

Element 6

HEALTH AND SAFETY LAW, REGULATION AND INFLUENCE

LEARNING OUTCOMES:

- Understand International frameworks for legislation, regulation and enforcement.
- Understand statutory and regulatory obligations for maintaining health and safety in an organisation.
- Understand the industry and community roles in influencing and promoting local and national positive health and safety outcomes.

THE FACTORIES ACT, 1948

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY SECTIONS

1. Short title, extent and commencement. 2. Interpretation. 3. References to time of day. 4. Power to declare different departments to be separate factories or two or more factories to be a single factory. 5. Power to exempt during public emergency. 6. Approval, licensing and registration of factories. 7. Notice by occupier.

CHAPTER II

THE INSPECTING STAFF

7A. General duties of the occupier.

7B. General duties of manufacturers, etc., as regards articles and substances for use in factories.

8. Inspectors.

9. Powers of Inspectors.

10. Certifying surgeons.

CHAPTER III

HEALTH

11. Cleanliness.

12. Disposal of wastes and effluents.

13. Ventilation and temperature.

14. Dust and fume.

15. Artificial humidification.

16. Overcrowding.

17. Lighting.

18. Drinking water.

19. Latrines and urinals.

20. Spittoons.

CHAPTER IV

SAFETY

21. Fencing of machinery.
22. Work on or near machinery in motion
23. Employment of young persons on dangerous machines.
24. Striking gear and devices for cutting off power.
25. Self-acting machines.
26. Casing of new machinery.
27. Prohibition of employment of women and children near cotton-openers.
28. Hoists and lifts.
29. Lifting machines, chains, ropes and lifting tackles.
30. Revolving machinery.
31. Pressure plant.
32. Floors, stairs and means of access.
33. Pits, sumps openings in floors, etc.
34. Excessive weights.
35. Protection of eyes.
36. Precautions against dangerous fumes, gases, etc.
- 36A. Precautions regarding the use of portable electric light.
37. Explosive or inflammable dust, gas, etc.
38. Precautions in case of fire.
39. Power to require specifications of defective parts or tests of stability.
40. Safety of buildings and machinery.
- 40A. Maintenance of buildings.
- 40B. Safety officers.
41. Power to make rules to supplement this Chapter.

CHAPTER IVA

PROVISIONS RELATING TO HAZARDOUS PROCESSES

41A. Constitution of Site Appraisal Committee.

41B. Compulsory disclosure of information by the occupier.

41C. Specific responsibility of the occupier in relation to hazardous processes.

41D. Power of Central Government to appoint Inquiry Committee.

41E. Emergency standards.

41F. Permissible limits of exposure of chemical and toxic substances.

41G. Workers' participation in safety management.

41H. Right of workers to warn about imminent danger.

CHAPTER V

WELFARE

- 42. Washing facilities.
- 43. Facilities for storing and drying clothing.
- 44. Facilities for sitting.
- 45. First-aid appliances.
- 46. Canteens.
- 47. Shelters, rest rooms and lunch rooms.
- 48. Creches.
- 49. Welfare officers.
- 50. Power to make rules to supplement this Chapter.

CHAPTER VI

WORKING HOURS OF ADULTS

- 51. Weekly hours.
- 52. Weekly holidays.
- 53. Compensatory holidays.
- 54. Daily hours.
- 55. Intervals for rest.
- 56. Spread over.
- 57. Night shifts.
- 58. Prohibition of overlapping shifts.
- 59. Extra wages for overtime.
- 60. Restriction on double employment.
- 61. Notice of periods of work for adults.
- 62. Register of adult workers.
- 63. Hours of work to correspond with notice under section 61 and register under section 62.
- 64. Power to make exempting rules.
- 65. Power to make exempting orders.
- 66. Further restrictions on employment of women.

