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MINE HEALTH AND SAFETY ACT, 1996 (ACT NO 29 OF 1996)

GUIDELINE FOR A MANDATORY CODE OF PRACTICE ON THE RIGHT TO REFUSE DANGEROUS WORK AND LEAVE DANGEROUS WORKING PLACES

I DAVID MSIZA, Chief Inspector of Mines, under section 49(6) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) and after consultation with the Council, hereby issues the guideline for a mandatory code of practice on the right to refuse dangerous work and leave dangerous working places in terms of the Mine Health and Safety Act, as set out in the Schedule.

(Signed)
DAVID MSIZA
CHIEF INSPECTOR OF MINES

SCHEDULE

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DEPARTMENT OF MINERAL RESOURCES

MINE HEALTH AND SAFETY INSPECTORATE

GUIDELINE FOR THE COMPILATION OF A

MANDATORY CODE OF PRACTICE ON

THE RIGHT TO REFUSE DANGEROUS WORK AND LEAVE A DANGEROUS WORKING PLACE

(Signed)
CHIEF INSPECTOR OF MINES

mineral resources
Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

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PART A: THE GUIDELINE

1. FOREWORD

1.1 At the MHSC OHS Summit held in November 2011, the stakeholders adopted an action plan aimed at improving various aspects of health and safety at mines. As part of implementing the 2011 Summit Action Plan, the MHSC subsequently instructed MRAC to develop a draft guideline on the RRDW for the South African mining sector. This guideline has its origins in that request.

1.2 Under common law employers are required to provide and maintain a work environment that is safe and without risk to the health or safety of employees. This is reflected in section 2 of the MHS Act which requires the

employer to ensure, as far as reasonably practicable, that the mine is commissioned, operated, maintained and decommissioned in such a way that employees can perform their work without endangering the health and safety of themselves or of any other person.

1.3 Arising from this entitlement to a safe working environment, employees have the RRDW under common law. (There are certain exceptions, e.g. policemen, firemen, security guards, etc. who are specifically employed to do certain dangerous work.) This right entails not only that the employee is entitled to leave a working place where he / she has reason to believe that the working place is unsafe (the RLDWP), but also that an employee is entitled to refuse to do work in a working place that is safe, but in which there is any equipment, machine, device or thing the employee is required to use or operate which is likely to endanger himself/herself or any other employee (the RRDW). Put differently, the RRDW can be exercised either by refusing to do the required work but remaining in the working place, or by refusing to do the required work and leaving the working place.

1.4 Section 23(1)(a) of the MSHA partly reflects the common law mention above. It gives employees the RLDWP if circumstances arise which, with reasonable justification, appear to that employee to pose a serious danger to the health or safety of that employee or if the health and safety representative responsible for that working place directs that employee to leave that working place. The fact that section 23 does not mention the RRDW does not mean employees do not have that right. This guideline will cover both these rights.

1.5 This Guideline was informed by two studies conducted by the Centre for Sustainability in Mining and Industry (CSMI) of the University of the Witwatersrand, i.e. International Legislative Review 'The Right to Refuse Dangerous Work' (August 2013) and a Sector Wide "Quantitative and Qualitative Study on The Right to Refuse Dangerous Work" (September 2013).

1.6 Section 23(2) of the MSHA requires the employer, after consulting the health and safety committee at the mine, to determine effective procedures for the general exercise of the rights granted by section 23(1). The purpose of this guideline is to assist the employer in drawing up its COP so that it contains such effective procedures for the general exercise of the RRDW and the RLDWP and that the employer complies with section 23(2).

2. LEGAL STATUS OF GUIDELINES AND CODES OF PRACTICE

In accordance with section 9(2) of the MSHA an employer must prepare and implement a COP on any matter affecting the health or safety of employees and other persons who may be directly affected by activities at the mine if the Chief Inspector of Mines requires it. These COPs must comply with the relevant guideline issued by the Chief Inspector of Mines (section 9(3)). Failure by the employer to prepare or implement a COP in compliance with this Guideline is a breach of the MSHA.

3. OBJECTIVE OF THE GUIDELINE

3.1 The objective of this guideline is to assist the employer, in consultation with the health and safety committee at the mine, with the drafting of a COP including a procedure to be followed by the employees, health and safety representatives, and employers in the exercise of the RRDW and RLDWP.

3.2 It provides guidance of a general nature on the required format and contents for the COP and details sufficient information to enable the employer at the mine to prepare a comprehensive and practical procedure for the exercise of the RRDW and RLDWP.

