

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 an offence, including an offence in terms of sub-regulation (4) in terms of which that person required or permitted a child worker 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.

#### **14. Exemptions**

- (1) The Minister may exempt work performed by a child worker 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 worker will not be exposed to a significant risk of hazards that may affect the child's health or development.

#### **15. Summary**

Any person who employs a child worker must display the prescribed summary of these regulations in the workplace where it can be read by employees including child workers who are at the workplace, which may include a summary of other relevant regulations and laws, in their workplace. This summary is provided in Schedule 2 to these regulations.

#### **16. Short title and commencement**

These regulations shall be known as the BCEA Regulations on Hazardous Work by Children and will come into effect 21 days after the date of publication in the *Government Gazette*.

#### **Schedule 1: Hazardous substances and agents**

Hazardous substances and agents referred to in regulation 9(2)(d):

- 4-Aminobiphenyl
- Arsenic and arsenic compounds
- Asbestos
- Benzene
- Benzidine
- Beryllium and beryllium compounds
- N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornaphazine)
- Bis(chloromethyl)ether and chloromethyl methyl ether

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

## **Schedule 2: Summary of regulations on the health and safety of children at work and on hazardous work by children**

The Minister of Labour has made regulations to protect the health and safety of child workers at work under –

- (a) section 44 and 45 of the Basic Conditions of Employment Act, 1997 (called the BCEA regulations);
- (b) section 43 of the Occupational Health and Safety Act, 1993 (called the OHS Act regulations).

This is a summary of the most important provisions of these two sets of regulations.

Any person who employs or uses the services of a child worker must display this summary in the workplace where it can be read by employees including child workers who are at the workplace.

## 1. Definitions

In this summary these terms means the following, unless the context indicates otherwise—

- (1) **"child"** means a person under 18 years old;
- (2) **"child worker"** means a child referred to in the definition of "employer";
- (3) **"employer"** means a person who employs, or provides work to a child, subject to paragraph 3 below.

## 2. Purpose of regulations and notice

- (1) The purpose of the regulations is to –
  - (a) protect the health and safety at work of child workers who are lawfully entitled to work;
  - (b) prohibit categories of work which child workers may not perform;
  - (c) place conditions on the work that may be performed by child workers
  - (d) identify which categories of work constitute worst forms of child labour, and to make appropriate enforcement provisions in this regard;

## 3. Coverage and interpretation of regulations

- (1) The BCEA regulations cover child workers as defined in those regulations, namely children who are employed, including children who assist any person to carry on their business.
- (2) The OHSA regulations cover all work performed by child workers as defined in those regulations.
- (3) For the purposes of the BCEA regulations, any person who allows a child worker to assist them in carrying on their business is the employer of that child.
- (4) The regulations do not -
  - (a) permit the employment of any child worker who is under 15 years of age or is subject to compulsory schooling in terms of any law;
  - (b) reduce 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.
- (5) These regulations must be interpreted in accordance with the International Labour Organisation's Minimum Age Convention, 1973 and it's Worst Forms of Child Labour Convention, 1999. The text of the Convention is available at [www.ilo.org](http://www.ilo.org).

#### **4. Minimum age of work**

(1) A child worker who is under 15 years of age or is subject to compulsory schooling may not be employed as an employee and may not assist any person to carry on their business.

(2) However, a child worker who is under 15 or subject to compulsory schooling may -

(a) work in the performance of advertising, artistic or cultural activities in terms of a permit granted in terms of *Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities* issued by the Minister of Labour in terms of the BCEA (employers in these sectors should study the sectoral determination which can be accessed on [www.labour.gov.za](http://www.labour.gov.za));

(b) do the following work, other than as an employee as defined in the BCEA –

(i) collect contributions on behalf of a fund-raising organisation registered in terms of the Fund Raising Act (Act No. 107 of 1978);

(ii) do voluntary work for a church, charitable organisation or amateur sports club; and

(iii) as part of his/her schooling, do work 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.

(3) Even though the child worker may perform types of work referred to in paragraph (2)(a) to (b) above, such work is still subject to the provisions of the regulations summarised here.

(4) In terms of the South African Schools Act a child worker is subject to compulsory schooling until the last school day of the calendar year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.

#### **5. Access to nutrition, health care and educational services**

An employer who employs a child worker must ensure that their employment does not interfere with -

(a) their access to adequate nutrition;

(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-paragraphs (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) 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.

(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 OHSA 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.