CHAPTER VII

EMPLOYMENT OF YOUNG PERSONS

67. Prohibition of employment of young children.

68. Non-adult workers to carry tokens.

69. Certificates of fitness.

70. Effect of certificate of fitness granted to adolescent.

71. Working hours for children.

72. Notice of periods of work for children.

73. Register of child workers.

74. Hours of work to correspond with notice under section 72 and register under section 73.

75. Power to require medical examination.

76. Power to make rules.

77. Certain other provisions of law not barred

CHAPTER VIII

ANNUAL LEAVE WITH WAGES

SECTIONS

78. Application of Chapter.

79. Annual leave with wages.

80. Wages during leave period.

81. Payment in advance in certain cases.

82. Mode of recovery of unpaid wages.

83. Power to make rules.

84. Power to exempt factories.

CHAPTER IX

SPECIAL PROVISIONS

85. Power to apply the Act to certain premises.

86. Power to exempt public institutions.

87. Dangerous operations.

87A. Power to prohibit employment on account of serious hazard.

88. Notice of certain accidents.

88A. Notice of certain dangerous occurrences.

89. Notice of certain diseases.

90. Power to direct enquiry into cases of accident or disease.

91. Power to take samples.

91A. Safety and occupational health surveys

CHAPTER X

PENALTIES AND PROCEDURE

- 92. General penalty for offences.
- 93. Liability of owner of premises in certain circumstances.
- 94. Enhanced penalty after previous conviction.
- 95. Penalty for obstructing Inspector.
- 96. Penalty for wrongfully disclosing results of analysis under section 91.
- 96A. Penalty for contravention of the provisions of sections 41B, 41C and 41H.
- 97. Offences by workers.
- 98. Penalty for using false certificate of fitness.
- 99. Penalty for permitting double employment of child.
- 100. [Repealed.]
- 101. Exemption of occupier or manager from liability in certain cases.
- 102. Power of Court to make orders.
- 103. Presumption as to employment.
- 104. Onus as to age.
- 104A. Onus of proving limits of what is practicable, etc.
- 105. Cognizance of offences.
- 106. Limitation of prosecutions.
- 106A. Jurisdiction of a court for entertaining proceedings, etc., for offence.

CHAPTER XI

SUPPLEMENTAL

107. Appeals.

108. Display of notices.

109. Service of notices.

110. Returns.

111. Obligations of workers.

111A. Right of workers, etc.

112. General power to make rules.

113. Powers of Centre to give directions.

114. No charge for facilities and conveniences.

115. Publication of rules.

116. Application of Act to Government factories.

117. Protection to persons acting under this Act.

118. Restrictions on disclosure of information.

118A. Restriction on disclosure of information.

119. Act to have effect notwithstanding anything contained in Act 37 of 1970.

120. Repeal and savings.

WHAT IS ILO?

- **International Labour Organization (ILO) is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that labour peace is essential to prosperity.**
- **Agency of United Nations**
- **Most countries are members (187 countries)**
- **Sets international standards for H&S by publishing:**
 - **Conventions**
 - **Recommendations**

WHAT IS ILO?

- ILO (International Labour Organization) is the unique organization of governments, employers and workers (Tripartism) having the aspiration of fair societies, which is one of the UN agencies setting up the international labour standards on an international scale against abuse of economic power and arbitrariness of employers in order for citizens to maintain the absolute minimum level of global workers' rights (and to have Decent Work coined as the specific term since 2015).
- ILO was established in 1919 in Geneva, Switzerland by the League of Nations and became the first UN specialized agency in 1946. And it has 187 members states as of December 2020.

WHAT IS ILO?

Conventions

- Create necessary requirements to prevent accidents / harm

Recommendations

- Provide guidance on necessary requirements

WHAT IS ILO?

- Occupational Safety and Health Convention (**C155**) - a goal setting policy for companies and nations
- Occupational Safety and Health Recommendation 1981 (**R164**) - supplements C155 and gives more guidance on how to comply with its policies

We'll talk about these a lot during the course!

