

Using legislation to protect workers' health

This article is written by the Workplace Information Group (WIG). It looks at how laws relating to safety and health are made. The limitation of these laws and ways that workers can use the laws to their own advantage, are also discussed.

A brief summary of the occupational health laws that already exist, is provided.

Introduction

This article introduces shopstewards to laws which apply to health and safety at work. The authors do not go into great detail about each law but rather concentrate on questions about who makes the law, limitations of the law and possible strategies on how to use the law.

This article does not aim to provide all the answers but rather to introduce debate around issues related to the law.

No law can by itself guarantee health and safety protection at work. Even the most advanced laws contain many gaps, ambiguities and half measures. But, it does remain important to fight for better laws and legal rights. The law can provide basic, minimum standards of protection for many unorganised workers in South Africa. Laws can also provide a useful starting point for health and safety bargaining.

How laws are made

Ultimately, the state makes laws. The extent to which these laws include the demands of workers depends on how strong and organised workers are, to put pressure on the state and management. In the early 1970s it was illegal for black workers to join or form trade unions, but this did not stop workers from organising themselves. Workers formed their own unions and built strong shop floor structures. Unions became so big that they could not be ignored. This forced managements to negotiate with these unions even though they were regarded as illegal. Because the law and courts did not recognise trade unions for black workers, big battles were being fought outside of the framework of industrial law. The rule of the law did not apply.



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The government had lost control and management and unions were exercising the real power. The government was forced to recognise unions representing the interest of black workers.

From the above example we can see that workers, through their organised strength and militancy, can help to shape laws.

In most cases, however, laws are not openly challenged in this way. The state usually publishes draft legislation in the government gazette for comment and any individual or organisation is then free to recommend changes. The state, unfortunately, is not obliged to accept these comments or recommendations and workers and their unions need to consider whether this avenue should be followed. It is expected, though, that the state would find it difficult to ignore a concerted response to draft legislation especially if it was backed up by other forms of protest.

Generally, however, laws tend to provide only for minimum standards in the workplace and it is usually up to workers and their unions to see that these laws are enforced.

Limitations of the law

The law is open to interpretation. For example, in the Mines and Works Act it is stated that workers have the right to refuse dangerous work. The problem is who decides what work is dangerous and what is not? One would expect that underground workers are the

best judge of the situation, but their perceptions are usually ignored.

Another major problem is that the government does not have enough staff to ensure that the law is being implemented. They are not able to inspect every workplace and make sure that management is abiding by the law. Managements are aware of this problem and, therefore, openly violate the law. In South Africa many of the inspectors appear to be racist and have anti-union attitudes. Often, they do not inspect workplaces properly and are biased in favour of management in cases of dispute.

The law can be complex and is written in a style which is not easy to understand. Workers do not have easy access to what is being said in the law, and this can result in confusion. Workers are, therefore, in many cases not able to exert pressure on management to implement the law and on the state to change the law.

Finally, the fines that management has to pay for violating the law are very low. Managements are often willing to pay these cheap fines instead of making expensive changes to the production process. Also, it is cheaper to pay the fines than to spend money on improving health and safety.

The law also protects management from being sued for damages. "Common law" is the law which makes provision for suing for damages but this law does not apply to the workplace. The government states that this is not necessary as there are health and safety laws to cover these problems.



The success of the unions' Anti-Labour Relations Act Campaign shows that the extent to which laws operate in the interests of workers depends on the organised strength and militancy of the workers.

Is the law important?

Laws are important for three reasons. Firstly, legal rights that have been won and that are in the law cannot be traded off at negotiations. Secondly, because the law makes rules for everyone, it can protect all workers whether they are in trade unions or not. Thirdly, the law sets minimum standards and guidelines which can serve as a useful starting point for negotiations. But the law does not provide the answer to all health and safety problems that workers experience. The law does not and cannot replace shop-floor struggles and collective bargaining. Workers need to use all available methods to secure their demands. In the next section we will suggest ways and strategies that workers and unions can use to secure a healthier and safer workplace with regard to the law.

Using the law to build health and safety

The first step to using the law is to gain an understanding of what is in the law. It is important for workers to have a clear understanding of what rights are already guaranteed in the law. This could come about in the following ways:

- unions can share experiences on sections of the law which resulted in the unions making gains;
- by practically taking up issues.