4. DEFINITIONS AND ACRONYMS

In this guideline for a COP or any amendment thereof, unless the context otherwise indicates:

"COP" means Code of Practice;

"DMR" means Department of Mineral Resources;

"EMPLOYEE" means any person who is employed or working at a mine;

"MHSA" means Mine Health and Safety Act, 1996 (Act No. 29 of 1996), as amended;

"MHSC" means the Mine Health and Safety Council;

"MRAC" means the Mining Regulation Advisory Committee;

"OHS" means occupational health and safety;

"RLDWP" means the right to leave a dangerous working place;

"RRDW" means the right of refusal to do dangerous work;

"Reasonable justification" means that the employee has some objective information that makes him or her believe there are unsafe conditions at the working place or the work to be done is unsafe to the extent that there is an imminent and serious danger to the health or safety of person at that working place. The employee does not have to be correct in his or her knowledge or belief, but such belief should be reasonable given the information of the employee. These principles apply to both the RRDW and RLDWP

5. SCOPE

This mandatory guideline covers the legislative background to and procedures for exercising of the RRDW and RLDWP.

6. TASK GROUP MEMBERSHIPS

The members of the Task Group involved in the preparation of this guideline were:

State

- (a) Anthony Coutinho
- (b) Maelula Ramabulana
- (c) Shimanyana Kgosiemang
- (d) Kevin Hewitson

Employers

- (a) Anton van Achterbergh
- (b) Duncan Scott

Labour

- (a) Paul Mardon
- (b) Martha Llale

Consultant

- (a) Noel Williams

PART B: AUTHOR'S GUIDE

1.1 The COP must, where possible, follow the sequence laid out in Part C "Format and Content of the COP". The pages as well as the chapters and sections must be numbered to facilitate cross-reference. Wording must be unambiguous and concise.

1.2 It should be indicated in the COP and on each annexure to the COP whether:

1.2.1 The annexure forms part of the COP and must be incorporated in the COP or whether aspects thereof must be incorporated in the COP; or

1.2.2 The annexure is merely attached as information for consideration

in the preparation of the COP.

1.3 When annexures are used the numbering should be preceded by the letter allocated to that particular annexure and the numbering should start at one (1) again, (e.g. 1, 2, 3, A1, A2, A3,...).

1.4 Whenever possible illustrations, tables, graphs and the like should be used to avoid long descriptions and/or explanations.

1.5 When reference has been made in the text to publications or reports, references to these sources must be included in the text as footnotes or sidenotes as well as in a separate bibliography.

PART C: FORMAT AND CONTENT OF THE MANDATORY CODE OF PRACTICE

1. TITLE PAGE

The COP should have a title page reflecting at least the following:

1.1 The name of mine;

1.2 The Heading: "Mandatory Code of Practice on the Right to Refuse Dangerous Work and Leave a Dangerous Working Place";

1.3 A statement to the effect that the COP was drawn up in accordance with Guideline DMR Reference Number DMR 16/3/2/1-A6 issued by the Chief Inspector of Mines;

1.4 The mine reference number for the COP;

1.5 Effective date; and

1.6 Revision dates (if applicable).

2. TABLE OF CONTENTS

The COP must have a comprehensive table of contents.

3. STATUS OF MANDATORY COP

This section must contain statements to the effect that:

3.1 The mandatory COP was drawn up in accordance with Guideline DMR Reference Number: DMR 16/3/2/1-A6 issued by the Chief Inspector of Mines;

3.2 This is a mandatory COP in terms of sections 9(2) and 9(3) of the MHSA;

3.3 The COP may be used in an accident investigation/inquiry to ascertain compliance and also to establish whether the COP is effective and fit for purpose;

3.4 The COP supersedes all previous relevant COPs; and

3.5 All managerial instructions or recommended procedures (Voluntary COPs) and standards on the relevant topics must comply with the COP and must be reviewed to ensure compliance.

4. MEMBERS OF DRAFTING COMMITTEE

4.1 In terms of section 9(4) of the MHSA the employer must consult with the Health and Safety Committee on the preparation, implementation or revision of any COP.

4.2 It is recommended that the employer should, after consultation with the employees in terms of the MHSA, appoint a committee responsible for the drafting of the COP.

4.3 The members of the drafting committee assisting the employer in drafting the COP should be listed giving their full names, designations, affiliations and experience. This committee should include competent persons sufficient in number effectively to draft the COP.