ROLE OF NATIONAL GOVERNMENT

- Develop recommendations for occupational safety and health standards;
- Conduct Research on Worker Safety and Health
- Conduct Training and Employee Education
- Regular inspection of plant to check compliance.
- Develop information on safe levels of exposure to toxic materials and harmful physical agents and substances;
- Conduct research on new safety and health problems;
- Conduct on-site investigations
- Fund research by other agencies or private organizations through grants, contracts, and other arrangements.
- Take action if violate rules – Improvement action & Prohibition action.

BENEFITS OF NATIONAL LEGISLATING

- Government legislation provides workers with minimum standards of health and safety in the workplace.
- Minimum standards, however, can always be made more protective with stronger legislation.
- Historically, many trade unions have been successful in pressuring governments to enact health and safety legislation, to make legislation more protective and to enforce the laws.
- Today it is still important for unions to organize and fight for stronger and more protective occupational health and safety legislation at the national, state or provincial levels.

LIMITATIONS OF MONITORING SYSTEMS

- In this part, we are going to analyse the limitations and the difficulties that the previous monitoring mechanism have been encountering about the regular supervising systems and the special supervising systems separately.
- There have been plenty of criticism about them and we can recognize that there is a variety of limitations to them.

LIMITATION OF THE IMPLEMENTATION AND VOLUNTARISM

- Even though the ILO standards have a reputation and widely recognized, the United Kingdom Government once stated that “A collection of fine words”.
- The voluntarism that the ILO respects as a core identity has been criticized because it tends to block the implementation and the enforcement.
- Moreover, when the member states don't fulfill the implementation of the conventions which are even legally binding, the member states only will be denounced in the labour conference without the substantial penalty except the severe cases.
- As a result, in terms of the significance of the implementation, the supervisory system itself remains very questionable because the members states can ignore the standards and the employees remain without any legal protection.

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LIMITATION OF THE SIMPLICITY OF THE ILO STANDARDS AND ITS SIGNIFICANCE

- The ILO standards have been criticized because of its simplicity, which makes it hard to improve each unique labour conditions that every states of members has.
- The simple International Labour Standard is not suitable for all the states. Even though the ILO standards are adopted, not all the States members can't meet up with them fully because raising the labour standard has a lot to do with the cost increase, which will be a burden to those states.
- It takes place that the states are too poor to fix the budgets on the basic conditions for the workers. We acknowledge that the ILO standard offers a minimum labour standard that all the employees should have.
- However, there is no point applying the international labour standards to those countries who realistically can't fulfil the requirements based on the limitation of the national resources. One-for-all system from the ILO is not appropriate in this sense.

LIMITATION OF THE INITIATION OF THE PROCESS, NO INDIVIDUAL

- As we have seen, what the special systems of supervision have in common is that one individual can't initiate the process. When it comes to Representation, this system can only function through the employer's organizations or employee's organization.
- For the complaints process, the qualified applicants are the member state, the governing body and an International Labour Conference delegate. As a result, First of all, it is a fact that the workers who are actually the victims by themselves won't be able to initiate the process of the special supervising system.
- Secondly, the question is that when workers live in the countries where there aren't any labour associations nor trade associations (or in the case when those organizations don't function properly for any reason), this becomes very problematic. Consequently, it's crucial to modify this system based on the point of view of the workers who actually suffer from those violations.

EFFECTIVENESS OF NATIONAL AND INTERNATIONAL HEALTH AND SAFETY

- ILO Constitution sets forth the principle that workers must be protected from sickness, disease and injury arising from their employment.
- In addition to the immense suffering caused for workers and their families, the associated economic costs are colossal for enterprises, countries and the world.
- The losses in terms of compensation, lost work days, interrupted production, training and reconversion, as well as health-care expenditure
- Employers face costly early retirements, loss of skilled staff, absenteeism and high insurance premiums.
- Yet, many of these tragedies are preventable through the implementation of sound prevention, reporting and inspection practices.
- ILO standards on occupational safety and health provide essential tools for governments, employers and workers to establish such practices and provide for maximum safety at work.

