Government Gazette

Vol. 401, No. 19453, 13 November 1998

Regulation Gazette, No. 6342

No. R. 1441

GOVERNMENT NOTICE

BASIC CONDITIONS OF EMPLOYMENT ACT, 1997

CODE OF GOOD PRACTICE ON THE PROTECTION OF EMPLOYEES DURING PREGNANCY AND AFTER THE BIRTH OF A CHILD

Notice is hereby given in terms of section 87(2) of the Basic Conditions of Employment Act, 1997, that the Minister of Labour, after consulting NEDLAC, has issued under section 87(1)(b) of that Act, a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child as set out in the Schedule.

SCHEDULE

CODE OF GOOD PRACTICE ON THE PROTECTION OF EMPLOYEES DURING PREGNANCY AND AFTER THE BIRTH OF A CHILD

1. INTRODUCTION

1.1 Many women work during pregnancy and many return to work while they are still breast-feeding.

1.2 The objective of this code is to provide guidelines for employers and employees concerning the protection of the health of women against potential hazards in their work environment during pregnancy, after the birth of a child and while breast-feeding.

2. APPLICATION OF THE CODE

2.1 This code is issued in terms of section 87(1)(b) of the Basic Conditions of Employment Act (BCEA) 75 of 1997.

2.2 It is intended to guide all employers and employees concerning the application of section 26(1) of the BCEA which prohibits employers from requiring or permitting pregnant or breast-feeding employees to perform work that is hazardous to the health of the employee or that of her child.

2.3 Workplaces may be affected differently depending upon the type of business and sector they are engaged in and the physical, chemical and biological hazards to which employees may be exposed in the workplace.

2.4 The norms established by this code are general and may not be appropriate for all workplaces. A departure from the code may be justified in the proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.

3. CONTENTS

This code -

3.1 sets out the legal requirements relevant to the protection of the health and safety of pregnant and breast-feeding employees;

3.2 sets out a method for assessing and controlling the risks to the health and safety of pregnant and breast-feeding employees;

3.3 lists the principal physical, ergonomic, chemical and biological hazards to the health and safety of pregnant and breast-feeding employees and recommends steps to prevent or control these risks. These are listed in Schedules One to Four, which are included for guidance and are not exhaustive.

4. LEGAL REQUIREMENTS

4.1 The Constitution protects the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction [section 12(2)] and gives every person the right to health services, including reproductive health care [section 27(1)(a)].

4.2 No person may be discriminated against or dismissed on account of pregnancy.*

* The relevant provisions establishing this right are section 9(3) and (4) of the Constitution; section 187(1) of the Labour Relations Act 66 of 1995 and section 6 of the Employment Equity Act of 1998.

4.3 Employers are required to provide and maintain a work environment that is safe and without risk to the health of employees. This includes risks to the reproductive health of employees. These duties are established in terms of both the Occupational Health and Safety Act (OHSA) 85 of 1993 and the Mine Health and Safety Act (MHSA) 27 of 1996. Key aspects of these Acts are -

4.3.1 employers must conduct a risk assessment, which involves identifying hazards, assessing the risk that they pose to the health and safety of employees. and recording the results of the risk assessment.

4.3.2 employers must implement appropriate measures to eliminate or control hazards identified in the risk assessment;

4.3.3 employers must supply employees with information about and train them in the risks to their health and safety and the measures taken to eliminate or minimise them;

4.3.4 elected worker health and safety representatives and committees are entitled to participate in the risk assessment and control of hazards;

4.3.5 employees have a duty to take reasonable steps to protect their own health and safety and that of other employees.

5. PROTECTING THE HEALTH OF PREGNANT AND BREAST-FEEDING EMPLOYEES

5.1 Section 26(1) of the BCEA prohibits employers from requiring or permitting a pregnant employee or an employee who is breast-feeding to perform work that is hazardous to the health of the employee or the health of her child. This requires employers who employ women of childbearing age to assess and control risks to the health of pregnant or breast-feeding employees and that of the foetus or child.

5.2 Employers should identify, record and regularly review -

5.2.1 potential risks to pregnant or breast-feeding employees within the workplace;

5.2.2 protective measures and adjustments to working arrangements for pregnant or breast-feeding employees.