5. GENERAL INFORMATION

General relevant information relating to the mine must be stated in this paragraph. The following minimum information must be provided:

5.1 A brief description of the mine and its location;

5.2 The commodities produced;

5.3 The mining methods or combination of methods used at the mine must be listed and their particular risks associated with these methods;

5.4 The unique features of the mine that have a bearing on this COP must be set out and cross-referenced to the risk assessment conducted; and

5.5 Other relevant COPs.

6. TERMS AND DEFINITIONS

Any word, phrase or term of which the meaning is not absolutely clear or which will have a specific meaning assigned to it in the COP, must be clearly defined. Existing and/or known definitions should be used as far as possible. The drafting committee should avoid jargon and abbreviations that are not in common use or that have not been defined. The definitions section should also include acronyms and technical terms used.

7. RISK MANAGEMENT

Section 11 of the MSHA requires the employer to identify hazards, assess the health and safety risks to which employees may be exposed while they are at work, record the significant hazards identified and risks assessed. Other related COPs must address how the significant risks identified in the risk assessment process must be dealt with, having regard to the requirements of section 11(2) and 11(3) that, as far as reasonably practicable, attempts should first be made to eliminate the risk, thereafter to control the risk at source, thereafter to minimise the risk and thereafter, insofar as the risk remains, provide personal protective equipment and to institute a programme to monitor the risk. Where despite these controls a significant imminent risk arises employees may need to exercise the RRDW or the RLDWP.

8. ASPECTS TO BE ADDRESSED IN THE COP

While the main purpose of the COP should be to set out an effective mine specific procedure for employees to exercise their RRDW and RLDWP, it is important for that procedure to be put in context, so that employees and management understand and are in agreement how it fits into the overall risk management process at the mine. It is therefore recommended that the COP should include the aspects set out below.

8.1 Legislative background

The COP should first set out the legislative background relating to the RRDW and RLDWP. Annexure 1 sets out the common law and most of the relevant MSHA provisions. Those provisions of Annexure 1 which are relevant to the circumstances at the mine should be included in the COP in a logical sequence and in simple language which the persons at the mine would clearly understand. Annexure 1 is attached for information purposes and should be consulted in the preparation of the COP.

8.2 Summary of major health and safety hazards

The COP should set out a table of the major health and safety hazards identified in terms of the mine's risk assessment which may give rise to employees having to exercise the RRDW or RLDWP. This table should also identify the major dangers associated with each such identified hazard. The table should be reviewed and updated on a regular basis and therefore it may be preferred to attach it as an annexure to the COP. Annexure 2 is an example of how this could be done. This is by no means an exhaustive list, but a list of some commonplace hazards. The hazards in Annexure 2 may not be relevant to the mine and are given for illustrative purposes only. Annexure 2 is attached for information purposes in the preparation of the COP.

8.3 Procedure for employees to exercise their RRDW and RLDWP

8.3.1 The COP should set out an effective mine specific procedure for employees to exercise their RRDW and RLDWP having regard to the minimum requirements of what must be included in the procedure as contained in section 23(2)(a) - (e) of the MSHA.

8.3.2 The aim of the procedure should be to ensure that the circumstances giving rise to any employee exercising the RRDW or RLDWP are addressed, and any disputes about them, are resolved as expeditiously as possible at the lowest possible level of the organizational structure, but with the matter being capable of being elevated, if it remains unresolved, to appropriate more senior levels until it is resolved at the highest level at the mine or by the employer.

8.3.3 In the case of small or smaller mines, the levels of organizational structures will differ and in some instances there may only be one. In such cases more than one appeal level would be inappropriate. Procedures appropriate to the organizational levels at the mine should be determined, having regard to the aforesaid principal that disputes should be resolved as expeditiously as possible, but be capable of being elevated to the highest level of management.

8.3.4 The different steps of the procedure should also contain strict time limits within which those steps should be taken.

8.3.5 The persons potentially involved in each step of the procedure should be clearly identified (with names and occupations, where appropriate) and the functions and powers of each person clearly set out.

8.3.6 Where appropriate, the procedure could describe how certain steps should be performed (e.g. what employees must do when they exercise the RRDW or RLDWP; how a workplace should be barricaded off; etc.).

Annexure 3 sets out an example of a procedure for employees to exercise their RRDW and RLDWP. This annexure is for information purposes and should be consulted in drafting the COP.