PURPOSE AND PRINCIPLES OF ENFORCEMENT REGULATION

- Health and safety legislation needs government enforcement in order for it to be effective. In many countries, however, there are serious limitations in the way the laws are enforced.
- Government inspectors are needed to inspect, monitor and enforce the law in workplaces.
- These inspectors are known as health and safety inspectors or factory inspectors and are under the authority of the Ministry of Labour or the equivalent.
- Inspectors should make sure that employers comply with the minimum legal health and safety standards.
- However, their authority is limited to the extent of the legislation; weak and ineffective legislation gives inspectors little authority, and the result may be little or no action to improve working conditions.

PROBLEMS IN ENFORCEMENT OF HEALTH AND SAFETY LEGISLATION

- Many trade unions have identified a number of problems with the enforcement of health and safety legislation in their countries. Common problems include the following:
- There are not enough inspectors (try to find out how many inspectors there are in your country and roughly how many workplaces. You will see that it is impossible for inspectors to visit every workplace on a regular basis. Most inspectors will visit the biggest factories or those with known health and safety problems).
- Many inspectors have only limited training in the field of occupational health and safety.
- Many inspectors have to do their job with virtually no equipment or sources of information.
- Inspectors can enforce only existing legislation, but the legislation itself may not be powerful or protective.

PROPER ADEQUATE ENFORCEMENT SHOULD

- Ensure that sufficient trained, equipped personnel with access to sources of information are available to inspect workplaces and enforce laws
- Include regular, unannounced inspections of all workplaces
- Allow for penalties that are equal to the illegal action committed, including severe penalties for very serious offences
- Be supported by strong, protective legislation

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COMMON LIMITATIONS OF LEGISLATION

- When standards address only specific categories of workplaces, such as “factories” or “workshops”, many workers are left unprotected if they do not fit into those narrow categories. Also workers in the public sector and the self-employed are often not covered by current legislation.
- The penalties are limited for employers who are caught breaking the law, even for very serious offences.
- There are insufficient resources available for enforcing the laws and inspecting worksites.
- Most of the legislation that does exist deals with industrial safety and not occupational health.
- There is a lack of up-to-date, detailed regulations accompanying the act.
- Many employers and workers' organizations are not familiar with existing acts, regulations, codes of practice, guides, etc.
- Unions, workers and employers are not involved in the standard-setting process in any way.
- Many standards are written so unclearly from a worker's viewpoint that they cannot be used to uphold the law. (If a standard is unclear, then it is particularly important that contract language clarifies the issue and is not open to interpretation.)

WHAT SHOULD LEGISLATION DO?

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WHAT IS SAFETY AUDIT?

- Safety audit is a planned, independent, documented and a systematic approach of determining the success level of the Health and Safety Management System.
- It involves the collection of data, analyzing it and the result compared with the Organization's Health and Safety objective and organizational best practices.
- Safety audit accesses the efficiency, effectiveness, and reliability of the total health and safety management system of a company.
- It helps to identify emerging safety issues before they become problems and also serve as a catalyst for necessary changes to improve employee safety.

WHO SHOULD CONDUCT SAFETY AUDIT

- Safety audit can be conducted either internally or externally.
- Internally, it can be done by a senior management staff who possess the needed expertise or by an external consultant. The major advantage of internal audit is that; it is cheaper and the auditor also has the first-hand knowledge of the health and safety system which could serve as a guide during the process.
- However, an external audit is mostly preferred in order to prevent bias during the process.

WHAT IS THE DIFFERENCE BETWEEN AN AUDIT AND AN INSPECTION?