5.3 Where appropriate, employers should also maintain a list of employment positions not involving risk to which pregnant or breast-feeding employees could be transferred.*

* In terms of section 26(2) of the BCEA an employer must offer suitable alternative employment to an employee during pregnancy if her work poses a danger to her health or safety or that of her child or if the employee is engaged in night work (between 18:00 and 06:00, unless it is not practicable to do so. Alternative employment must be on terms that are no less favourable than the employee's ordinary terms and conditions of employment.

5.4 Employers should inform employees about hazards to pregnant and breast feeding employees and of the importance of immediate notification of pregnancy.

5.5 Workplace policies should encourage women employees to inform employers of their pregnancy as early as possible to ensure that the employer is able to identify and assess risks and take appropriate preventive measures.

5.6 The employer should keep a record of every notification of pregnancy.

5.7 When an employee notifies an employer that she is pregnant her situation in the workplace should be evaluated. The evaluation should include -

5.7.1 an examination of the employee's physical condition by a qualified medical professional;

5.7.2 the employee's job;

5.7.3 workplace practices and potential workplace exposures that may affect the employee.

5.8 If the evaluation reveals that there is a risk to the health or safety of the pregnant employee or the foetus, the employer must -

5.8.1 inform the employee of the risk;

5.8.2 after consulting the employee and her representative, if any, determine what steps should be taken to prevent the exposure of the employee to the risk by adjusting the employee's working conditions.

5.9 The employee should be given appropriate training in the hazards and the preventive measures taken.

5.10 If there is any uncertainty or concern about whether an employee's workstation or working conditions should be adjusted, it may be appropriate in certain circumstances to consult an occupational health practitioner. If appropriate adjustments cannot be made, the employee should be transferred to an alternative position in accordance with section 26(2) of the BCEA.

5.11 Employers must keep the risk assessment for expectant or new mothers under regular review. The possibility of damage to the health of the foetus may vary during the different stages of pregnancy. There are also different risks to consider for workers who are breast-feeding.

5.12 Arrangements should be made for pregnant and breast-feeding employees to be able to attend antenatal and postnatal clinics as required during pregnancy and after birth.

5.13 Arrangements should be made for employees who are breast-feeding to have breaks of 30 minutes twice per day for breast-feeding or expressing milk each working day for the first six months of the child's life.

5.14 Where there is an occupational health service at a workplace, appropriate records should be kept of pregnancies and the outcome of pregnancies, including any complications in the condition of the employee or child.

6. THE IDENTIFICATION AND ASSESSMENT OF HAZARDS

6.1 **Physical hazards**

The control of physical hazards in the workplace includes the recognition, evaluation and control of

6.1.1 exposure to noise, vibration, radiation, electric and electromagnetic fields and radioactive substances;

6.1.2 work in extreme environments;

6.1.3 control of the thermal environment (heating and air conditioning).

Schedule One describes the extent to which certain of these physical agents may constitute a hazard to the health and safety of pregnant and breast-feeding employees and suggests methods to prevent or control these hazards.

6.2 **Ergonomic hazards**

The application of ergonomics involves ensuring that work systems are designed to meet the employee's needs for health, safety and comfort. A range of ergonomic risk factors may pose hazards to the health and safety of pregnant and breast-feeding employees and should be identified and assessed as part of the risk assessment programme. These include -

6.2.1 heavy physical work;

6.2.2 static work posture;

6.2.3 frequent bending and twisting;

6.2.4 lifting heavy objects and movements requiring force;

6.2.5 repetitive work;

6.2.6 awkward postures;

6.2.7 no rest;

6.2.8 standing for long periods;

6.2.9 sitting for long periods.

Schedule Two describes the extent to which some of these factors may constitute a hazard to the health and safety of pregnant and breast-feeding employees and suggests methods to prevent or control these hazards.

6.3 **Chemical hazards**

Contact with harmful chemical substances may cause infertility and foetal abnormalities. Some chemicals can be passed to the baby during breast feeding and could possibly impair the health and the development of the child.

The Hazardous Chemical Substances Regulations, 1995, issued under OHSA apply to all employers who carry out activities, which may expose people to hazardous chemical substances. These employers must assess the potential

exposure of employees to any hazardous chemical substance and take appropriate preventive steps. The Regulations set maximum exposure levels for some 700 hazardous chemical substances.

