

	<b>Procedure</b>	
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**Title: Employees' Right of Refusal to Work in an Unsafe Situation Procedure**

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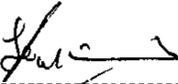
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## **1. Introduction**

Eskom is committed to health and safety excellence, which forms an integral part of its operations. Eskom and its subsidiaries will conduct business with respect and care for people to ensure that no operating condition or urgency of service endangers the life of anyone or causes injury or damage to the environment.

Although the Bill of Rights entrenched in the South African Constitution makes no specific reference to health and safety in the workplace, the rights relevant to health and safety in the workplace include the right to life, the right to a safe and healthy environment, and labour rights.

Employees have a duty to take reasonable care of their health and safety and the health and safety of other persons, to cooperate with the employer, to carry out lawful orders, to report unsafe situations and incidents, and engage in a manner following the behavioural safety observations elements (SMAT), which will ensure that unsafe behaviour does not continue or repeat itself.

The aim of this Procedure is to ensure that an environment is created that promotes Zero Harm by empowering employees and contractors to take responsibility for their own safety and that of others.

## **2. Supporting Clauses**

### **2.1 Scope**

This Procedure shall apply to all Eskom sites with the intention of promoting a safe working environment for all Eskom employees (permanent, non-permanent, employees placed by a Temporary Employee Services provider (TES), learners, and bursary students), agents, consultants, and contractors.

#### **2.1.1 Purpose**

This Procedure clarifies Eskom's intention to ensure that no one is exposed to unsafe conditions or is in a position, with respect to any behaviour, that can result in serious risk at the workplace.

#### **2.1.2 Applicability**

This Procedure shall apply throughout Eskom Holdings SOC Ltd divisions and subsidiaries.

#### **2.1.3 Effective date**

1 July 2015.

### **2.2 Normative/Informative References**

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

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### 2.2.1 Normative

- [1] Occupational Health and Safety Act 85 of 1993.
- [2] 32-727: Eskom, Safety, Health, Environment and Quality Policy.
- [3] 32-407 Behavioural Observation Procedure.

### 2.2.2 Informative

- [4] DPC 34-846: Operating Regulations for High-voltage Systems.
- [5] GGR 0992: Plant Safety Regulations (Low-voltage Regulations).
- [6] GGR 0568: Pulverised Fuel Firing Regulations.
- [7] ISO 9001 Quality Management Systems.
- [8] NEMA 107: National Environmental Management Act.
- [9] MHSA: Mine Health and Safety Act.

## 2.3 Definitions

- 2.3.1 **Absolute (or strict) requirement:** A requirement designed for a safe working environment, which means that the particular duty must be complied with, irrespective of cost or likelihood of injury.
- 2.3.2 **Unsafe situation:** Any situation involving an unsafe act from an individual or an unsafe condition.
- 2.3.3 **Safety rules:** Rules designed to prevent accidents and injuries when followed.
- 2.3.4 **Contractor:** Any employer formally contracted (directly or indirectly) by Eskom and who performs work or supplies a service, product, equipment, or material for the purposes of advancing Eskom's business and other interests. This includes personal contractors/consultants and third-party contractors (vendors, suppliers, agents, joint ventures, principal contractors and subcontractors).
- 2.3.5 **Suppliers:** Any person or organisation that supplies any product, equipment, or material; and this includes courier services.
- 2.3.6 **Agents:** Any person who acts as a representative for Eskom (as the client), as defined in the OHS Act. (With specific reference to the Construction Regulations).

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- 2.3.7 **Joint ventures:** An entity formed through a decision and agreement to work together between two or more persons, parties, and/or organisations to undertake an economic activity together and which entity is managed by means of this agreement. The parties agree to create a new entity by both contributing equity, and they then share in the revenues, expenses, and control of the enterprise.
- 2.3.8 **Treat:** to apply/administer a process to improve or remedy a risk/hazard/unsafe condition(s) or situation(s).
- 2.3.9 **Mitigate:** to control/prevent a hazard from causing harm and to reduce a risk/hazard/unsafe condition(s) or situation(s).
- 2.3.10 **Eliminate:** to remove/eradicate a risk/hazard/unsafe condition(s) or situation(s).
- 2.3.11 **Workplace:** Any premises or place where a person performs work in the course of his employment.
- 2.3.12 **Behavioural Safety Observation (SMAT):** Technique use to assess and address the actual safe and unsafe behaviours of people in the workplace; as well as workplace conditions - which are caused by the actions or non-actions of employees, contractors or their supervisors.

