



## **Administrative Fines**

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**The introduction of pecuniary penalties within a broader enforcement framework.**

**SOP - Admin. Fines – 001/11**

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## **1 DOCUMENT CONTROL INFORMATION**

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### **1.1 Document Reference**

Administrative Fines – The introduction of pecuniary penalties within a broader enforcement framework.

### **1.2 Synopsis**

This document outlines the process that will be adopted by the OHSA for the intimation of pecuniary penalties for breaches of OHS related offences.

## **2 OVERVIEW**

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**2.1** In terms of article 38 (3) of the OHS Authority Act (Chap. 424), the Authority may intimate the imposition of a pecuniary penalty in lieu of instituting criminal proceedings in a Court of Law, when an offence against the Act or regulations made under the Act is committed.

**2.2** The scope of article 38 (3) is to create a speedy and effective deterrent against contraventions to the law. A functioning system of intimations will also reduce the Authority's dependence on the Police and on judicial proceedings to solicit compliance with the law.

**2.3** The law does not require the Authority to exhaust the administrative remedy before resorting to criminal procedures, but establishes a discretionary power. Thus it is up to the Authority to decide as to whether the circumstances of a case warrant the imposition of an administrative fine or the institution of criminal proceedings or to take any other action as contemplated by the law. However, for the sake of objectivity and fairness, this document establishes general criteria upon which such decisions shall be based.

**2.4** This document is also intended to establish those administrative procedures required for the implementation of article 38 (3) of the Act, and will support subsidiary regulations issued under the OHS Authority Act for this purpose.

### **3 ENFORCEMENT ACTIONS**

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**3.1** The primary duty of an OHS Officer is to ensure that occupational health and safety are safeguarded by whosoever has a duty to do so. Thus, when a contravention comes to light, an OHS Officer has an obligation to act within the scope of the Act, so that the prevailing hazards and risks are controlled. The types of action that may be taken by an Officer are elaborated upon by the Enforcement Policy of the Authority.

### **4 INTIMATION OF PENALTIES**

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**4.1** Contraventions for which a letter of intimation shall be issued have been identified according to the following criteria:

- (i) the contravention does not in itself constitute or lead to an immediate and serious risk to occupational health and safety, but has the propensity of leading to a serious risk to health and safety; OR
- (ii) The contravention occurs in relation to work which is of a temporary nature – examples of such works include (but are not exclusively limited to) construction activities, road works, setting up of exhibitions, erection of scaffoldings, and use of machinery or equipment.

A non-exhaustive list of such contraventions where a letter of intimation is to be sent has been drawn up (Annex 1) and will be periodically reviewed. This list will also feature in subsidiary legislation. Any changes to the list will need to be prescribed.

**It is being emphasized that fines will only be issued for contraventions that are listed in the Annexes to the regulations and to this document, which may be amended as necessary.**

- 4.2** Once a contravention for which a letter of intimation is to be issued becomes known to an OHS Officer, the Officer shall, within five working days of the contravention being known, draw up and submit to the Authority a contravention report in writing.
- 4.3** The report shall include the following information:
- (i) The particulars of the person(s) responsible for committing the contravention.
  - (ii) The date, time, and place where the contravention occurred.
  - (iii) A brief description of the contravention/s and any other additional information if practicable.
  - (iv) Legal references, including any references to any Codes of Practice and/or any other forms of guidance issued by the Authority.
- 4.4** A letter of Intimation shall be drawn up using the templates included in this document, based on the report of the contravention referred to in 4.3 above.
- 4.5** For the purposes of this document, an Intimation Letter shall be considered to have been issued by the Authority, once it is received by the intimated party.
- 4.6** If a penalty is not paid within fifteen (15) days from the service of the intimation, the Authority shall commence the process for criminal proceedings to be instituted before the judicial authorities as shown by the process flowchart attached to this document.
- 4.7** To exercise the highest degree of transparency, OHSA shall implement a review process, the scope of which is to ensure that the requirements of, and the conditions established by this SOP are being followed and implemented. For this purpose, the Authority shall evaluate the process leading to the decision to issue an Intimation Letter in the case of a representative sample of all letters of intimation issued by the Authority.
- 4.8** A record of this review process shall be kept.
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## **5 PROSECUTION**

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**5.1** Prosecution is an essential part of enforcement, but should be undertaken only as the last resort. If there are valid and substantial reasons for so doing, the OHSA shall initiate prosecution without prior warning and without any of its Officers having carried out any other prior or alternative enforcement actions.