The Hazardous Chemical Substances Regulations require employers to inform and train employees about, and in any substance to which they are or may be exposed. This must include information on any potential detrimental effect on the reproductive ability of male or female employees.

Regulation 7(1) of the General Administrative Regulations, 1996, under OHSA requires manufacturers, importers, sellers and suppliers of hazardous chemical substances used at work to supply a Material Safety Data Sheet (MSDS) which must include information on any reproductive hazards. Every employer who uses a hazardous chemical substance must be in possession of the relevant MSDS and must make it available on request to affected persons.

With the exception of the Lead Regulations, there are no regulations, which set maximum exposure levels of specific applications for women of childbearing age or pregnant women.* In view of the absence of occupational health standards for the exposure of pregnant or breast-feeding women to chemical substances, care should be taken to minimise exposure to chemicals, which can be inhaled, swallowed or absorbed through the skin. Where this cannot be achieved, employees should be transferred to other work in accordance with section 26(2) of the BCEA.

* European Council Directive 9V32/EEC classifies some 200 substances and preparations as falling into one of the following categories:

- possible risks of irreversible effects (R40)
- may cause cancer (R45)
- may cause heritable genetic damage (R46)
- may cause harm to the unborn child (R61)
- possible risk of harm to the unborn child (R63)
- may cause harm to breast fed babies (R64)

The actual risk to health of these substances can only be determined following a risk assessment of a substance at a place of work, i.e. although the substances listed may have the potential to endanger health or safety, there maybe no risk in practice. For example, if exposure is below the Oval that might cause harm.

Chemical substances that are known or suspected to constitute a hazard to pregnant or breast-feeding women and to the foetus or child are listed in Schedule Three below.

6.4 **Biological hazards**

Many biological agents, such as bacteria and viruses, can affect the unborn child if the mother is infected during pregnancy. Biological agents may also be transferred through breast-feeding or by direct physical contact between mother and baby. Health workers, including service workers in health-care facilities and workers looking after animals or dealing with animal products are more likely to be exposed to infection than other workers. Employees who have close contact with young children, such as teachers and ecu-care workers, are at increased risk of exposure to rubella (German measles) and varicella (chicken pox).

Universal hygiene precautions are required to prevent disease. These include high standards of personal hygiene, surveillance of staff in high-risk areas, appropriate sterilisation and disinfecting procedures, designation of person to be responsible for health and safety, the use of protective clothing and gloves and the avoidance of eating or smoking in laboratories or other risk areas.

Some of the biological agents that are known to constitute a hazard to the health of breast-feeding or pregnant women are listed in Schedule Four.

7. ASPECTS OF PREGNANCY THAT MAY AFFECT WORK

Employers and employees should be aware of the following common aspects of pregnancy that may affect work:

7.1 As a result of morning employees may be unable to perform early shift work. Exposure to nauseating smells may also aggravate morning sickness.

7.2 Backache and varicose veins may result from work involving prolonged standing or sitting. Backache may also result from work involving manual handling.

7.3 More frequent visits to the toilet will require reasonable access to toilet facilities and consideration of the employee's position if leaving the work she performs unattended poses difficulties..

7.4 The employee's increasing size and discomfort may require changes of protective clothing, changes to work in confined spaces and changes to her work where manual handling is involved. Her increasing size may also impair dexterity, agility, co-ordination, speed of movement and reach.

7.5 The employee's balance may be affected making work on slippery or wet surfaces difficult..

7.6 Tiredness associated with pregnancy may affect the employee's ability to work overtime and to perform evening work. The employer may have to consider granting rest periods.