8.4 Training

The COP should identify all the persons who could be involved in any of the steps of the procedure to exercise the RRDW or RLDWP, from the employees, health and safety representatives, supervisors, etc. to the highest level of management, and set out:

8.4.1 The different training requirements for each of these persons or groups of persons;

8.4.2 What the training should cover, which could include the following:

8.4.2.1 The major health and safety hazards, their identification and controls thereof;

8.4.2.2 The RRDW and RLDWP;

8.4.2.3 When the RRDW and RLDWP can be exercised and by whom;

8.4.2.4 The procedure for exercising the RRDW and RLDWP;

8.4.2.5 The interface between the RRDW and RLDWP and other risk management processes at the mine;

8.4.2.6 How employees can raise a complaint in the event of any obstruction to them exercising or wanting to exercise the RRDW or RLDWP; and

8.4.2.7 Previous occurrences where employees have exercised the RRDW or RLDWP and lessons learnt.

8.4.3 How often the training should be given / refreshed;

8.4.4 Who will be doing the training; and

8.4.5 Measures to ensure, measure and monitor the effectiveness of the

training.

8.5 Communication

The COP should set out a communication strategy that highlights management's support for employees to exercise the RRDW and RLDWP under appropriate circumstances and that reinforces awareness amongst employees of this aspect of risk management. The communication strategy should identify the different target audiences, the appropriate language to be used for each and could cover the following:

8.5.1 Regular communication bulletins and newsletters;

8.5.2 Regular awareness activities, which could include the following:

8.5.2.1 Print media: posters and pamphlets:

8.5.2.2 Electronic, audio-visual and new media: DVD clips at the shaft bank, sms messages, email and digital media;

8.5.2.3 Promotional media: T-shirts, caps, helmet stickers and cards; and

8.5.2.4 Face to face: tool box talks and drama.

8.5.3 Visible felt leadership, involving management:

8.5.3.1 Complying with health and safety rules;

8.5.3.2 Regular discussions with all levels of employees;

8.5.3.3 Support for employees who have exercised the RRDW or RLDWP; and

8.5.3.4 Support for health and safety representatives who have requested employees to exercise the RRDW or RLDWP.

PART D: IMPLEMENTATION

1. IMPLEMENTATION PLAN

1.1 The employer must prepare an implementation plan for its COP that makes provision for issues such as organisational structures, responsibilities of functionaries and programmes and schedules for this COP that will enable proper implementation of the COP. (A summary of/and a reference to, a comprehensive implementation plan may be included.)

1.2 Information may be graphically represented to facilitate easy interpretation of the data and to highlight trends for the purpose of risk assessment.

2. COMPLIANCE WITH THE COP

The employer must institute measures for monitoring and ensuring compliance with the COP.

3. ACCESS TO THE COP AND RELATED DOCUMENTS

3.1 The employer must ensure that a complete COP and related documents are kept readily available at the mine for examination by any affected person.

3.2 A registered trade union with members at the mine or where there is no such union, a health and safety representative on the mine, or if there is no health and safety representative, an employee representing the employees on the mine, must be provided with a copy of the COP on delivery of a written request to the employer. A register must be kept of such persons or institutions with copies to facilitate updating of such copies.

3.3 The employer must ensure that all employees are fully conversant with those sections of the COP relevant to their respective areas of responsibility.

ANNEXURE 1:

The legislative background relating to the RRDW and RLDWP

1. The common law

1.1 Employers are required to provide and maintain a work environment that is safe and without risk to the health or safety of employees.

1.2 Arising from this entitlement to a safe working environment, employees have the RRDW under common law. (There are certain exceptions, e.g. policemen, firemen, security guards, etc. who are specifically employed to do certain dangerous work.) This right entails not only that the employee is entitled to leave a working place where he has reason to believe that the working place is unsafe (the RLDWP), but also that an employee is entitled to refuse to do work in a working place that is safe, but in which there is any equipment, machine, device or thing the employee is required to use or operate which is likely to endanger himself/herself or any other employee (the RRDW). Put differently, the RRDW can be exercised either by refusing to do the required work but remaining in the working place, or by refusing to do the required work and leaving the working place.

2. The MSHA

2.1 Section 2:

(1) The employer of every mine that is being worked must:

(a) Ensure, as far as reasonably practicable, that the mine is designed, constructed and equipped:

- (i) To provide conditions for safe operation and a healthy working environment; and
- (ii) With a communication system and with electrical, mechanical and other equipment as necessary to achieve those conditions.

(b) Ensure, as far as reasonably practicable, that the mine is commissioned, operated, maintained and decommissioned in such a way that employees can perform their work without endangering the health and safety of themselves or of any other person.

2.2 Section 6:

(1) Every employer must:

- (a) Supply all necessary health and safety equipment and health and safety facilities to each employee; and
- (b) Maintain, as far as reasonably practicable, that equipment and those facilities in a serviceable and hygienic condition.