In any case, the OHSA shall commence the process for criminal proceedings to be instituted before the judicial authorities without fail and without any other enforcement action having been taken before, whenever:

- (i) there are repeated breaches of the law, which give rise to significant risk, especially when a duty holder ignores previous enforcement action or when there exists a bad record of poor occupational health and safety standards;
- (ii) there is a severe and reckless disregard of health and safety requirements;
- (iii) OHS Officers are intentionally obstructed in the lawful course of their duties, wilfully given false information and when a person refuses to give information as requested by an OHS Officer.

## **6 MITIGATING CIRCUMSTANCES**

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**6.1** There may be mitigating, particular or special circumstances where although under normal circumstances prosecution would be undertaken, it would be in the interest of both parties that an administrative fine is imposed. This notwithstanding, the application of such a provision remains at the sole discretion of the Authority. The responsibility for bringing to the attention of the Authority such circumstances which may lead to the consideration of the mitigation of such proceedings shall be upon the contravener, duly substantiating such claims.

- 6.2** Claims regarding the existence of mitigating and, or particular, and, or special circumstances shall be addressed to the CEO, who shall decide accordingly and inform the claimant of the decision, citing due reasons.

## **7 PAYMENT OF FINES**

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- 7.1** The penalty shall become due on the day on which such intimation is served.
- 7.2** Payment of fines shall be affected within fifteen days (15) of receipt of the intimation letter by cheque addressed to the Occupational Health and Safety Authority, 17, Edgar Ferro Str., Pieta`, between Monday and Friday, excluding Public Holidays, from 8.00 am - 12.00 (noon) and from 1.00 pm till 4.00 pm, (1<sup>st</sup> October - 15<sup>th</sup> June) and from 8.00 am – 12.00 (noon) between 16<sup>th</sup> June and 30<sup>th</sup> September.
- 7.3** The Authority shall issue an appropriate receipt for all moneys collected. The receipt shall include a disclaimer stating that the payment of a penalty does not in itself constitute a reason for the Authority to stop the process for criminal proceedings to be instituted before the judicial authorities or any other enforcement action deemed necessary by law.