SCHEDULE ONE

PHYSICAL HAZARDS

HAZARD	WHAT IS THE RISK	HOW TO AVOID THE RISK
Vibration and mechanical shocks	Long-term exposure to vibrations may increase the risk of miscarriage and stillbirth. Exposure to shocks or wholebody vibrations in the later stages of pregnancy can result in premature labour.	*It is advised that pregnant workers and those that have recently given birth avoid work that is likely to involve uncomfortable, whole body vibrations, especially at low frequencies, or where the abdomen is exposed to shocks or jolts.*
Extreme heat	The exposure of pregnant and breast-feeding employees to extreme heat may lead to dizziness and faintness, particularly in the case of women performing standing work. Lactation may be impaired by heat dehydration.	*Employers should limit the exposure of pregnant and breast-feeding workers to extreme heat. Arrangements for access to rest facilities and refreshments should be made in conditions of extreme heat.*
Extreme cold	Work in extremely cold conditions such as cold storage rooms has been associated with problems in pregnancy.	*Employees must be supplied with thermal protective clothing and their exposure to cold limited in terms of regulation 2 of the Environmental Regulations for Workplaces, made*

		under the Occupational Health and Safety Act (OHSA).
Noise	Prolonged exposure to noise can elevate the blood pressure of pregnant women and lead to tiredness.	*Employers should ensure compliance with regulation 7 of the Environmental Regulations for Workplaces, OHSA.*
Ionising Radiation	Significant exposure to ionising radiation is known to be harmful to the foetus. Working with radioactive liquids or dusts can result in exposure of the foetus (through ingestion or via contamination of the mother's skin) or a breast-fed baby to ionising radiation .	*Work procedures should be designed to keep exposure of pregnant women as low as reasonably practicable and below the statutory dose limit for a pregnant woman.* *Pregnant women or breast-feeding mothers should not work where there is a risk of radioactive contamination.* *Employers of registered radiation workers, including radiographers, must comply with the regulations controlling the use of electronic products issued under the Nuclear Energy Act 131 of 1993.*
Non-ionising (electromagnetic) radiation	It has not been established that the levels of non-ionising electromagnetic radiation likely to be generated by video display units (VDU's) or other office equipment constitutes a risk to human reproductive health.	*Women who are pregnant or who are planning children and are worried about working with VDU's should discuss their concerns with an occupational health practitioner.* *The following practical measures can be adopted to limit exposure to electromagnetic fields in offices (emfs):* • *Workers should sit at arm's length from the computer (70cm) and about 120cmirom the backs and sides of co-workers ' monitors.* • *Workers should have regular breaks from VDU work, as this reduces exposure time.* • *Radiation-reducing glare screens (or shields) can reduce the electrical component of the emfs. However, shields that distort the image on the monitor should not be used*
Work in compressed air and diving	People who work in compressed air are at risk of developing the bends. It is not clear whether pregnant	*Pregnant workers should not work in compressed air because of potential harm to the foetus from gas bubbles.*

	women are more at risk of getting the bends but potentially the foetus could be seriously harmed by gas bubbles.	*For those who have recently given birth there is a small increase in the risk of the bends. The Diving Regulations, 1991, under OHSA, must be complied with.*
Physical and mental strain	Excessive physical or mental pressure may cause stress and give rise to anxiety and raised blood pressure during pregnancy.	*Employers should ensure that hours of work and the volume and pacing of work are not excessive and that, where practical, employees have some measure of control over how their work is organised. Seating should be available where appropriate. Longer or more frequent rest breaks will help to avoid or reduce fatigue.*
Physically strenuous work	Employees whose work is physically strenuous should be considered to be at increased risk of injury when pregnant or after the birth of a child.	*Heavy physical exertion, including the lifting or handling of heavy loads, should be avoided from early pregnancy onwards.*
Prolonged sitting and standing	Sitting or standing for long periods during pregnancy can have serious health consequences. Standing for long unbroken periods can result in complications during pregnancy such as deep vein thrombosis, varicose veins, premature labour and even miscarriage.	*Workstations should be adjustable to allow for necessary changes in posture.* *Pregnant employees who sit for long periods should be provided with a proper chair with lumbar support rest to prevent lower back pain. A footrest could alleviate pain and discomfort in the case of both sitting and standing workers.* *Pregnant employees who work in a stationary position should be given frequent rest breaks. Mobility during breaks should be encouraged to help prevent swelling of the ankles and improve blood circulation.* *Where work organisation permits task rotation, this should be done to allow the worker to do tasks that involve standing, sitting and moving.*
Anaesthetic gasses	Exposure to anaesthetic gases during pregnancy can lead to miscarriage.	*Exposure to high concentrations of anaesthetic gases should be avoided during pregnancy.*
Carbon monoxide	Risks arise when engines or appliances using petrol, diesel and liquefied petroleum gas are operated in enclosed areas. Carbon monoxide can result in the foetus being	*Occupational exposure to carbon monoxide should be avoided during pregnancy and breast-feeding.*