A knowledge of existing laws and regulations will help workers ensure that management is meeting all its obligations. Workers have to take on the day-to-day task of being health and safety inspectors. A good understanding of the law will also allow workers to pick up sections or clauses of the law which are anti-worker. For example, in MOSA provision is made for safety representatives. But these safety representatives are supposed to be appointed by management. Safety representatives, according to MOSA, are not required to be accountable to workers. This section of MOSA is clearly anti-worker and workers need to organise to exert pressure on management and the state to allow them to elect their own safety representatives.

Conclusion

Laws are a reality. They have problems and limitations and they have their uses. Laws are ultimately made by the state but the extent to which they operate in the interests of workers depends on the organised strength and militancy of workers.

In addition workers need to challenge management to implement the law on the factory floor. Ultimately workers need to challenge the state and management at the same time.

Workers use the law to

A worker from Ladysmith tells a story about what happened in his factory:

"Conditions in our factory were very bad. Management tried to keep the union out, but after a long struggle we won recognition. But management still refused to negotiate on any issues.

In May 1985, some of the workers went on strike and were dismissed. They were reinstated on

the condition they signed a document called "Company Rules and Safety Regulations". According to MOSA, they had to obey these Safety Regulations.

The workers were very angry about the new company rules. Management did not consult the workers about them, although they included important matters like disciplinary procedures and health and safety.

Which laws apply to health and safety?

The current laws which apply to health and safety are:

1. MOSA - Machinery and Occupational Safety Act

The purpose of this law is, "to provide for the safety of persons at a workplace or in the course of their employment or in connection with the use of machinery ...". This law applies to workers in most industries including farmworkers and domestic workers. The following workers are excluded:-

- mineworkers who are covered by the Mines and Works Act;
- workers working with explosives who are covered by the Explosives Act;
- workers in deregulated small businesses (once law is gazetted) and workers in the bantustans. (*A review of MOSA and its problems can be found on page 22.*)

2. WCA - Workmens Compensation Act:

The purpose of this law is to regulate compensation for disablement caused by accidents and industrial diseases during the course of employment. There is a list of compensatable industrial diseases such as lead poisoning. For more information contact your nearest health and safety group. This list does not cover all the potential illnesses caused by work. It is possible to get compensation for a disease which is not on this list but this is very difficult because workers have to prove that they got the disease from work.

Only workers whose employers contribute to the Workmens Compensation Fund qualify for workmens compensation. Mineworkers are covered by the WCA and the Occupational Diseases in Mines and Works Act (ODMWA).

win health and safety rights

Early in 1987, NUMSA decided to declare a dispute and take the case to the Industrial Court. Management used delaying tactics, so the union pushed the case in the Industrial Court. In the court, the union argued that it was an unfair labour practice for the company to negotiate the rules, and gave the management 30 days to call a meeting with the union to address these issues. The court also said that man-

agement must consider the NUMSA proposals for a grievance procedure and a health and safety agreement."

The Industrial Court Judgement says: "The refusal by the respondent (management) to negotiate with the applicant (NUMSA), its rules and regulations relating to discipline and health and safety, constitutes an unfair labour practice."

3. Mines and Works Act:

This law relates to the operation of Mines and Works and of the machinery used. Therefore this law does not specifically cover health and safety. This law, in fact, is very weak on health and safety at mines and works.

4. Basic Conditions of Employment Act:

The purpose of this law is to regulate the conditions of employment. For example, the law states what the length of the working day should be and how much sick leave workers are entitled to. Although this law overlaps with MOSA in that some of its laws, like those mentioned above, can be used together with MOSA in fighting for healthy and safe working conditions - it is not a law focusing specifically on health and safety.

5. Labour Relations Act:

The Labour Relations Act regulates the relationship between employers and employees. For example, it deals with dispute procedures, unfair labour practices and the setting up of industrial councils and so on. Parts of this act may affect health and safety, for example, if a worker is dismissed from work on medical grounds then the employer can be challenged for an unfair dismissal. □

Acknowledgement

WIG would like to thank the National Union of Mineworkers' Compensation, Occupational Safety & Health Department for input into this article.