MINE HEALTH AND SAFETY IN SOUTH AFRICA
We will look at the following topics:

- A broad outline of and background to the Mine Health and Safety Act 29 of 1996 (MHSA).
- Institutions established by the MHSA: MHSI, MHSC, Health & Safety Committees.
- The risk based system of health and safety management and employers’ duties in terms of the MHSA.
- The enforcement of the provisions of the MHSA by the MHSI.
- Employees’ rights and duties in terms of the MHSA.
- The compensation schemes under COIDA and ODIMWA.
- A look at the rock fall on Lily Mine in Barberton from a health & safety perspective.
BACKGROUND TO THE MINE HEALTH AND SAFETY ACT
Mining has always been a major and very active industry in South Africa. Gold mining began in the Witwatersrand in 1886.

Mining is inherently dangerous and the legislation governing mine health and safety dates back to the late 19thC.

Prior to the enactment of the Constitution, Mine Health & Safety legislation was detailed and prescriptive:

- There was no provision for the representation of the majority black mineworkers on health and safety matters.
- Legislation was strict and prescriptive: ‘no one shall we exposed to harmful levels of dust underground.’
The change in South Africa’s political regime to a democracy and the enactment of the Constitution had an impact on mine health and safety legislation: section 24 of the Constitution guarantees everyone “the right to an environment which is not harmful to their health and well-being.”

The Leon Commission of Enquiry into Safety & Health in the Mining Industry (1995) found that the old (pre-constitution) legislative framework governing mine health and safety was inadequate:

- The laws had not been adequately enforced by government;
- The mining industry had been allowed to disregard key aspects of existing laws without any sanction;
- The accident record of the industry was ‘appalling’ and there were ‘serious occupational health problems’ in the industry;
- The Mine Health and Safety Inspectorate was under-resourced; and
- Urgent remedial action was necessary.
The regulation of health and safety on the mines is separate from other industries: mine health and safety is governed by the Mine Health and Safety Act (MHSA), other industries are governed by the Occupational Health and Safety Act (OHSA).

Primary aim of the OHSA & MHSA: PREVENTION of injury & disease.

The MHSA works in conjunction with legislation to compensate mineworkers to counter the failure to prevent occupational injury & disease:

- The Compensation for Occupational Injuries & Diseases Act (COIDA)
- The Occupational Injuries in Mines and Works Act (ODIMWA)
MINE HEALTH AND SAFETY ACT 29 OF 1996

The most important aims of the MHSA are to:
- Promote a culture of health and safety on the mines;
- Promote training in health and safety in the mining industry;
- Enforce health and safety measures; and
- Require employers and employees to identify hazards, and to eliminate, control and minimise risks to health and safety.
The MHSA brings the three major stakeholders in the mining industry together: industry (employers), labour (unions, employees) and the Government and sets out their respective rights and duties.

Important principles arising out of the MHSA:

1. Employers have a duty and responsibility to protect the health and safety of employees that are exposed to occupational health and safety hazards and risks.

2. The state has the duty and responsibility to effectively regulate health and safety conditions at work places on the mines.

3. The employee has the right to refuse to work in an environment that may endanger his/her health or safety.
The MHSA establishes the Mine Health and Safety Inspectorate (MHSI), headed up by the Chief Inspector of Mines (CIM).

- The CIM (appointed by the Minister) is required to implement the MHSA and administer the Inspectorate.
- The MHSI plays a proactive role in the promotion of health and safety and it has the powers to enforce compliance with the Act.

The MHSA establishes the Mine Health & Safety Council (MHSC) which advises the Minister on health & safety at the mines.

- The MHSC is chaired by the CIM and is made up of representatives from the employers, employees and the state departments.
MINES employing less than 100 employees must have health & Safety Representatives.

MINES employing more than 100 employees must have a health & safety representative for each shift and one or more health & safety committees.

Health & safety representatives are elected by the employees and they represent employees on all aspects of health & safety.

Health and safety committees consist of employee and employer representatives.
Health & safety representatives and committees are appointed only after negotiation and consultation with the representative trade union at the mine to conclude a collective agreement to regulate health & safety. These agreements address issues including:

- Number of health & safety representatives / committees at a mine;
- Number of employer / employee representatives;
- Election and appointment of representatives and term of office;
- Manner and circumstances in which meetings may be held;
Health & safety representatives and committees have broad powers e.g. requesting the Chief Inspector of Mines to investigate any accident on a mine which results in serious injury or illness of any person (s36), to represent employees on all aspects of health & safety including the power to participate in CIM inquiries into any accident on a mine which results in serious injury or illness of any person (s30).

