minder appointed or designated by the parent of the child, if they accompany the child; and
 - (iii) sufficient bedding, lavatory and washing facilities for the child worker;
 - (c) the child worker with nutritious food or, if the child is able to purchase such food within a reasonable distance from the place of work or accommodation, provide the child with an allowance sufficient to purchase food and enable the child to purchase it at appropriate intervals.
- (3) It is an offence for any person to recruit a child worker to perform work in violation of sub-paragraph (1) and (2)..

7. Prohibition of piecework and task work

- (1) No person may require or permit a child worker to perform piecework or task work. Piecework is work in terms of which remuneration is based mainly on the quantity of work done. Task work is work in terms of which the remuneration of an employee is based mainly on the completion of set tasks.
- (2) This does not prevent a child worker being paid a commission or receiving an incentive payment on the completion of a task if –
 - (a) the child is paid at least the minimum wage prescribed for that work in terms of any sectoral determination or bargaining council agreement;
 - (b) in the absence of any such minimum wage, 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.

8. Maximum daily and weekly working time

- (1) A child worker may not work more than 8 hours on any day.
- (2) A child worker who is not enrolled at school may not work for more than 40 hours in any week.
- (3) A child worker who is enrolled in school may not work for more than –
 - (a) 20 hours in any week during school term, and
 - (b) 40 hours in any week that falls entirely within school holidays
 - (c) two hours on any school day; or four hours on any school day followed by a non-school day (e.g. a Friday, or the last day of a school term.)

9. Night work

- (1) A child worker may not work before 6 am or after 6 pm on any day, except where allowed in sub-paragraph (2).
- (2) A child worker, other than one who is expected to be at school the following day, may work between 6 pm and 11 pm if –
 - (a) the work is in a restaurant, cinema, theatre or shop where there is adequate adult supervision; or
 - (b) the work is baby-sitting or child minding;
- (3) Unless the parent or legal guardian agrees otherwise in writing, any person who requires or permits a child worker to work after 6pm must, at the end of the shift, provide him/her with safe transport home, at no cost to the child, parent or care-giver.

10. Prohibited work

An employer may not require or permit a child to work in any of the work:

- (a) deep sea fishing;
- (b) commercial diving or other hazardous work under water;
- (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) protecting or safeguarding any person or property or work involving the handling of firearms;
- (h) refining petroleum products;
- (i) filling cars with petroleum or other chemical fuels at a filling station, or doing work close to such activity;
- (j) brewing, manufacturing or selling any liquid which in its final form would contain more than one per cent of alcohol;

- (k) work in a bar, shebeen, tavern or pub or other establishment whose primary business is to sell alcoholic beverages to the general public, for consumption on the premises;
- (l) the manufacture or application of tar or asphalt;
- (m) work involving an exposure, or potential exposure, to blood-borne or air-borne pathogens;
- (n) work in a health care or related facility, in circumstances where there is likely exposure to biological agents, including but not limited to Hepatitis, HIV, and tuberculosis, anaesthetics, anti-neoplastic medications or addictive drugs;
- (o) work involving exposure to a hazardous substance, to lead, asbestos, silica, coal or other hazardous dusts or to 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, brazing or soldering;
- (t) rock and stone crushing;
- (u) operating 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 any motor vehicle or mobile plant;
- (x) work in vehicles transporting passengers or heavy goods;
- (y) work in a confined space.

11. Worst forms of child labour

(1) In addition, no person may 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, or rolling mills that form and cut metals;
- (iii) the production of aluminium, brass, bronze or similar alloys, charcoal or the fuel, coke;
- (iv) the manufacture of auramine, isopropanol or magenta;
- (v) the gasification of coal;
- (vi) diving operations using aqualungs;
- (vii) free diving below depths of 10 metres;
- (viii) work in which there is a reasonably foreseeable risk of exposure to blood-borne and airborne pathogens;
- (ix) work involving exposure to ionising radiation;

- (x) work in chemically-based mineral extraction or similar operations;
- (xi) any work in an environment in which the actual dry-bulb temperature is below minus 18 °C;
- (xii) hard manual labour 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;
- (xiii) work in circumstances in which it is reasonably foreseeable that the child will be exposed to physical, psychological or sexual abuse.

(2) Any form of work listed in sub-paragraph (1) above constitutes a worst form of child labour as contemplated in the Worst Forms of Child Labour Convention, 1999, adopted by the International Labour Organisation. These prohibitions may overlap to some extent with the prohibitions listed in paragraph 10, but the activities referred to in this paragraph are considered as exposing children to very serious harm. Penalties for breach should therefore be higher.

(3) No person may –

- (a) employ a child in circumstances in which the child is unreasonably confined to the employer's premises;
- (b) require or permit a child to engage 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
 - (iii) use, recruit, procure or offer a child for the commission of any serious offence (they are listed in schedules 1 and 2 of the Criminal Procedure Act, 1977).

