

March 7, 2014

New Construction Regulations of the Occupational Health and Safety Act

New Regulations

- On 7th February 2014, the Minister of Labour promulgated the new Construction Regulations 2014.
- The Regulations make considerable changes to the statutory requirements of occupational health in construction, which apply immediately.

Medical certificate of fitness for all employees

- In the old Construction Regulations, the medical certificate of fitness was only required for employees doing defined risk work, including heights work, work on suspended scaffolds, tower crane operators, construction vehicle- and mobile plant operators.
- The new regulations require that **all** construction employees are in possession of a medical certificate of fitness **specific to the construction work** to be performed.

Medical certificate of fitness: format and competent issuer

Whereas the old Construction Regulations referred to a medical certificate of fitness as 'a certificate valid for one year issued by an occupational health practitioner, issued in terms of these regulations, whom shall be registered with the Health Professions Council of South Africa', the new Regulations:

1. No longer define a **period of validity**; and
2. Require that the medical certificate of fitness is **specific to the construction work**; the document-format is defined in Annexure 3, which outlines a type of OREP; and
3. Define that the medical certificate must be issued by an **occupational health practitioner**; the Occupational Health and Safety Act defines an occupational health practitioner as 'an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council or the South African Nursing Council'.

Medical certificates of fitness for safety critical workers

- The new Regulations still define specifically that employees engaged in high risk work on a construction site, including heights work, work on suspended scaffolds, tower crane operation, driving a construction vehicle or operating mobile construction plant, require a medical certificate of fitness.
- Whereas the old Regulations defined that heights workers and suspended platform workers receive a 'physical and **psychological**' assessment, the new Regulations use the term '**evaluation of the employees' medical fitness necessary to work at a fall risk position or such similar environment**'.

Fall risk

The debate on how high a construction worker has to work for it to become a fall risk has been removed in quantitative terms and a pragmatic but practical definition has been

introduced describing the fall safety risk as ***'any potential exposure to falling either from, off or into'***.

Medical surveillance

- Whilst the new Regulations (similar to the old) refer only to Asbestos and Lead medical surveillance, all the requirements of the Occupational Health and Safety Act and Regulations apply.
- Medical surveillance is thus mandatory for employees exposed to health risks due to, thermal hazards, noise, hazardous chemical substances, hazardous biological agents or any other hazard (such as ergonomic, psycho-social etc.) identified in terms of the employers duties defined in Section 8.

The SASOM executive has commissioned a team of occupational medical experts to define risk-based standards for fitness for work and medical surveillance testing in a new Guideline to be released.

Legal references

Abbreviations

CR 2014: OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 - CONSTRUCTION REGULATIONS, 2014 - Published under Government Notice R84 in *Government Gazette* 37305 of 7 February 2014.
CR 2013: OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993 - CONSTRUCTION REGULATIONS, 2003 - Published on 18 July 2003

Definitions

- CR 2014: Regulation 1: Definitions: "Medical certificate of fitness": "means a certificate contemplated in regulation 7(8); Regulation 7(8): A contractor must ensure that all his or her employees have a valid medical certificate of fitness specific to the construction work to be performed and issued by an occupational health practitioner in the form of Annexure 3.
- CR 2003 Old "medical certificate of fitness" means a certificate valid for one year issued by an occupational health practitioner, issued in terms of these regulations, whom shall be registered with the Health Professions Council of South Africa

Duties of the Principal Contractor

CR 2014: Regulation 7(8): A contractor must ensure that all his or her employees have a valid medical certificate of fitness specific to the construction work to be performed and issued by an occupational health practitioner in the form of Annexure 3

Fall protection

- CR 2014: Regulation 10(2)(b): A fall protection plan contemplated in subregulation (1), must include (b) the processes for the evaluation of the employees' medical fitness necessary to work at a fall risk position and the records thereof;
- CR 2003 old: Regulation 8(1)(b) (b) the processes for evaluation of the employees' physical and psychological fitness necessary to work at elevated positions and the records thereof

Suspended Platforms

- CR 2014: Regulation 17(12)(a): A contractor must ensure that all employees required to work or to be supported on a suspended platform are-(a) medically fit to work safely in a fall risk position or such similar environment by being in possession of a medical certificate of fitness;
- Cr 2003 Old: Regulation 15(12) A contractor shall ensure that all employees required to work or to be supported on a suspended platform are (a) physically and psychologically fit to work safely in such an environment by being in possession of a medical certificate of fitness;

Cranes

CR 2014: Regulation 22 (f): A contractor must, in addition to compliance with the Driven Machinery Regulations, 1988 ensure that where tower cranes are used (f) the tower crane operators have a

medical certificate of fitness to work in such an environment, issued by an occupational health practitioner in the form of Annexure 3.

Construction vehicles and mobile plant

CR 2014: Regulation 23(1)(d)(ii): A contractor must ensure that all construction vehicles and mobile plant-(d) are operated by a person who-(ii) has a medical certificate of fitness to operate those construction vehicles and mobile plant, issued by an occupational health practitioner in the form of Annexure 3;

CR 2014: Annexure 3: medical certificate of fitness