

EMPLOYMENT

Johannesburg CBD fire – health and safety at work

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The recent fire which broke out in a government building in central Johannesburg lead to the tragic loss of lives of three firefighters who were attempting to put out the blaze. The lives, and health of safety of employees working in the building were also put at risk. The latest reports are that the building is only 21% compliant with applicable health and safety regulations, and as such, employees are being allowed to stay at home until such time as a new, compliant premises is available. The situation raises a number of legal considerations for workers in situations in which their health and safety may be compromised by an employer.

Primarily, all employees are protected by health and safety legislation. The Occupational Health and Safety Act, 85 of 1993 (“OHSA”), provides at a high level that “Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees”. The OHSA sets out in detail, through General Safety Regulations, the specific obligations imposed on all employers to ensure that workplaces are safe, free from hazards, and that hazard assessments are conducted to ensure real-time knowledge and assessment of risks that may expose employees to unsafe working environments. Any employer who fails to comply with these requirements would be in breach of OHSA, and subject to fines or penalties.

More particularly, employees who are affected by incidents such as the recent fire, would be entitled to the continuation of the employment relationship, notwithstanding that they may be unable to work due to the closure of the premises. As such, even if they are not working, or not at work, this is due to no fault of their own, and they are considered to be tendering their services in the normal course. If the employer is unable to utilise those services, for reasons such as the closure of the premises, it must still pay the employees their usual salaries and benefits in the normal course. Employees may agree to take unpaid periods or leave, or to take annual leave, but these interim measures cannot be imposed on employees in such circumstances without their consent. If injuries have been sustained, and medical certificates can be provided to the employer, paid sick leave will be available to the employees as well.

In addition, if any employees have sustained injuries in the fire, or in any other circumstances in which injury results from the employee performing duties in the course and scope of their employment, these injuries should be compensable in terms of compensation fund legislation. Reports of any injuries should be made by employees to their employer as soon as possible after the injury was sustained, so that the employer can notify the compensation fund. At that point, the Compensation Fund steps in legally to assume liability for the claims.

Employees should be aware of their rights, and their employer’s obligations to ensure that they are not exposed to unsafe working conditions. To the extent that recalcitrant employers are negligent or refuse to comply with their obligations, employees should also be aware that whistleblowing to the relevant regulatory authorities may be an option to force action before unfortunate incidents such as the recent fire take place.

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