## 2.4 Abbreviations

Abbreviation	Explanation
BU	Business Unit
EDC	Eskom Documentation Centre
ExCo	Executive Committee
H&S	Health and safety
OH&S	Occupational Health and Safety
OU	Operating Unit
TES	Temporary Employee Services
SMAT	Safety Management Audit Technique

## 2.5 Roles and Responsibilities

- 2.5.1 **The Sustainability Systems Department (OH&S):** The OH&S Department shall review the Procedure every five years or as required by the OHS Steering Committee.
- 2.5.2 **Group and divisional executives:** Group and divisional executives are responsible for ensuring adherence to this procedure within their respective groups/divisions.

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**2.5.3 Operating units/ Business units:** The management at Business Unit level shall be responsible for:

- implementing this Procedure;
- communicating to all their employees, contractors, and contractor employees the importance of compliance with this Procedure; and the consequences of non-compliance. This includes communicating duty of care and refusal to perform an unsafe task to all new employees and new contractors;
- implementing a monitoring process for ensuring understanding of, and compliance with, duty of care and refusal to perform an unsafe task; and
- ensuring understanding of, and compliance with, the requirements of this Procedure.

## **2.6 Process for Monitoring**

Compliance with the requirements of this Procedure has to be audited by the Operating/Business Unit,

Service Function and/or Strategic function at least annually as part of an internal review process. All records have to be audited by Assurance and Forensics Department or any person appointed by it to do so, on its behalf, at its discretion and at a frequency determined by it.

The focus areas of such monitoring will include the following:

- Self-assessments at BU/OU level (at intervals not exceeding three months)
- Auditing by Audit and Forensics Department

## **2.7 Related/Supporting Documents**

2.7.1 Refusal to work in an unsafe workplace. (Unique identifier 240-53716047).

# **3. Employees' Right of Refusal to Work in an Unsafe Situation Procedure**

## **3.1 General**

The employer has the duty to inform each person of his or her right to refuse unsafe work, which includes that every employee shall, at work:

- a) take reasonable care of his or her own health and safety and that of any other person who may be affected by his or her acts or omissions;
- b) co-operate in order to enable that any duty or requirement, including absolute (or strict) requirements imposed on the employer in order to achieve a safe workplace, are performed and complied with;

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- c) carry out any lawful order given to him or her and obey the health and safety rules and procedures laid down by his or her employer or by anyone authorised to do so by the employer in the interest of health and safety;
- d) if any situation that is unsafe or unhealthy comes to his or her attention, as soon as practicable take immediate preventative and corrective action and report such situation to his or her employer or to the health and safety representative for his or her workplace or section thereof, as the case may be, who shall, in turn, report it to the employer; and
- e) exercise the duty so as not to interfere with, damage, misuse or intentionally or recklessly interfere with anything that is provided in the interest of health or safety.

### **3.2 Standard Procedure for when an Employee Exercises his or her Right of Refusal to Work in the case of an Unsafe Work Situation**

Where an employee is directed, required, or instructed to perform a task in relation to equipment, a machine, device, thing, or physical condition and he or she reasonably believes in good faith that the:

- a) equipment, machine, device, or thing; or
- b) physical condition of the workplace;
- c) is in contravention of any health and safety requirement, may endanger, endangers, causes an undue hazard, or may cause an undue hazard to his or her health and safety, (collectively referred to as an unsafe work condition) or those of his or her co-worker or any person, such an employee has the right to refuse to perform such a task until such time as it has been corrected and made safe.
- d) The employee may refuse to return to perform such a task until the unsafe work condition(s) has/have been mitigated, treated or eliminated.
- e) An employee cannot refuse to work when high-risk work condition(s) and processes form part of his or her normal contractual duties, where following approved safe work procedures will ensure a safe working environment. (Example: a live line worker involved in live line work following safe work procedures).
- f) Should any employee at any time reasonably believe, in good faith, that the performance of work or a task is unsafe, the following procedures shall apply:

#### **Stage 1:**

1. The employee will immediately notify to the supervisor about the details of the unsafe condition or unsafe act. The supervisor shall give the situation immediate attention.
2. The employee will explain to the supervisor (or his nominated team leader) and, where available, the applicable health and safety representative the reasons for believing that the work to be performed is unsafe. The employee has the right to invite his/her union representative.
3. The employee(s) shall remain in a safe place.
4. The supervisor shall investigate the unsafe situation together with the applicable employee and the applicable health and safety representative responsible for that particular area.

