

## INSPECTIONS BY DEL OHS INSPECTORS - PART 3 – NOTICES SERVED ON THE EMPLOYER

So after the inspector has done all the introductory bits and has informed you about the nature of the inspection and has also at this stage completed the inspection, administrative and physical walk-about components, the inspector would have identified contraventions (shortcomings) in terms of the Occupational Health and Safety Act and/or its Regulations (OHSA). Remember that the Inspector could also identify shortcomings/contraventions in terms of any of the 'Incorporated' South African National Standards (SANS) that falls within the administrative remit of the South African Bureau of Standards (SABS).

Of course it is possible that the inspector did not find any contraventions on the day of the inspection/audit. That is very possible. You have different inspectors that have different disciplines, viz., the inspector has a qualification such as a three (3) year qualification or degree in Chemical Engineering, Mechanical Engineering, Electrical Engineering, Construction, Environmental Health (Occupational Hygienists), etc. They are then trained to perform the functions of an inspector. You have inspectors with varying levels of experience of course ranging possibly from a year to thirty plus years.

So then, lets get back to the key issue, after the inspection has been conducted. Remember all the while that the inspection is being conducted, the inspector must ensure that he/she is accompanied by person(s) from the company which may include persons representing the company but must, when they are appointed, be accompanied by the relevant health and safety representative for each area of responsibility. Size of the company being the determinant and also, instead of a company, it could be a 'User'. The inspector may also be accompanied by the recognised shopsteward on site. The inspector would also have interviewed at least two employees whose names are to be recorded in the inspector's report.

A senior manager must accompany the inspector in my opinion. I have always found it in poor taste when a company sends a junior person with an inspector during an inspection. This a clear sign of the poor sense of responsibility of the Chief Executive Officer (CEO) and/or the Board of Directors, Main Member(s), senior Management of a company. Remember, the company is obliged to provide any such reasonable resources as may be required in the performance of his/her functions as an inspector. The inspector may also have a person accompanying him/her on the inspection who may include: an interpreter, SAPS, person with technical knowledge, etc. but such person(s) must be under the supervision of the inspector while on site.

The inspector could at this stage write out the relevant notices based on the findings observed during the inspection. There are three possible notices an inspector could issue to an employer. An inspector could issue all three notices to the employer at the end of an inspection. It is not a case of first serving a contravention notice before a prohibition notice is served. The inspector is expected to write out the notices on site and to get the employer to sign for the notices after the inspector has finalised the process of writing up the notices. It should be noted that even if the employer or anyone representing the employer does not sign for the notices, this does not negate the notices in any way. Let's remember that a contravention is a criminal offence and the CEO is responsible and therefore accountable for what happens at any specific workplace in line with the OHSA. Can the Inspector legally require the employer to meet with him or her in his/her office, of course they can ... again, in line with OHSA. The types of Notices an inspector may issue primarily to an employer includes: Contravention Notice, Improvement Notice and a Prohibition Notice.

A contravention notice is issued for any act or omission of an employer in the interest of health and safety, in other words it is written down in OHSA and the employer was required to ensure that it was done as it is written. In the case of a prohibition notice though, if there is anything which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person, the inspector may in writing prohibit that employer from continuing or doing such act. I will cover this in greater detail in another article as there is quite a bit that is involved here.

A special note should be raised here at this point, any prohibition notice issued must be removed by the inspector in writing after the inspector is satisfied with the compliance after being notified by the employer that he/she complies with the content of the notice(s).

The improvement notice is rather a unique direction requiring the employer to 'improve' on a particular situation. For example, an AIA (Approved Inspection Authority) has made recommendations based on an hygiene survey conducted but the employer has not implemented the recommendations, the inspector, depending on the severity of the issue raised may issue an improvement notice or prohibition notice. Another example could be that the guard at a press or any other machine has been provided but during the assessment, the inspector determines that the guard may require modification to further improve on the guard(s) provided.

Don't forget, after the inspection was conducted, the employer provides a suitable facility for the inspector to provide feedback to the employer and his/her team on what he/she found during the course of the inspection and reflects on the reasons for the notices issued. This feedback is not to negotiate the content of the notices but rather to ensure the employer and his/her team are clear on what needs to be addressed to ensure compliance and in so doing, ensure the formal removal of any notices served.

An employer is given 60 days effectively to address any shortcomings and, if necessary, to Appeal any notice that the employer feels requires further consideration in the light of what may be presented. This will be dealt with in greater detail in the next publication. After the 60 days, the inspector will recommend a prosecution for non compliance to the Office of the Public Prosecutor.

Lastly, that an inspector may decide to issue no notices on the employer/user, that means that the inspector was unable to identify any contraventions. The employer will not receive anything in writing indicating that there were no findings. Every workplace or place of work is a dynamic environment that changes continually over time. Any inspection that happens on any specific day is valid up until the notice is issued. Of course that stands to reason.

Next time (Part 4), we will look at In the next article we will look into and consider Appeals and Exemptions and how you may use it to assist you.

Tibor Szana

Chief Inspector: OHS (Ret.)