(2) Every employer must ensure that sufficient quantities of all necessary personal protective equipment are available so that every employee who is required to use that equipment is able to do so.

(3) Every employer must take reasonable steps to ensure that all employees who are required to use personal protective equipment are instructed in the proper use, the limitations and the appropriate maintenance of that equipment.

2.3 Section 10:

(1) As far as reasonably practicable, every employer must:

- (a) Provide employees with any information, instruction, training or supervision that is necessary to enable them to perform their work safely and without risk to health, and
- (b) Ensure that every employee becomes familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks.

(2) As far as reasonably practicable, every employer must ensure that every employee is properly trained:

- (a) To deal with every risk to the employee's health or safety that:
 - (i) Is associated with any work that the employee has to perform; and
 - (ii) Has been recorded in terms of section 11.
- (b) In the measures necessary to eliminate, control and minimise those risks to health or safety,
- (c) In the procedures to be followed to perform that employee's work; and
- (d) In relevant emergency procedures.

2.4 Section 11:

(1) Every employer must:

- (a) Identify the hazards to health or safety to which employees may be exposed while they are at work;
- (b) Assess the risks to health or safety to which employees may be exposed while they are at work;
- (c) Record the significant hazards identified and risks assessed; and
- (d) Make those records available for inspection by employees.

(2) Every employer, after consulting the health and safety committee at the mine, must determine all measures, including changing the organisation of work and the design of safe systems of work, necessary to:

- (a) Eliminate any recorded risk;
- (b) Control the risk at source;
- (c) Minimise the risk; and
- (d) In so far as the risk remains:

- (i) Provide for personal protective equipment; and
- (ii) Institute a programme to monitor the risk to which employees may be exposed

(3) Every employer must, as far as reasonably practicable, implement the measures determined necessary in terms of subsection (2) in the order in which the measures are listed in the paragraphs of that subsection.

(4) Every employer must:

- (a) Periodically review the hazards identified and risks assessed, including the results of occupational hygiene measurements and medical surveillance, to determine whether further elimination, control and minimisation of risk is possible; and
- (b) Consult with the health and safety committee on the review.

2.5 Section 22:

Every employee at a mine, while at that mine, must:

- (a) Take reasonable care to protect their own health and safety, (b) Take reasonable care to protect the health and safety of other persons who may be affected by any act or omission of that employee;
- (c).....
- (d) Report promptly to their immediate supervisor any situation which the employee believes presents a risk to the health or safety of that employee or any other person, and with which the employee cannot properly deal;

(e) Co-operate with any person to permit compliance with the duties and responsibilities placed on that person in terms of this Act; and

(f)

2.6 Section 23:

(1) The employee has the right to leave any working place whenever:

(a) Circumstances arise at that working place which, with reasonable justification, appear to that employee to pose a serious danger to the health or safety of that employee; or

(b) The health and safety representative responsible for that working place directs that employee to leave that working place.

(2) Every employer, after consulting the health and safety committee at the mine, must determine effective procedures for the general exercise of the rights granted by subsection (1), and those procedures must provide for:

(a) Notification of supervisors and health and safety representatives of dangers which have been perceived and responded to in terms of subsection (1);

(b) Participation by representatives of employer and representatives of the employees in endeavouring to resolve any issue that may arise from the exercise of the right referred to in subsection (1);

(c) Participation, where necessary, by an inspector or technical adviser to assist in resolving any issue that may arise from the exercise of the right referred to in subsection (1);

(d) Where appropriate, the assignment to suitable alternative work of any employee who left, or refuses to work in, a working place contemplated in subsection (1); and

(e) Notification to any employee who has to perform work or is requested to perform work in a working place contemplated in subsection (1) of the fact that another employee has refused to work there and of the reason for that refusal.

(3) If there is no health and safety committee at a mine, the consultation required in subsection (2) must be held with:

(a) The health and safety representatives; or

(b) If there is no health and safety representative at the mine, with the employees.

(4) The Minister, by notice in the Gazette, must determine minimum requirements for the procedures contemplated in subsection (2).