## **8 GENERAL NOTES**

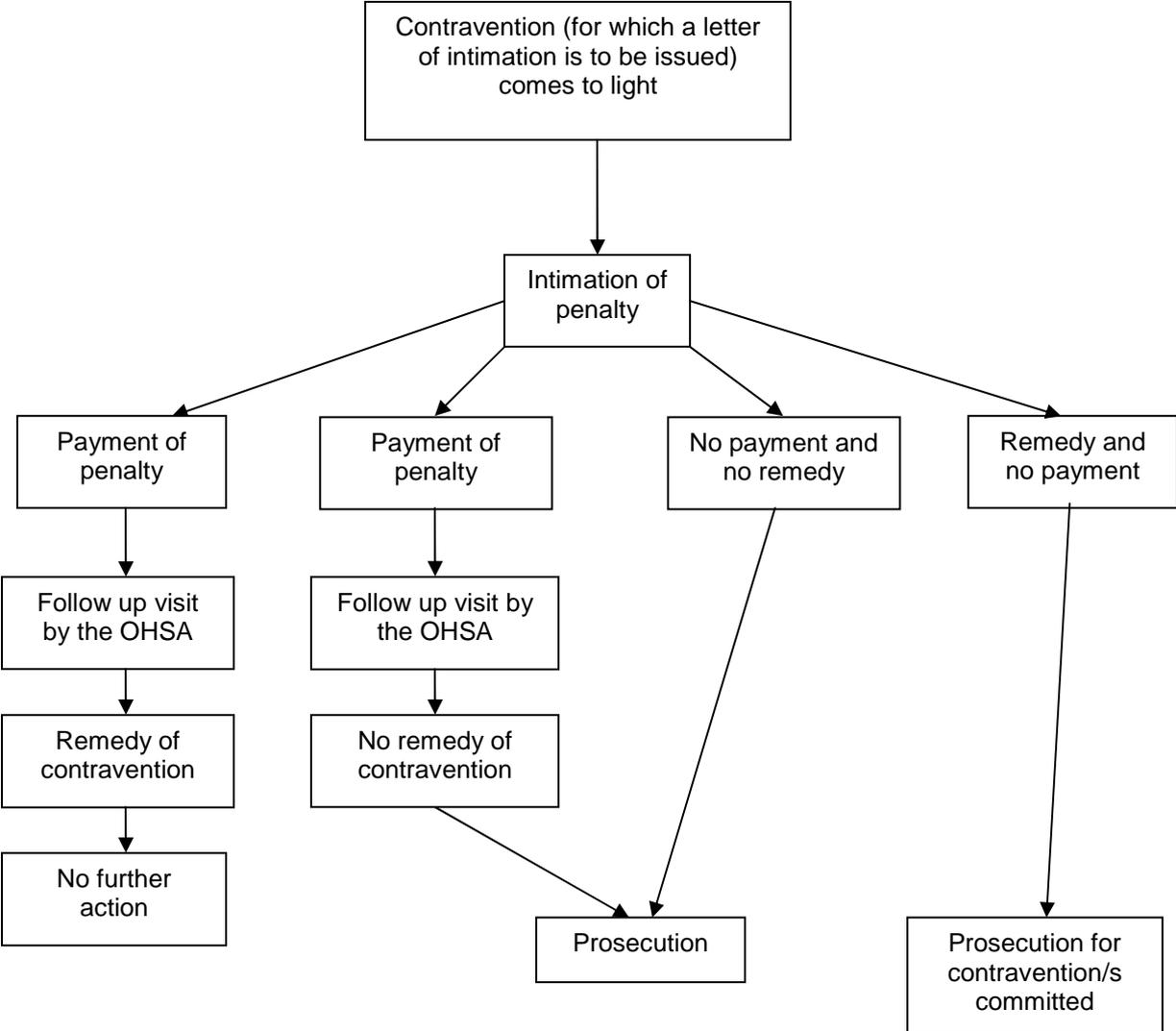
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- 8.1** The intimation for the payment of a penalty, and the payment thereof, will not operate as a waiver of the duty of a person to undertake any measure by which occupational health and safety may be safeguarded, whether such duty arises out of the Act or any regulation made there under, or out of an order issued by an Occupational Health and Safety Officer in terms of the Act. Where, following the payment of a penalty, the violation of any provision of the Act or any regulation made thereunder persists regardless of any instructions the Authority may have given for the redress of the same, the Authority may institute the proceedings referred to in article 38 of the Act for such continuing violation.

- 8.2** For the process to be deemed transparent, it is essential that adequate records are kept, including descriptions of the circumstances of each case as well as the justifications determining the course of action being taken.
- 8.3** Whereas OHS Officers, being public officers, are requested to maintain confidentiality, the OHS Authority Act declares the protection of occupational health and safety as being considered of public interest. Any requests for information about a specific case, including requests for confirmation as to whether any administrative fines were imposed by the Authority, need to be directed to the CEO, and each request for information will be treated on its own merits according to the parameters established by the OHS Authority Act and, or the requirements of the Freedom of Information Act and the Data Protection Act.

# PROCESS FLOWCHART

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**This Process Flowchart only indicates the steps to be taken in the case of those contraventions for which a letter of intimation is to be issued. The OHS Authority Act provides for other penalties in the case of other breaches of the law.**

Where, following the issue of a letter of intimation, adequate remedial action is observed but fine remains unpaid, the OHSA can stop the proceedings and withdraw all or part of the charges if the fine is paid before criminal proceedings commence.