(4) The BCEA regulations define which specific substances agents are considered very harmful to children.

12. Risk assessment

(1) Every employer who employs or provides work to a child worker, or permits any child worker 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 which must at least the following:

- (a) identifying the risks and hazards to which any child worker may be exposed;
- (b) analysing and evaluating the risks and hazards that are identified;
- (c) preparing and implementing –
 - (i) a documented plan of safe work procedures to remove, mitigate, reduce or control the risks and hazards that have been identified;
 - (ii) a monitoring plan; and
 - (iii) a review plan.

(2) The following factors must be taken in to account when making the risk assessment:

- (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) In the risk assessment process, the employer must have regard to the guidelines contained in Schedule 1 to the Health and Safety of Children at Work Regulations issued in terms of the OHSA.

13. Respiratory hazards

A child worker may not undertake any work where a person over the age of 17 performing the same work would be required in terms of the OHSA to wear respiratory protection equipment, i.e. equipment such as masks that protects workers from inhaling hazardous dusts or fumes.

14. Work in elevated position

(1) A child worker may not work at a height of more than 5 metres above the floor/ground.

(2) A child worker working at a height of more than 2 metres from the floor/ground must work under the supervision of the employer or a competent adult employee, and reasonable fall protection must be provided, such as a safety harness or railings.

15. Lifting of heavy weights

(1) A child worker performing any work may not, as part of their work, lift an object weighing more than –

- (a) the lesser of 15 kg or 20 % of the child's body weight;
- (b) more than 7,5 kg more than once per minute.

(2) A child worker may not lift objects weighing more than 5 kg at work for more than 2 hours without being granted a 30-minute period in which he or she is not required to lift such a weight.

16. Work in a cold environment

(1) The employer of a child worker working in an environment below the following actual dry-bulb temperature must be supplied with suitable protective warm clothing –

- (a) 0°C where the work involves repeated entry into, or presence for more than two minutes in such environment;
- (b) 6°C where the work involves repeated entry into, or presence for more than one hour in such environment.

(2) The protective warm clothing supplied to child worker must comply with Regulation 2(2)(b)(i) to (vi) of the Environmental Regulations for Workplaces

17. Work in a hot environment

(1) No person may require or permit a child worker to work or perform hard manual labour where the average temperature over one hour exceeds 30°C unless the child –

- (a) is acclimatised to such working environment before he/she is required or permitted to work in such environment;
- (b) has drink breaks every 15 minutes; and
- (c) is cognisant of the need to drink at least 150ml of liquid every break and the employer provides the child with the necessary liquids.

(2) The term 'average temperature' referred to here is technically 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, and determined over a period of one hour.

18. Work in noisy environment

No person may require or permit a child worker to perform any work involving an exposure to a noise level in excess of 80 dB(A) 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. DB(A) is a unit used in measuring noise, and takes into account how often loud noises are heard, even if an environment is not noisy all the time.

19. Power tools and cutting or grinding equipment

(1) A child worker may not use any power-driven machinery or power tool, or any cutting or grinding equipment unless a risk assessment conducted in terms of the regulations has determined that its use is safe and without significant risks for the child.

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- (2) If the risk assessment indicates that the power tool or other equipment is safe and without significant risks for the child worker to use, if used with safety equipment or facilities, the child –
- (a) must be provided with the necessary safety equipment and facilities that are usually required in terms of occupational health and safety regulations; and
 - (b) must be instructed in the use, maintenance and limitations of such equipment.
- (3) Before starting such work the child worker must receive adequate training in the safe and appropriate use of the power tools or machinery from a person competent in their use.
- (4) The child worker must be supervised by a competent person when using power tools or other equipment.
- (5) An inspector may issue a notice prohibiting the use by child workers of any power tool or other machinery.

20. Report to Department of Social Development

- (1) A labour inspector who finds a child worker being employed or used in contravention of the Act or of the BCEA or OHS Act regulations shall refer the matter for investigation to a child protection organisation designated in terms of the Children's Act No 38 of 2005 or to the provincial department of social development in the province where the child works or lives, unless the labour inspector is satisfied that the child will not suffer any detriment due to steps being taken by the inspector to ensure compliance with the law.
- (2) The relevant social worker must then investigate the circumstances of the child worker to determine whether he/she is in need of care and protection and, if so, take appropriate action to protect the child.

BCEA Regulations on Hazardous Work by Children

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. Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned but, unless the context otherwise indicates—

- (a) **"the Act"** means the Basic Conditions of Employment Act, 1997;
- (b) **"child"** means a person under eighteen years of age;
- (c) **"child worker"** means a child who is an employee as defined in the Act, which includes a child who assists any person to carry on or conduct their business; and
- (d) **"employer"** means a person who –
 - (i) employs a child; or
 - (ii) allows a child worker to assist in carrying on or conducting their business;
- (e) **"worst form of child labour"** means any work by a child in an activity listed in regulation 9.