2.7 Section 30:

(1) A health and safety representative may:

(a) Represent employees on all aspects of health and safety,

(b) Direct any employee to leave any working place whenever circumstances arise at that working place which, with reasonable justification, appears to the health and safety representative to pose a serious danger to the health or safety of that employee;

(c) Assist any employee who has left a working place in terms of section 23;

(d) Identify potential hazards and risks to health or safety,

(e) Make representations or recommendations to the employer or to a health and safety committee on any matter affecting the health or safety of employees;

(f) Inspect any relevant document which must be kept in terms of this

Act;

- (g) Request relevant information and reports from an inspector,
- (h) With the approval of the employer, be assisted by or consult an adviser or technical expert who may be either another employee or any other person;
- (i) Attend any meeting of a health and safety committee:
 - (i) Of which that representative is a member; or
 - (ii) Which will consider a representation or recommendation made by that representative.
- (j) Request:
 - (i) An inspector to conduct an investigation in terms of section 60; or
 - (ii) The Chief Inspector of Mines to conduct an inquiry in terms of section 65.
- (k) Participate in consultations on health and safety with:
 - (i) The employer or person acting on behalf of the manager, or
 - (ii) An inspector.
- (l) Participate in any health and safety inspection by:
 - (i) The employer or person acting on behalf of an employer, or
 - (ii) An inspector.
- (m) Inspect working places with regard to the health and safety of employees at intervals agreed with the employer, (n) Participate in any internal health or safety audit;
- (o) Investigate complaints by any employee relating to health and safety at work;
- (p) Examine the causes of accidents and other dangerous occurrences in collaboration with the employer or person acting on behalf of the manager, (q) Visit the site of an accident or dangerous occurrence at any reasonable time;
- (r) Attend a post-accident inspection;
- (s) Co-operate with the employer in the conducting of investigations in terms of section 11 (5);
- (t) Participate in an inquiry held in terms of section 65; and
- (u) Perform the functions:
 - (i) Agreed by the health and safety committee; or
 - (ii) Prescribed.

(2) The rights and powers referred to in subsection (1) apply to health and safety representatives referred to in section 25 (1) only in respect of the working places for which they are responsible.

2.8 Section 31:

- (1).....
- (2).....
- (3) The employer must provide health and safety representatives with:
 - (a) The facilities and assistance reasonably necessary to perform their functions;

- (b) Training that is reasonably required to enable them to perform their functions; and
- (c) Time off from work, without loss of remuneration, to attend any training course that is agreed or prescribed.

2.9 Section 32:

Every employer must notify the health and safety representatives concerned and, if there is a health and safety committee, the employee co-chairperson of that committee:

- (a) In good time, of inspections, investigations or inquiries of which an inspector has notified the employer, and
- (b) As soon as practicable, of any accident, serious illness or health-threatening occurrence, or other dangerous event.

2.10 Section 83:

(1) No person may discriminate against any employee for:

- (a) Exercising a right in terms of this Act or in terms of a collective agreement contemplated in this Act;
- (b) Doing anything that the employee is entitled to do in terms of this Act or in terms of a collective agreement contemplated in this Act;
- (c) Refusing to do anything that the employee is entitled to refuse to do in terms of this Act or in terms of a collective agreement contemplated in this Act,
- (d) Refusing to do anything that the employee is prohibited from doing in terms of this Act or in terms of a collective agreement contemplated in this Act; and
- (e) Standing for election, or performing any function, as a health and safety representative or a member of a health and safety committee.

2.11 Section 91:

(1) Any person, including an employer, who contravenes, or fails to comply with, any:

- (a) Provision of this Act,
- (b) Regulation; or
- (c) commits an offence and is liable to a fine or imprisonment as may be prescribed.

3. Comment

3.1 The requirement under the common law and the MHSa for the employer to provide employees with safe and healthy working environment demands of employers to prepare and implement comprehensive hazard identification and risk management system. This is specifically reflected in section 11 of the MHSa.

3.2 The control measures implemented by the employer to address the significant identified hazards and risks should under normal circumstances be appropriate to protect employees from those identified significant hazards and risks.

3.3 It is only if the control measures fail, or if new unexpected significant hazards and risks arise for which the control measures are inadequate, and there is no other effective way of protecting the health or safety of endangered employees, that the RRDW or the RLDWP may be exercised.

3.4 Section 23(1)(a) of the MHSa gives an employee the right to leave a working place if circumstances arise at that working place which, with reasonable justification, appear to that employee to pose a serious danger

to the health or safety of that employee. "Reasonable justification" is not defined in the MHSa, but means that the employee has some objective information that makes him or her believe there are unsafe conditions at the working place or the work to be done is unsafe to the extent that there is an imminent and serious danger to the health or safety of person at that working place. The employee does not have to be correct in his or her knowledge or belief, but such belief should be reasonable given the information of the employee. These principles apply to both the RRDW and RLDWP.