Audit

- Examines documents
- Examines procedures
- Interviews workers
- Verifies standards
- Checks the workplace
- Can be a long process
- Usually expensive
- Requires high level of competence

Inspection

- Checks the workplace
- Checks records
- Usually quick
- Lower cost
- May only require basic competence
- Part of an audit

PRE AUDIT PREPARATIONS

The following should be defined:

- Timescales
- Scope of the audit
- Area and extent of the audit
- Who will be required
- What documentation will be required
- Auditor competence
- Time and resources for auditors

DURING THE AUDIT

Auditors use three methods to gather information:

- Documentation - Documents and records
- Observation - Workplace, equipment, activities and behaviour
- Interviews - Managers and workers

DOCUMENTS EXAMINED DURING A HEALTH AND SAFETY AUDIT

Typical information examined during an audit:

- Health and safety policy
- Risk assessments
- Training records
- Minutes of safety committee meetings
- Maintenance records
- Record of monitoring activities
- Accident investigation reports and data
- Emergency arrangements
- Inspection reports from insurance companies
- Regulator visitors
- Worker complaints

END OF THE AUDIT

Verbal feedback session

- To managers
- Highlights of the audit

Written Report to Management

- Findings
- Recommendations
- Priorities and timescales

EXTERNAL AUDITS

Advantages	Disadvantages
<ul style="list-style-type: none">• Independent of any internal influence• Fresh pair of eyes• May have wider experienced at auditing• Experience of different types of workplace• Recommendations often carry more weight• Up to date with law	<ul style="list-style-type: none">• Expensive• Time consuming• May not understand the business so make impractical suggestions• Difficult to arrange

INTERNAL AUDITS

Advantages	Disadvantages
<ul style="list-style-type: none">• Less expensive• Auditors are already familiar with the workplace and what is practicable• Can see changes since last audit• Improves ownership of issues found• Builds competence internally• Workplace more at ease• Familiarity with workplace and individuals	<ul style="list-style-type: none">• Auditors may not notice certain issues• Auditors may not have good knowledge of industry or legal standards• Auditors may not possess auditing skills so may need training• Auditors are not independent so may be subject to internal influence

STATUTORY OBLIGATION FOR MAINTAINING HEALTH AND SAFETY

- All organizations have management processes or arrangements to deal with payroll, personnel issues, finance and quality control - managing health and safety is no different.
- Legal requirements include:
 - A written health and safety policy (if you employ five or more people)
 - Assessments of the risks to employees, contractors, customers, partners, and any other people who could be affected by your activities - and record the significant findings in writing (if you employ five or more people). Any risk assessment must be 'suitable and sufficient'
 - Arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures that come from risk assessment
 - Access to competent health and safety advice
 - Providing employees with information about the risks in your workplace and how they are protected