Employers are obliged to keep health & safety representatives and committees informed of all developments regarding inspections, investigations and inquiries in order for them to play a role and make contributions to health & safety (s 32).

Disputes arising out of the appointment of health & safety representatives or committees, or the disclosure of information, are referred to the CCMA and follow its procedures for dispute resolution.
EMPLOYERS’ DUTIES IN TERMS OF THE MHSA
What is risk based management of health & safety (in contrast to previous strict prescriptive regime)?

(1) Identification of Risk: the hazards associated with each and every process and their associated tasks on site have been identified, the likelihood of the hazard being realised has been assessed, and the potential harm the hazard could cause either to people, property or the wider environment has been evaluated.

(2) Control and record of risk: The required risk control measures have been put in place, and the whole process for each individual risk assessment has been documented.

(3) Access to information: Each risk assessment is made freely available to anyone who wishes to see it, and is reviewed on a regular basis (i.e. every 12 – 24 months) or changed in the light of prevailing circumstances (e.g. new equipment installed; reductions in Manning levels, etc.).
In terms of the MHSA, employers are primarily responsible for ensuring a healthy and safe environment on the mines:

Employers are required to do what is reasonably practicable to fulfil their health and safety duties and responsibilities to their employees and surrounding communities.

reasonably practicable – means practicable having regard to:

(a) the severity and scope of the hazard or risk concerned;
(b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;
(c) the availability and suitability of means to remove or mitigate that hazard or risk; and
(d) the costs and the benefits of removing or mitigating that hazard or risk.
To fulfil their responsibilities in terms of the MHSA, employers have a range of responsibilities. They must adopt and follow a formal risk assessment process (section 11) in terms of which they are required:

1. To identify the hazards to health and safety to which employees may be exposed at work;
   1. to assess the risk to health and safety posed by those hazards;
   2. Record the hazard identified and risks assessed;
   3. Make the records available to employees for inspection

2. After consultation with the health and safety committee, to determine measures necessary to eliminate, control or minimise the risk:
   1. Insofar as any risk remains, employers are required to provide personal protective equipment to employees.

3. Implement measures (identified in 2) so far as reasonably practicable.
Employers are continuously required to:

1. Periodically review whether risks to health & safety can be further minimised (in consultation with the health & safety committee).
2. Conduct an investigation into every accident and serious illness in consultation with the health & safety committee.
3. Report on the cause of the accident or illness and recommend ways of preventing future similar accidents or illnesses.
4. Furnish the MHSI and the health & safety committee with the report.
Employers must also:

- develop a health and safety policy (s8).
- prepare and implement a code of practice (COP) which sets out the control measures currently in place to protect the workforce and reduce risks (s9).
- provide job specific health and safety training which takes into account hazards and risks (s10).
- introduce a system of occupational hygiene measurement in order to measure levels of exposure to hazards and to establish a system of medical surveillance (ss12 and 13).
- keep records of hazardous work and medical surveillance and produce annual medical reports (ss 14, 15 and 16).
What steps could or should have been taken to prevent the accident at Lily mine?

What are the employer’s duties after the rock fall at Lily mine?
DUTIES OF THE STATE IN TERMS OF THE MHSA
DUTIES OF THE MHSI

- The primary functions of the MHSI are to:
  - Inspect mines;
  - Investigate and conduct inquiries into accidents and other health & safety incidents; and
  - Enforce compliance with the MHSA

- The principles of enforcement are:
  - Proportionality and responsiveness;
  - Transparency (employers and union representatives);
  - Consistency, impartiality and non-discriminatory;
  - Targeted towards activities generating considerable risk/harm to health & safety; and
  - Due process (PAJA applies);
  - Accountability (MHSI is accountable to govt, public, employers and employees);
Depending on the seriousness of an offence, the MHSI has powers to enforce compliance with the MHSA. It may:

- Inform and educate stakeholders though letters or directives, and workshops, or set mandatory guidelines for Codes of Practice.
- Issue compliance or closure notices;
- Order compliance by issuing instructions requiring the employer to improve the working conditions at a mine within a specified time;
- Issue an instruction to suspend or halt the operations or part thereof;
- Issue an administrative fine;
- Suspend or cancel a certificate of competency issued in terms of the MHSA.
- Recommend criminal prosecution.
The imposition of administrative fines by inspectors for non-compliance has failed to serve as a deterrent to employers because they are very low (max R200 000) and employers are reluctant to pay them, as payment is viewed as an admission of guilt.

