



# The New Health and Safety Framework: What Every Employer Needs to Know



**Webinar**  
**5 December 2024**

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# Webinar Info

- Date: 5 December 2024
- Time: 09:00 till 10:00hrs
- Speakers:
  - Mr. George Steve Darmanin MSc.OHSEM CMIOSH
  - Dr. Mary Gauci LL.B., LL.D., (Melit.). MSc. Trng & HRM (Leic.), Dip. OHS (Melit.)



# Title Change

Cap. 424 - Act 27 of 2000 - Occupational Health and Safety Authority Act

to

Cap. 646 - Act 33 of 2024 - Health and Safety at Work Act



# New Definitions (most relevant)

- "**client**" means any natural or legal person for whom a project is carried out
- "**competent person**" means a person possessing adequate qualifications and minimum accreditations in terms of law or where required, as established by the Authority through administrative instruments, suitable training and sufficient knowledge, experience and skill for the safe performance of the specific task or work required, and who provides advice with regard to the health and safety at work preventive and protective measures required to be taken, and whose name appears in the **competent person register** administered or otherwise delegated by the Authority in relation to such matters which are regulated by the Authority

# New Definitions (most relevant)

- "**constituted bodies**" means any body which is established to represent the interests of its members such as workers or employers and shall include any body recognised under the Malta Council for Economic and Social Development Act and other bodies of a similar nature which are recognised under any other law
- "**duty holder**" means any person who has a duty or obligation to fulfill and, or the responsibility to ensure that a duty or an obligation is fulfilled by virtue of any requirement of this Act or of subsidiary legislation, and shall include as the case may be, an employer, a self-employed person, a worker, a client, a project supervisor for health and safety matters, a manager who is responsible for workers, a supervisor who is responsible for workers, an HSRO and any other person to whom this Act or any subsidiary legislation made thereunder assigns a duty or responsibility

# New Definitions (most relevant)

- "**HSRO**" means the Health and Safety Reporting Officer appointed in accordance with article 12(8) and who is a high-ranking employee at management level, or such other person which an employer may appoint, as may be established by regulations issued in terms of this Act;



# Composition of the Board of the Authority

- 9 persons – same as before
- Similar structure – but, the person appointed by the Minister with competence in health and, or safety at work **must be listed in the register of competent persons;**
- Clear duties to the functions and responsibilities of the Board. More emphasis on the ‘Board’ as opposed to the ‘Authority’ from previous Act.

# Duties of the Employer

- 12. (1) It shall be the duty of an employer to ensure the physical and **psychological** wellbeing of his workers at all times and of all persons who may be affected by the work being carried out for such employer at their workplace.
  - (j) by replacing the dangerous by the non-dangerous or the less dangerous; and
  - (k) by giving appropriate instructions to workers.





# Duties of the Employer

- (5) An employer shall prepare and review as and when appropriate, a **statement of the general policy** with respect to health and safety at work, which shall include the main measures for the implementation of such a policy, and to bring the declaration and any review of it to the **notice of all the workers and their representatives**.
- (6) It shall be the duty of the employer to **inform any contractor, self-employed person and workers from outside the organization** of the contents of the health and safety at work policy, the presence of specific hazards at work, the resultant risks, and the preventive and protective measures required to be taken, and shall ensure that the provisions of the policy are abided by at all times.

# Duties of the Employee

- All obligations listed under L.N. 36 of 2003 are now more or less replicated in the Act.
- This implies more emphasis on the employees/workers' duties

# Health & Safety Reporting Officer (HSRO)

- This role when applicable shall be a “a high-ranking employee at management level, or such other person....”
  - Implies that can be internal or external as long as functions can be adhered to
- List of duties include:
  1. Receive reports
  2. Conduct investigations
  3. Provide report in writing to employer
  4. Provide report in writing to OHSA if employer fails to implement in reasonable time and more
- The role of HSRO is more of a investigative and governance in nature rather than a technical OHS officer
- Not necessary to be in competent person register as it is not an OHS competent person role by nature.