	starved of oxygen.	
Antimitotic (Cytotoxic) drugs	Exposure to antimitotic drugs, which are used for treating cancer, damages genetic information in human sperm and egg cells. Some of these drugs can cause cancer. Absorption is by inhalation or through the skin.	*Workers involved in the preparation and administration of antimitotic drugs should be afforded maximum protection. Direct skin contact can be avoided by wearing suitable gloves and gowns. Pregnant employees potentially exposed to cancer drugs should be offered the option of transfer to other duties.*
Ethylene oxide	Ethylene oxide is used mainly in sterilising procedures in hospital. Exposure may occur when sterilised goods are transferred to the aerator after the cycle is complete and when changing the gas tanks.	*Health risks can be minimised by reducing worker exposure during transfer when the steriliser door is opened Pregnant employees exposed to ethylene oxide above the acceptable level should be transferred to other duties.*
Lead	Exposure of pregnant and breast-feeding employees to lead affects the nervous system of young children and is detrimental to child development.	*Contact with lead should be avoided during pregnancy and breast feeding. The Lead Regulations issued under OHSA must be complied with These Regulations specify levels at which employees must be withdrawn from exposure to lead.*
Mercury and mercury derivatives	Organic and inorganic mercury compounds can have adverse effects on the mother and foetus.	*Women of childbearing age should not be exposed to mercury compounds.*
Polychlorinated Byphenyls (PCBs)	PCBs can cause deformities in the child. Maternal exposure before conception can also affect foetal development as PCBs can be passed on to the foetus through the mother's blood.	*No pregnant women should be exposed to PCBs at work.*
Organic solvents	Exposure to organic solvents including aliphatic hydrocarbons, toluene and tetrachloroethylene can lead to miscarriage and have a detrimental effect on the foetus.	*Pregnant women should be protected to exposure against these organic solvents.*
Pesticides and herbicides	Exposure to certain pesticides and herbicides is associated with an increased risk of miscarriage and can adversely affect the development of the child.	*Exposure to pesticides and herbicides should be avoided or minimised*
Alcohol	Foetal alcohol syndrome can lead to physical and mental abnormalities in children. Workers in the beverage, catering and associated industries, including wine farming, are particularly at risk.	*Where appropriate, employees should be informed of and counselled in the hazards associated with foetal alcohol syndrome.*

Tobacco smoke	Tobacco smoke contains carbon monoxide and carcinogenic and other harmful substances. Smoking and the inhalation of environmental smoke affects foetal blood supply and can lead to retarded growth and development and more early childhood diseases. Smoking carries an increased risk of cancer and cardiovascular disease.	*Care should be taken to ensure that women employees are able to work without being exposed to tobacco smoke.*

SCHEDULE FOUR

BIOLOGICAL HAZARDS

HAZARD	HOW TO AVOID RISK
Cytomegalovirus	Employees should be required to maintain high standards of personal hygiene, wash their hands after each patient contact and use gloves when handling potentially contaminated wastes in order to minimise the risk of infection.
Hepatitis	General precautions must be taken for all forms of hepatitis. Vaccination is the most effective means available of preventing hepatitis B. l Workers must take particular care to avoid mucous membranes and skin coming into contact with potentially contaminated blood or other secretions.
HIV	Universal precaution is important for workers potentially exposed to HIV. Health care workers should take precautions to prevent needless stick injuries and exercise care when handling the blood, tissues or mucosal areas of all patients.
Rubella (German measles)	Rubella vaccine is the most effective means of preventing the disease, and susceptible employees should be immunised. Pregnancy should be avoided for 3 months after vaccination.
Varicella (chicken pox)	It is advisable to identify employees who have not previously had chicken pox. Pregnant employees who are known not to be immune to chicken pox and who are exposed to an active case should report to a physician.
Toxoplasmosis gondii	Control measures against toxoplasmosis gondii for women of reproductive age include high standards of personal and environmental hygiene; the sanitary disposal of cat faeces and avoiding contamination by cat faeces of soil to be tilled for agriculture.