As an alternative to imposing fines, the MHSA makes provision for criminal sanction for failure to comply with its provisions. Chapter 7 of the MHSA (section 86) provides that it is a criminal offence to negligently cause serious injury or illness to anyone on a mine.

Whilst cases have been referred to the National Director of Public Prosecution, no criminal prosecutions have ever been carried out for the death and / serious injury cause by exposure to harmful levels of dust in a mine.
What action may the MHSI take following the rock fall at Lily mine in Barberton?
EMPLOYEES’ RIGHTS & DUTIES IN TERMS OF THE MHSA
In terms of the MHSA, employees have the following rights:

- Exit medical examination and certificate (at the employer’s cost) if employment is terminated for any reason (s17);
- Access to their medical surveillance records (PAIA request case pending) (s19);
- Appeal a finding of unfitness to perform work (s20);
- Representation on the Mine Health & Safety Committee and the MHSC (s42).
- To information, instruction, training or supervision necessary to perform work without risk to health and is aware of work-related hazards and risks and measures to be taken to minimise, eliminate and control hazards and risks (s10).
- To leave a working place which pose a danger to the employee’s health or safety (s23);
  - No objective standard to determine when it is justified to stop work.
  - **NUM V Driefontein Consolidated**: (1) to decide whether exercising the right to stop work is justifiable one must not lose sight of the circumstances of the mining industry as a whole.
  - (2) once the complaint has been investigated and the workplace has been made safe, employees cannot refuse to return to work.
Mine employees must (s22):

- Take reasonable care to protect their own health & safety and that of others;
- Use and take care of protective clothing, facilities and equipment provided by the employer;
- Report any risks to health or safety to their immediate supervisor;
- Cooperate with persons enforcing the provisions of the MHSA.
COMPENSATION FOR OCCUPATIONAL INJURY OR DISEASE: COIDA & ODIMWA
The MHSA gives content to the employer’s duty of care it owes to employees and provides a framework of preventative legislation with the aim of preventing occupational injury and/or disease on the mines.

The MHSA aims to hold employers to account for failing to comply with its provisions by providing for a range of criminal and administrative sanctions.

However, as in the past, there is not strict enough enforcement of the MHSA and employees suffering from occupational injuries and disease have recourse in the form of compensation provided for in COIDA and ODIMWA.
COIDA compensates mineworkers who suffer injuries as a result of accidents on the mine (e.g. broken limbs from a rock fall).

COIDA falls under the Department of Labour and administered by Rand Mutual Assurance (RMA).

Compensation is paid out according to % disability, permanent or temporary.

There is provision for payment of pensions for serious and permanent disability.

No right to sue for damages in addition to compensation.
Mineworkers who suffer occupational lung disease fall under the ODIMWA compensation scheme.

In contrast to COIDA:
- ODIMWA falls under the Department of Health;
- It is administered by the MBOD (failing system: 100 000 claim backlog)
- ODIMWA provides for benefit medical exams for mineworkers after leaving work on the mines at the state’s expense;
- Compensation is in the form of a once off lump sum payment (topped up if disease progresses), maximum of R105 000.
- No MBOD offices beyond SA’s borders.
- Right to sue for damages in addition to compensation.
MERGING OF ODIMWA INTO COIDA

- Three departments: Health, Labour and Mineral Resources aim to merge ODIMWA and COIDA schemes: mineworkers with lung disease to fall under COIDA scheme.

- Positive outcomes:
  - Increased benefits for occupational lung disease;
  - Better administration and access to benefits;

- Negative outcomes:
  - Loss of right to sue for damages;
  - No BMEs or autopsies;
  - No provision for ‘top up’ payments for disease progression;
  - Who to pay? ‘orphaned’ mineworkers?
Are mineworkers injured in the rock fall entitled to compensation? COIDA or ODIMWA?
THANK YOU