## INTIMATION LETTER

<OHS Ref: >

Illum ta` , 201

### Persuna

### Kumpanija

Lil isem persuna + ID nru

**JEW**

Lil isem persuna fl-ogħla kariga

Indirizz

Kumpanija

Indirizz

Permezz ta' din l-ittra l-Awtorita` għas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol tavżak sabiex fi żmien ħmistax-il gurnata (15) minn meta tirċievi din l-ittra tħallas l-ammont ta` ....., bħala multa dovuta minnek, u dan skont Artiklu 38(3) tal-Kapitlu 424 tal-Liġijiet ta` Malta. Dan minħabba li fil-.....(POST), nhar il-.....(DATA), għall-ħabta ta'.....(HIN) inqas milli -..... F'din l-ispezzjoni l-Uffiċċjali tas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol tkellmu ma' ....., ID.....

Il-ħlas dovut minnek għandu jsir lill-Awtorita` għas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol, fl-indirizz indikat hawn fuq, mit-Tnejn sal-Ġimgħa, esklużi festi pubbliċi, fil-ħinijiet indikati aktar 'il quddiem f'din l-ittra. Int mitlub ukoll li ġġib din l-ittra miegħek meta tiġi tħallas.

B'din l-ittra qed tkun avżat ukoll illi ma jittieħdux passi ulterjuri kontra tiegħek mill-Awtorita` jekk isir il-ħlas tal-penali indikati fiż-zmien stipulat f'din l-istess ittra kif ukoll tirregolarizza ruħek mal-liġi.

Inti avżat illi jekk tonqos milli tirregola ruħek fi żmien t-terminu hawn fuq stipulat, l-Awtorita` għas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol, tirrizerva d-dritt li tieħu l-passi ulterjuri skont u kif meħtieġ.

Tant biex tagħraf timxi u tirregola ruħek.

Kap, Taqsimiet Tekniċi

Ħinijiet tal-uffiċċju tal-Awtorita` għas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol:

**Xitwa (1 t' Ottubru – 15 ta' Ġunju):**

**Sajf (16 ta' Ġunju – 30 ta' Settembru)**

Mit-tmienja (8.00) ta' filgħodu sa nofsinhar

Mit-tmienja (8.00) ta' filgħodu sa nofsinhar

Mis-sagħtejn (14.00) sal-erbgħa (16.00) ta' wara nofsinhar

± kopja Diretturi



<OHSA Ref: >

Illum ta', 201

**Persuna**

**Kumpanija**

Lil isem persuna + ID nru

**JEW**

Lil isem persuna fl-ogħla kariga

Indirizz

Kumpanija

Indirizz

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Inti avżat illi jekk tonqos milli tirregola ruġek fi żmien t-terminu hawn fuq stipulat, l-Awtorita` għas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol, tirriżerva d-dritt li tiegħu l-passi ulterjuri skont u kif meħtiegħ.

Tant biex tagħraf timxi u tirregola ruġek.

Kap, Taqsimiet Tekniċi

Finijiet tal-uffiċċju tal-Awtorita` għas-Saħħa u s-Sigurta` fuq il-Post tax-Xogħol:

**Xitwa (1 t' Ottubru – 15 ta' Ġunju):**

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Mit-tmienja (8.00) ta' filgħodu sa nofsinhar

Mis-sagħtejn (14.00) sal-erbgħa (16.00) ta' wara nofsinhar

± kopja Diretturi

<b>Deskrizzjoni tal-kontravvenzjoni</b>	<b>Att jew Avviż Legali konċernat</b>	<b>Multa</b>
(a)		
(b)		
(c)		
(d)		
(e)		

Total dovut:

ANNEX 1 - CONTRAVENTIONS FOR WHICH THE OHSA SHALL ISSUE A LETTER OF INTIMATION

<b>Contravention</b>	<b>Penalty (€)</b>	<b>Comments</b>
Workplace equipment or machinery in use not inspected, examined, tested and, or certified according to OHS legislation.	250	See Schedule I to this document. The stipulated penalty shall apply for each item of equipment or machinery which has not been examined, tested and, or certified within the prescribed time from when the obligation falls due, and, or in cases where (i) no certificate required to be sent has been sent, or (ii) no entry in a register is made, or (iii) no register is kept.
Not carrying out a suitable, sufficient and systematic assessment of all occupational health and safety hazards and the resultant risks involved.	250	Legal Notice 36/2003.
Employer not performing suitable and sufficient assessments of the health and safety risks to which workers are exposed in consequence of VDU use.	250	Legal Notice 43 / 2002

