

Occupational Health & Safety Act 85 of 1993

Section 37: Acts or Omissions by Employees or Mandatories

This is arguably the most critical section for business owners and directors to understand. It deals with **vicarious liability** and serves as the legal bridge between an employee's actions and the employer's criminal responsibility.

The Text (Summarised)

Section 37 states that if an employee commits an act or omission that constitutes an offence under the Act, the **employer** shall also be deemed guilty of that same offence.

However, it provides a vital defence: The employer will **not** be convicted if they can prove that:

1. They did not permit or connive at the act/omission; AND
2. They took all reasonable measures to prevent it.

Additionally, this section applies to "mandatories" (contractors or agents). If you appoint someone to perform a duty on your behalf and they fail, *you* remain liable unless you exercised proper supervision and control.

Detailed Explanation for Your Clients

Think of Section 37 as the "You Are Responsible for Your Team" clause. In South African OHS law, ignorance of what your staff are doing is not a defence; it is evidence of poor management.

- **The Presumption of Guilt:** Unlike standard criminal law where innocence is presumed, Section 37 flips the burden. If your worker breaks the law, the court assumes *you* broke it too. You must actively prove your innocence.
- **"Reasonable Measures":** This is your shield. To avoid conviction, you cannot simply say "I told them to be safe." You must demonstrate tangible proof: signed training registers, documented risk assessments, regular inspection records, disciplinary records for non-compliance, and valid legal appointments. Paperwork isn't bureaucracy here; it's your alibi.
- **Contractor Liability:** Many businesses mistakenly believe outsourcing safety outsources liability. Section 37 explicitly says otherwise. If you hire a contractor to do high-risk work and they cut corners, *your* company faces prosecution unless you can show you vetted their competency and actively supervised their compliance.



OSHPROV PTY LTD
HSE MADE EASY

- **Why It Matters for SMEs & Farms:** Smaller operations often have less formal oversight, making them vulnerable under this section. A farm worker bypassing a tractor guard or a hotel cleaner using unlabelled chemicals triggers Section 37 immediately. Without documented systems proving you tried to prevent it, the owner carries the criminal risk personally.