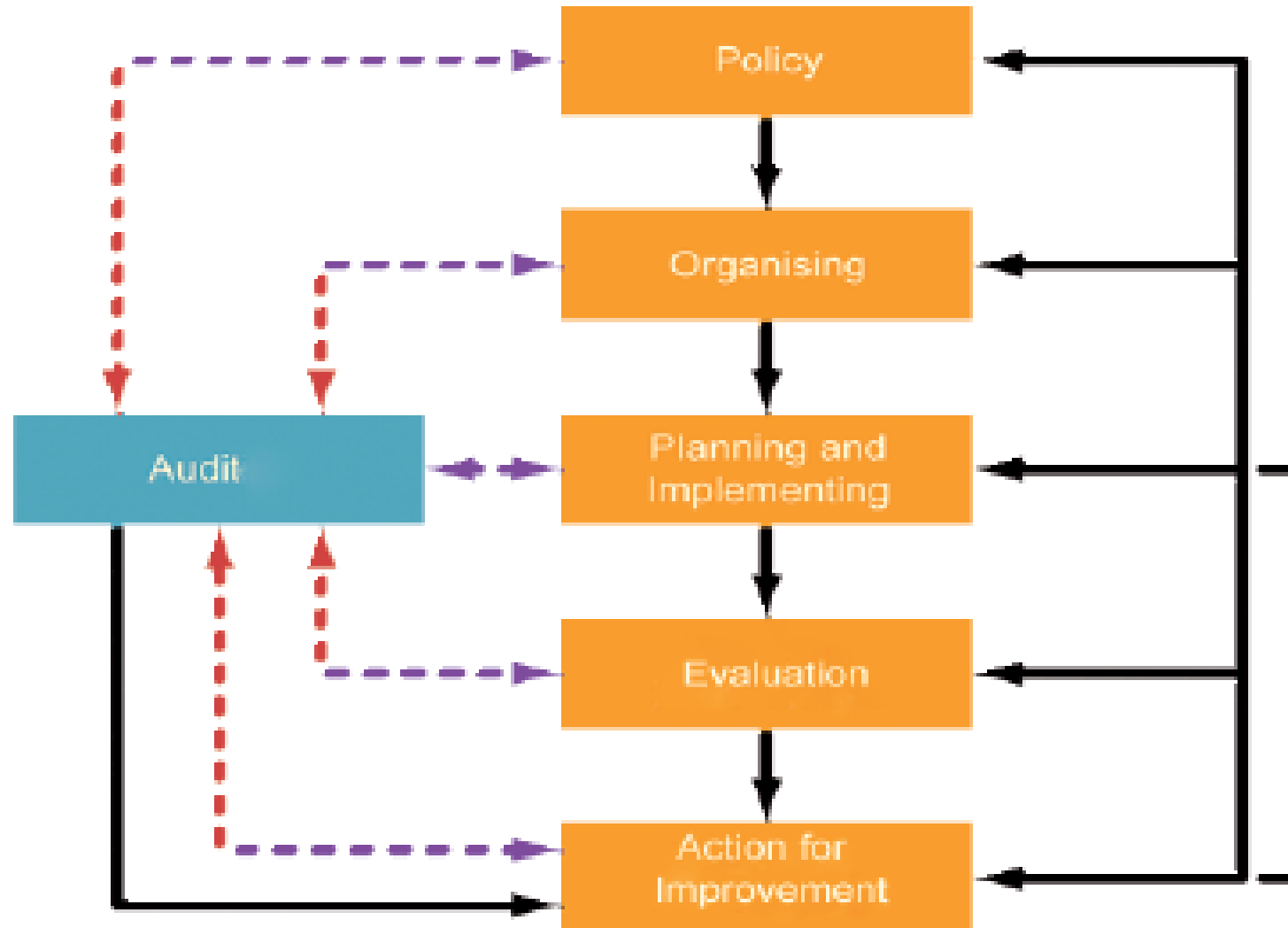
CONT.....

- Instruction and training for employees in how to deal with the risks
- Ensuring there is adequate and appropriate supervision in place
- Consulting with employees about their risks at work and current preventive and protective measures

CHALLENGES IN MAINTAIN H&S REGULATIONS : EVER-CHANGING SAFETY LAWS AND REGULATIONS

- Safety laws and regulations are often complicated and they keep evolving to create safer workplaces for people to work in.
- As a business owner or safety professional, it might get overwhelming for you to understand and keep up with all the safety laws and regulations.
- This gap may lead to non-compliance. The consequences of non-compliance with the safety laws and regulations can be quite fatal for your employees and the business.
- Hence, it is paramount for you to adapt to the changing laws, communicate them to your employees, and ensure that they are followed by everyone in your organisation.

SAFETY MANAGEMENT SYSTEM



SAFETY MANAGEMENT SYSTEM : KEY ELEMENTS OF ILO-OSH 2001

- We will cover this in more detail in a minute...
 - Policy
 - Organising
 - Planning and Implementing
 - Evaluation
 - Action for Improvement
 - Audit
- The system should develop over time to ensure continual improvement

SAFETY MANAGEMENT SYSTEM : KEY ELEMENTS OF ILO-OSH 2001

- **Policy**

- Clear statement of commitment to health and safety
- Set clear targets and objectives.

- **Organising**

- Roles and responsibilities for health and safety
- At all levels in the organisation
- from senior management down to shop floor.