# HSRO

- To whom is this role applicable to?
  - So far – **No one. This will be established by means of regulations issued in terms of the Act;**
- Will be applicable to and **if**:
  - **Minister publishes list** of industry, sectors or categories to whom it will apply
  - **Special circumstances** - e.g. OHSa identifies through a report, inspection or otherwise an employer who although not indicated in any list, due to the nature of the report and or serious shortcomings identified, mandate the requirement of an HSRO until it is satisfied that all shortcomings has been addressed.

# Responsibilities Of Employers & HSRO?

- When an employer has appointed an HSRO to perform the duties referred to in article 13, this does not relieve the employer of his duties established in terms of this Act and shall not affect the principle of employers' responsibility as provided for in this Act or any regulations made thereunder. **The appointment of an HSRO does not indemnify the employer from any liability**
  - The Employer shall give the HSRO access to all resources
  - The Employer shall provide the HSRO with unrestricted access to information
  - Where the HSRO is required, the employer is obliged to give the details of the HSRO to the OHSA.
  - Failure to appoint an HSRO, shall constitute an offence against this act and the employer who is found to be in breach can be liable to a fine of up to fifty thousand euros(€50,000), as determined by the OHSA

# Administrative Instruments

- The OHSA CEO has the power to issue administrative instruments following the approval of the Minister
- Administrative instruments can be applicable even to one particular case or matter and can apply for a specific time
- Administrative instruments shall be published on the Authority's website and have the force of law
- Instances when administrative instruments can be used:
  - Determine qualification/standards to safeguard OHS
  - Prohibit unsafe work activities
  - Regulate a mandatory insurance cover by employers to employees
  - Specify minimum requirements to qualify as a competent person

# Administrative Penalties

- **Any Act or Omission that is not Criminal in Nature shall be subject to an Administrative Penalty – Issued at the Discretion of OHSA**
- **Administrative – up to €20,000 for EACH breach!!**
  - Before imposing an administrative penalty, the Authority MAY at it's discretion notify the person who committed the breach, and impose a time period to remedy the situation
  - An appeal can be filed within 20 days by means of a written petition for fines up to (€ 1,500)
  - Administrative Offences may include:
    - Not having OHS Workers' Reps
    - Not having documented Risk Assessments
    - Not filing notifications
    - Not keeping ohs records
    - Etc.



# Offences

- Any Offences against the Act or Omission that is not Criminal in Nature shall be subject to an Administrative Penalty - Issued at the Discretion of OHSA
- Offences may include:
  - Hindering an officer to carry out his/her duties
  - Fails to comply with the requirements of this act
  - Making incorrect statements
  - Furnish False information
- Offences are punishable by:
  - Up to two years imprisonment and/or
  - Fine of not less than €1,000 and not more than €50,000 for EVERY Offence
  - Second and subsequent convictions – minimum of 1 year imprisonment and/or
  - Fine of not less than €2,000 and not more than €50,000 for EVERY Offence
- Offences are tried before the Courts of Magistrates, Court of Criminal Judicature



# Special Compromise Procedure

- **The Authority has the discretion to adopt a Special Compromise Procedure in case of an offence (not applicable in circumstances involving fatalities)**
- **Authority may issue a compromise fine that shall not exceed €50,000**
- **Accepting a compromised fine is equivalent to an admission of guilt**

# Health and Safety Tribunal

- Independent and impartial
- Hear claims in connection with breaches of an administrative nature and as a result of which an administrative penalty can be imposed.
- The Tribunal shall not be subject to the control or direction of any other person or authority.
- Composed of a:
  - Chairperson – at least five 5 years of experience as a warranted legal professional
  - 2 other members who are warranted professionals in fields related to health and safety at work with at least 5 years of experience.



# Publication of Administrative Penalties and Judgments

- This measure aims to promote awareness and understanding by allowing OHS Professionals, employers and organisations to learn from others' experiences.

Thank you!