Employer not carrying out an assessment of the occupational health and safety hazards which may be involved at the place of work, before engaging or offering work to any young person.	250	Legal Notice 91 / 2000
Employer not carrying out an assessment of the occupational health and safety hazards which may be involved at the place of work, before assigning work to any pregnant or breastfeeding worker or to a mother	250	Legal Notice 92 / 2000
Levying or permitting to be levied a charge or deduction of wages of any worker in respect of anything done or provided in the interests of occupational health, safety, hygiene or welfare pursuant to the regulations.	250	Legal Notice 36/2003. The penalty shall be applied to an organisation, irrespective of the number of employees affected.
Not ensuring the appointment of workers health and safety representatives.	250	Legal Notice 36 / 2003

<p>The commencement of work which requires prior notification, authorization or submission of plan of work to the OHSA without such an obligation being fulfilled.</p>	<p>250</p>	<p>Legal Notice 281 / 2004 (construction), Legal Notice 37 / 2003, as amended by L.N. 6 / 2005(COMAH), LN 323 / 2006 (Asbestos)</p>
<p>Non notification of any accident which results in either the death of or a major injury to any person or, in the case of an employee at work, in that employee being incapacitated for work for more than three consecutive days.</p>	<p>250</p>	<p>Legal Notice 52 / 1986. The penalty applies for each injury not notified.</p>
<p>Not complying with obligations laid down in Schedule IV to Legal Notice 281/2004.</p>	<p>250</p>	<p>Legal Notice 281/2004 - Schedule IV</p>
<p>Requesting workers to handle a load, which by reason of its characteristics or because of unfavourable ergonomic conditions, involves a risk particularly of back injury to workers, without first having taken appropriate organisational measures, or provided appropriate mechanical means in order to avoid the need for manual handling</p>	<p>250</p>	<p>Legal Notice 35/2003</p>
<p>A client not appointing a project supervisor/s</p>	<p>250</p>	<p>Legal Notice 281/2004</p>

A person intentionally or recklessly interferes with or misuses anything provided in the interests of occupational health and safety.	250	Legal Notice 36/2003
Not keeping a written or retrievable electronic copy of a risk assessment when 5 or more workers are employed.	250	Legal Notice 36/2003
Not providing workers and their representatives with comprehensible and relevant information.	250	Legal Notice 36/2003
Worker not taking care of his/other persons' health and safety in accordance with the training and the instructions given by an employer.	250	Legal Notice 36/2003
Temporary workers are not afforded adequate health and safety protection.	250	Legal Notice 36/2003
A project supervisor not ensuring the preparation of a health and safety plan	250	Legal Notice 281/2004
Workers not cooperating with employer and / or appointed WHS representatives and / or	250	Cap. 424, LN 36 / 2003

workers having a specific responsibility for the safety and health of workers		
Employer fails to ensure that where there is a risk of mechanical contact with moving parts of work equipment which could lead to accidents, those parts must be provided with guards or devices to prevent access to danger zones or to halt movements of dangerous parts before the danger zones are reached.	250	Legal Notice 282/2004 Legal Notice 52/1986
Employer not providing PPE / C and / or not ensuring that workers make full and correct use of that PPE / C	250	Legal Notice 36/2003
Self-employed person not taking measures to safeguard one's own health and safety and that of other persons who can be affected by reason of the work which is carried out.	250	Cap 424.
A person breaks or tampers with any seal made, or with any monitoring equipment installed, put up or left by an OHS Officer in a work place, or in the case of personal	250	Cap. 424

monitoring equipment, on a worker.		
Mobile crane operated with outriggers on inadequate supports or unstable ground	250	Cap. 424.
Tower crane not certified after installation and before being put into service on a site	250	Legal Notice 282/2004
Lifting equipment with suspended loads left without surveillance	250	Legal notice 282/2004
Person/s lifted without adequate safety measures or cage which has not been certified	250	Legal Notice 282/2004
Person/s lifted on forklift truck without certified attachments	250	Legal Notice 282/2004
An operator of a COMAH establishment not preparing a major accident prevention policy	450	Legal Notice 37/2003 as amended by Legal Notice 6/2005
An operator of a COMAH establishment not producing a safety report	450	Legal Notice 37/2003 as amended by Legal Notice 6/2005
An operator of a COMAH establishment not reviewing and revising a safety report	450	Legal Notice 37/2003 as amended by Legal Notice 6/2005