2. Purpose and interpretation

- (1) The purpose of these regulations is to –
 - (a) place conditions on the work that may be performed by child workers who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law;
 - (b) prohibit any person from permitting or requiring such child workers to perform particular types of work specified in the regulations.
- (2) 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.

- (3) These regulations must be interpreted in accordance with International Labour Organisation's Minimum Age Convention, 1973 and the Worst Forms of Child Labour Convention, 1999.⁶
- (4) To the extent that any sectoral determination establishes a basic condition of employment that applies specifically to child workers 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.

3. Access to nutrition, health care and educational services

Every employer who employs a child worker 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.

4. Work away from parents or legal guardian

- (1) It is an offence for any person to require or permit a child worker 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 worker to perform work in violation of sub-regulation (1).

⁶ The text of the Conventions is available at www.ilo.org

5. Prohibition of piece-work and task work

- (1) It is an offence for any person to require or permit a child worker 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 child worker is based mainly on the quantity of work done;
 - (b) "task work" means work in terms of which the remuneration of the child worker is based mainly on the completion of set tasks.
- (3) This regulation does not prevent the payment of a commission or an incentive payment on the completion of a task to a child worker 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.

6. Maximum daily and weekly working time

- (1) It is an offence for any person to require or permit a child worker who is not enrolled in school to work for more than 40 hours of work in any week.
- (2) It is an offence for any person to require or permit a child worker who is enrolled in school to work
 - (a) for more than 20 hours in any week falling in the school term;
 - (b) for more than 40 hours of work in any week that falls entirely within school holidays.
- (3) It is an offence for any person to require or permit child worker 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) four 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.

7. Night work

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

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- (2) A child worker, other than a one who is expected to be at school the following day, may work between 6 pm 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 worker to work after 6pm on any day in terms of sub-regulation (2) must at the end of the child's shift provide that child with safe transport to the child's home at no cost to the child, or the child's parent or caregiver.

8. Prohibited work

- (1) It is an offence for any person to require or permit a child worker 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, or work involving the handling of firearms;
 - (h) the refining of petroleum products;
 - (i) filling cars with petroleum or other chemical fuels at a filling station, or doing work close to such activity;
 - (j) the brewing manufacturing or selling of any liquid which in its final form would contain more than one per cent of alcohol;
 - (k) work in a bar, shebeen, tavern or pub, or another establishment whose primary business is to sell alcoholic beverages to the general public, for consumption on the premises;
 - (l) the manufacture or application of tar or asphalt;
 - (m) work involving an exposure, or potential exposure, to blood-borne or air-borne pathogens;
 - (n) work in health care or veterinary or related facility, in circumstances where there is likely exposure to biological agents, including but not limited to Hepatitis, HIV, and tuberculosis, anaesthetics, anti-neoplastic medications or addictive drugs;
 - (o) work involving exposure to any of the following –
 - (i) hazardous substance or agent;

- (ii) lead, asbestos, silica, coal or other hazardous dusts ;
- (iii) 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, brazing or soldering;
- (t) rock or 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 or mobile plant;
- (x) work in vehicles transporting passengers or heavy goods;
- (y) work in a confined space.

9. Worst forms of child labour

- (1) In addition to any prohibition contained in regulation 8 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, or rolling mills that form and cut metals;
 - (iii) in the production of aluminium, brass, bronze or similar alloys, charcoal or the fuel, 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 depths of 10 metres;
 - (viii) work in which there is a reasonably foreseeable risk of exposure to blood-borne and airborne pathogens;
 - (ix) work involving an exposure to ionising radiation or a hazardous substance or agent;
 - (x) work in chemically-based mineral extraction or similar operations;
 - (xi) doing any work in an environment in which the actual dry-bulb temperature is below -18 °C;
 - (xii) doing hard manual labour 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;
- (xiii) 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 engage 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 Schedule 1 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.

10. 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 (2) 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.

11. Medical examinations

- (1) A labour inspector who has reason to believe that a child worker 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.

12. Report to department of social development

A labour inspector who finds a child worker being employed or used in contravention of Chapter 6 of the Act or in contravention of these regulations shall refer the child for investigation to a child protection organisation designated in terms of the Children's Act No 38 of 2005 or to the provincial department of social development in the province where the child works or lives, unless the labour inspector is satisfied that the child will not suffer any detriment due to steps being taken by the inspector to ensure compliance with the law.

13. Offences and Penalties

- (1) Any person who requires or permits a child worker 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 worker to work in breach of any provision of these regulations it is a 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 worker or any offence for a breach of any law