ANNEXURE 2:

Example of a Table of the Major Health and Safety Hazards Identified in terms of a Mine's Risk Assessment which may give rise to Employees having to Exercise the RRDW or RLDWP.

(The hazards and associated dangers in the Table below are by no means an exhaustive list, but a list of some commonplace hazards and associated dangers. The hazards and dangers in Annexure 2 may not be relevant to the mine, and are given for illustrative purposes only. Annexure 2 is attached for information purposes in the preparation of the COP.)

Hazard	Dangers associated with the hazard
Hanging wall / roof / sidewall / rib side.	<ul style="list-style-type: none"> • Working places that have not first been examined and made safe as required by regulation 14.1 (FOG regulations). • Working places where safety pillars have been removed or do not adhere to the minimum safety pillar dimensions. • Missing or blasted out support. • Rock bursts.
Winches and rigging.	<ul style="list-style-type: none"> • Winch not anchored or incorrectly anchored. • Missing guard. • Open electrical connections. • Snatch blocks not anchored correctly. • No signalling arrangements. • No illumination.
Ventilation and temperatures.	<ul style="list-style-type: none"> • Dust levels in the atmosphere exceed the specified maximum. • Airflow has been restricted. • Temperatures exceed the maximum allowable or have increased considerably. • Breakdown of main fan.
Gas accumulations and fumes.	<ul style="list-style-type: none"> • The presence of flammable and/or noxious gasses which exceed the maximum permissible limits.

Water accumulations, flow of water.	<ul style="list-style-type: none"> • Any abnormal water flows from strata or drilled holes. • Any major water flows from ore passes and box holes. • Any accumulation of water of unknown depth.
Flow of broken rock, mud or slimes.	<ul style="list-style-type: none"> • Uncontrolled flow of rock, mud from ore passes or box holes. • Any imminent or initiated flow of mud from the top or side of mine tailings facilities.
Misfires, explosives.	<ul style="list-style-type: none"> • Any misfired hole with which the crew cannot deal. • Any accumulation of explosives, especially old explosives.
Fires and explosions.	<ul style="list-style-type: none"> • Any fire or explosion in other parts of the mine which could affect the working place. • Any working place which constitutes a "hazardous location" (as defined in MHSR regulations chapter 10 dealing with hazardous locations) and in which apparatus is used that is not "explosion protected apparatus", as defined in the regulations.
Defective equipment and vehicles.	<ul style="list-style-type: none"> • Equipment and vehicles which prove to have defects during pre-service examination. • Equipment and vehicles which become defective or inoperative during the shift.
Power failure.	<ul style="list-style-type: none"> • Power failure, local or general, which may affect the operation of fans and other critical equipment.
Dangerous electrical equipment and installations.	<ul style="list-style-type: none"> • Open connections, frayed cables, etc.
Lack of illumination.	<ul style="list-style-type: none"> • No or ineffective illumination at equipment and machinery, where moving parts can endanger safety.
Inadequate personal protective equipment (PPE).	<ul style="list-style-type: none"> • Non-availability of PPE. • Damaged or worn PPE not replaced. • Inappropriate selection/below standard PPE.
Inadequate training	<ul style="list-style-type: none"> • Inadequate training to perform a task safely (including basic, induction, refresher training).

- Inadequate training on the major hazards (including basic, induction, refresher training).

Unacceptable and dangerous behaviour of colleagues.

- Including substance abuse at work.
- Aggressive or violent behaviour.
- Inadequate training, experience or licencing for the job.

Noise

- Noise levels not to exceed the specified maximum.
 - Engineering interventions to be introduced to restrict levels at source.
 - Noise levels that cannot be limited to have correct identified PPE provided.
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ANNEXURE 3:

Example of a procedure for employees to exercise their RRDW and RLDWP

1. Notification by employee

1.1 Any employee who, with reasonable justification, exercises the RRDW or RLDWP must immediately:

1.1.1 Notify that employee's immediate supervisor and the health and safety representative for the working place, if they are present at or near the workplace, of his/her actions and the reasons for it; and

1.1.2 Notify other employees if there may be a serious danger to their health or safety.

1.2 If the immediate supervisor is not present, the employee must notify, as soon as possible and at least before the end of that shift, the supervisor of that immediate supervisor, or another easily contactable mine official of at least equivalent rank.

1.3 If the health and safety representative for that workplace is not present, the employee must notify another workplace health and safety representative or a full time health and safety representative.