- **Planning and Implementing**

- Detailed arrangements to manage H&S
 - Risk assessments
 - Conducting Training programs
 - Identify hazards, assess and control risks
 - Standard operating Procedure

SAFETY MANAGEMENT SYSTEM : KEY ELEMENTS OF ILO-OSH 2001

- **Evaluation**

- Methods to monitor and review the effectiveness of the arrangements
- Management must ensure that the systems and measures put in place are working effectively.

- **Action for Improvement**

- Steps to correct issues found in the evaluation
- Any defects identified by the review process must be set right as soon as possible

- **Audit**

- Independent, critical and systematic evaluation of the management system

INEFFECTIVE OHS POLICY

1. No commitment or leadership
2. No annual objectives
3. Health and safety not given enough priority
4. Insufficient resources provided
5. Personnel do not understand the aims
6. Too much emphasis on employee responsibility
7. No measurement of performance
8. Management unaware of their role
9. No training of management in their responsibilities

CIRCUMSTANCES IN WHICH HEALTH AND SAFETY POLICY TO BE REVIEWED

Some reasons for review

- Changes in key personnel
- Changes in management structure
- Changes in ownership
- Changes in processes
- Changes in technology
- Changes in legislation
- Incident
- Enforcement action
- After audit
- After worker consultation
- Passage of time e.g. annually

ROLE OF TRADE UNIONS

1. Negotiating improvement in and other non-wage benefits with employers.
2. Defending employees rights and jobs.
3. Improving working conditions eg. better hours of work, health conditions and safety policies.
4. Improving pay and other benefits, including holiday entitlement, sick pay and pension.
5. Encouraging firms to increase workers participation in business decision making.

CONT.....

1. Supporting members who have been dismissed unfairly.
2. Developing skills of union members by providing training and education Courses.
3. Providing social and recreational amenities for their members.
4. Influencing government policy and employment legislation.

Eg. minimum wages etc.

COLLECTIVE BARGAINING

Collective bargaining often take place for improved wages and other working condition if:

1. Inflation erodes the purchasing power of union members.
2. Other groups of workers have received pay while union members have not.
3. New machinery or working practices have been Introduced in the workplace which may make it more difficult for union members to do their work or might even replace them.
4. Labour productivity of their members have increased.
5. The profit of the employing organization has increased.

SOCIAL RESPONSIBILITIES OF ORGANIZATIONS TO DEVELOP HIGH STANDARDS OF HEALTH AND SAFETY

- Contributes to sustainable development, including health and welfare of society,
- takes account of the stakeholders' expectations,
- is in compliance with the applicable law and consistent with international norms of behaviour,
- is integrated throughout the organization and practiced in its relationships.

SOCIAL RESPONSIBILITIES OF ORGANIZATIONS TO DEVELOP HIGH STANDARDS OF HEALTH AND SAFETY

- are willing to incorporate social and environmental considerations in their decision-making processes and be accountable for the impacts of their decisions and activities on society and the environment,
- follow the general principles of social responsibility which include: accountability, transparency, ethical behaviour, respect for stakeholder interests, respect for the rule of law, respect for international norms of behaviour, respect for human rights.

CORPORATE SOCIAL RESPONSIBILITY (CSR) CAN INFLUENCE DEVELOPMENT OF OCCUPATIONAL SAFETY AND HEALTH (OSH) MANAGEMENT

- integration of safety and health into business processes,
- developing strategic approach to OSH that is compatible with strategic management,
- developing strategies that improve OSH but also foster innovation,
- combining the rational logic of prevention and safety management systems with ethical or value-driven approaches,
- developing the external stakeholder perspective for OSH, and involve and commit new powerful stakeholders in safety and health programs,
- developing more integrated approaches to safety and health, whereby occupational safety and health are no longer isolated from public safety and health, product safety, and whereby the safety and health responsibilities of companies are no longer limited to their own site