An operator of a COMAH establishment not preparing an internal emergency plan	450	Legal Notice 37/2003 as amended by Legal Notice 6/2005
An operator of a COMAH establishment not providing information to the competent authority	450	Legal Notice 37/2003 as amended by Legal Notice 6/2005
No person/s designated by an employer to assist him in undertaking the measures relating to occupational health and safety.	450	Legal Notice 36/2003
Workers who are entitled to undergo health surveillance not provided with such health surveillance.	450	Legal Notice 36/2003
An operator of a COMAH establishment not supplying information on safety measures and on the requisite behaviour in the event of a major accident	450	Legal Notice 37/2003 as amended by Legal Notice 6/2005
Employer not taking measures to prevent risks: <ul style="list-style-type: none"> <li>• Failure to prevent risks of falls from heights;</li> </ul>	450	Cap. 424 and Legal Notice 36/2003

<ul style="list-style-type: none"> <li>• Failure to ensure that all open edges are effectively fenced / guarded;</li> <li>• Failure to ensure that work equipment is operated correctly</li> </ul>		
<p>Employer not providing adequate first aid equipment and facilities as are adequate and appropriate for enabling first aid to be rendered to whosoever becomes injured or ill inside the workplace</p>	250	L.N. 11 of 2002
<p>Employer not ensuring the presence at all times of such a number of first aiders as is adequate and appropriate in the circumstances for rendering first aid to employees if they are injured or become ill at work.</p>	250	L.N. 11 of 2002
<p>Employer not providing and maintaining a suitably equipped first-aid room where two hundred or more employees are at work in a place of work, or where the type of activity or the frequency of accidents so dictate</p>	250	L.N. 11 of 2002

A self - employed person not providing or ensuring that there is provided, adequate first aid equipment to enable him to render first aid to himself while he is at work, or for others to give him first aid	250	L.N. 11 of 2002
Blocked, inaccessible and / or locked emergency exits	250	L.N. 44 of 2002
Employer not taking the necessary measures for fire-fighting and evacuation of workers in the event of serious and imminent danger as contemplated by LN 44 / 2002	250	L.N. 44 of 2002
Employer not ensuring the structure and solidity of any building or structure	250	L.N. 44 of 2002
Employer not making effective and suitable provisions to ensure that every workplace, particularly if enclosed, is ventilated by a sufficient quantity of fresh or purified air, and for rendering harmless by the use of extraction systems, so far as reasonably practicable, all fumes, dust and other	250	L.N. 44 of 2002

impurities that may be injurious to health generated in the course of any process of work carried out in the workplace		
Inadequate or no health and / or safety signage	250	LN 45 of 2002

SCHEDULE 1 (In respect of workplace equipment or machinery)

Type of machinery	Applicable regulation	Frequency of Examination/Testing/Certification	Action required to be taken by Employer
Power presses	LN 25 of 1984	Fenced: every 12 months	Register to be kept.
		Unfenced: every 6 months	
Hoists and goods lifts	LN 47 of 1964	6 months (goods lifts)	Report to be sent to OHSA.
		In case of a continuous hoist or a hoist or lift which is not connected to mechanical power – every 12 months	
Lifting machines, including cranes and winches	LN 52 of 1986	Every 14 months	Register to be kept.
Chains, ropes and lifting tackle	LN 52 of 1986	Every 6 months	Register to be kept.
Steam water boilers	LN 34 of 1976	12 months, and after any extensive repairs	Report to be sent to OHSA.
Hot water boilers	LN 34 of 1976	12 months, and after any extensive repairs	Register to be kept.

Passenger and Passenger goods lifts	L.N. 231 of 2007	Preventive inspection of lifts in workplaces every six months	Report to be sent to OHSA
Passenger and Passenger goods lifts	L.N. 231 of 2007	Thorough examination of lifts in workplaces every six years	Report to be sent to OHSA
Escalators and travelators	L.N. 44 of 2002	Examination and certification of escalators and travelators every six months	Report to be sent to OHSA