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5. The task risk assessment is to be reviewed to address the concerns of the employee and to outline the corrective actions in order to mitigate/treat/eliminate the unsafe situation.

Alternatively, if it is found that the perceived threat is unfounded, the supervisor shall give a clearance notice to the employee, co-signed by the applicable employee, indicating that the identified perceived threat has been thoroughly investigated and that the situation has been declared to be safe. (See form referenced in Paragraph 2.7.1.)

6. If emergency action is required to correct an unsafe situation that constitutes an immediate threat to employees or any other person, only qualified and properly instructed employees or persons will be permitted to correct such unsafe condition. Every possible effort must be made to control the hazard while this is being done.
7. When the issue has been resolved and the appropriate corrective action has been taken, the employee shall return to work. If the issue has not been resolved, proceed to the following stage.

## **Stage 2**

The manager of that section or, if not readily available, any other person with the necessary knowledge, skills, and experience who understands the task and associated risks must then review the risk assessment and mitigation plans and, where necessary, make changes to further reduce/treat/eliminate the risk. If the issue is resolved and the appropriate corrective action has been taken, the employee shall return to work.

If the issue has not been resolved, then the work will be considered as unsafe and cannot continue until the applicable Responsible Manager (BU/OU Manager) have introduced all steps to ensure the work place is safe as defined in the Occupational Health and Safety Act, Eskom's policies, procedures and best practices.

### **3.3 Participation by Subject-Matter Specialist**

If a supervisor requests that a subject-matter specialist should participate in the resolution of an issue, the BU Responsible Manager:

- a) must ensure the appointment of the appropriate subject-matter specialist to enter the workplace for the purpose of participating;
- b) must give every reasonable assistance necessary to enable participation by the subject-matter specialist; and
- c) shall:
  - i. ensure that the necessary steps are taken to make the workplace healthy and safe; and
  - ii. jointly advise the employees of the steps that are being taken

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### **3.4 Report**

The supervisor, together with the subject-matter specialist (if applicable), must prepare a report as stipulated in form referenced in Paragraph 2.7.1, which must be tabled and discussed at the next Statutory Health and Safety Committee meeting. The chairperson of the Health and Safety Committee must enter the refusal to work into the register and ensure that all events involving any person exercising his or her right of refusal to work in unsafe situations have been recorded in the minutes of the Health and Safety Committee.

### **3.5 Victimization Prohibited**

Employees who exercise their right to refuse to work in accordance with the steps set out in this Procedure are protected by the Occupational Health and Safety Act. Therefore, no employer or person acting on behalf of an employer shall:

- a) dismiss or threaten to dismiss an employee;
- b) discipline or suspend or threaten to discipline or suspend an employee;
- c) impose any penalty on an employee; or
- d) intimidate or coerce an employee

Solely because the employee has acted in compliance with the applicable requirements set out in this Procedure.

Notwithstanding this, any employee who without good reason refuses to work and who fails to follow this Procedure may be dealt with in terms of Eskom's applicable policies and procedures.

## **4. Acceptance**

This document has been seen and accepted by:

<b>Name</b>	<b>Designation</b>
Neo Tsholanku	General Manager Legal
Phillip Mashego	Senior Manager Human Resources
OHS Steering Committee	

## **5. Revisions**

<b>Date</b>	<b>Rev.</b>	<b>Compiler</b>	<b>Remarks</b>
June 2015	1	SN Middel	Confirmed still valid. Revision date updated
August 2013	0	SN Middel	

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## **6. Development Team**

The following people were involved in the development of this document:

- SN Middel
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- S Isaacs
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## **7. Acknowledgements**

- S Govender
- S Isaacs

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