2. Notification by workplace health and safety representative

2.1 If a workplace health and safety representative directs employees to stop work and/or leave a working place, that representative must:

2.1.1 Immediately notify the supervisor of that working place or, if he / she is not present, notify another supervisor or management official of at least equivalent rank;

2.1.2 Notify any full time health and safety representative.

3. Notification to health and safety department or manager

3.1 The COP should set out a procedure to ensure that a notification of any incident reaches the health and safety department at the mine as soon as practicable, or where there is no health and safety department, the mine manager.

4. Evaluation of danger and steps to be taken

4.1 The supervisor or any other mine official present (contemplated in

1.1.1. 1.2 or 2.1.1) and the health and safety representative (contemplated in 1.1.1 or 1.3) must meet as soon as practicable to evaluate whether there is any danger to the health or safety of employees which is serious and, if so, to determine what steps, if any, should be taken to safely remove the danger to health or safety. If any such steps are determined:

4.1.1 The supervisor must ensure that the necessary steps are taken to make the work and/or working place healthy and safe;

4.1.2 The supervisor must take reasonable precautions to prevent unauthorised entry to any unsafe working place; and

4.1.3 Once these steps have been taken, the supervisor and the workplace health and safety representative must jointly advise the employees accordingly, where after the employee/s must return to the workplace immediately and/or start work immediately.

4.2 If, however, it is agreed that no serious danger to the health or safety of the employee/s prevails, the employee/s will be required to return to the workplace immediately and/or start work immediately.

4.3 If the persons contemplated in 4.1 are unable to agree on whether or not there is a serious danger and/or on the steps that need to be taken to remove any serious danger:

4.3.1 The supervisor must notify a manager with responsibility for the section of the mine concerned; and

4.3.2 The representative must notify the full time health and safety representative, and may request the assistance of a technical adviser (see 4.17 below).

4.4 Thereafter, a meeting must be held involving the persons referred to in 4.3.1 and 4.3.2, to seek to resolve the issue that led to the refusal to work and/or employees leaving the working place.

4.5 If agreement is still not reached on whether there is a serious danger and/or the steps that must be taken to remove any serious danger, management must arrange for the involvement of an appropriate technical adviser to assist the parties. Should agreement still not be reached following the involvement of such technical adviser the employer must make a final decision on all issues on which there is disagreement after consultation with such technical adviser. Such decision must be in writing and must record the reasons for the decisions, highlighting the reasons where any employer decisions deviate from any recommendations by the technical adviser.

4.6 When agreement is reached on the steps that must be taken to remove the danger, or the employer has taken a final decision as contemplated in 4.4, the supervisor and the health and safety representative must:

4.6.1 Ensure that the necessary steps are taken to make the work and/or working place healthy and safe;

4.6.2 Jointly advise the employees of the steps that are being taken; and

4.6.3 Once the steps have been taken, jointly advise the employees accordingly, where after the employees must return to the workplace immediately and/or start work immediately.

5. Re-assignment and protection

5.1 Employees who have refused to work or have withdrawn from a working place:

5.1.1 Must remain in the nearest safe place to that working place, unless directed otherwise by mine management; and

5.1.2 May not be disciplined for exercising their right to refuse dangerous work and/or leave a dangerous working place unless they acted in bad faith or refuse immediately to return to work once the work and/or working place is safe.

5.2 The management of the mine may require an employee who has refused to work and/or withdrawn, or who was instructed to stop work and/or withdraw from a working place, to perform suitable alternative work if the employee is competent and qualified to perform the work concerned.

5.3 Management may request another employee to do the work or to work in the working place, but if any employee is requested to do the work and/or work in the working place before the matter has been resolved, management must notify the employee:

5.3.1 That another employee has refused to do the work and/or work there;

5.3.2 Of the reason(s) for the refusal;

5.3.3 Of the reason(s) why the employee is requested to do the work and/or work in that working place, given the other employee's refusal; and

5.3.4 That the employee has the same right to refuse as the first employee.

6. Participation by technical advisers

6.1 If a workplace health and safety representative requests that a technical adviser participates in the resolution of the issue:

6.1.1 Management must not unreasonably withhold the approval required;

6.1.2 Management must give reasonable assistance necessary to enable participation by the technical adviser; and

6.1.3 Access by any technical adviser will be in terms of existing recognition and procedural agreements between the parties and existing mine policies and procedures.

7. Report

7.1 The supervisor and the workplace health and safety representative must each prepare a report, or may prepare a joint report, setting out:

7.1.1 The circumstances which arose that posed a serious danger to the health or safety of an employee; and

7.1.2 The steps taken to resolve that problem.

7.2 The report/s must be placed before the next meeting of the mine's health and safety committee, which committee should monitor all instances of withdrawals.
