

# Regulatory perspectives in occupational safety and health management

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# The purpose of this presentation

1. to provide a regulatory perspective on internal control on OSH.
2. to describe and discuss some of the internal control regulations on OSH which are imposed on firms.
3. Glimpse into the future of OSH Regulations in Kenya

# MENU

1. Some Definitions
2. OSH regulatory Models
3. Internal Control Regulations for OSH Management
4. Perspectives on the future regulatory models

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# Regulate/Regulatory?

To **control** (something, especially a business activity) by means of **rules** and **regulations**.

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# Regulator?

a person or organization appointed by a government to regulate an area of activity such as OSH, banking or industry.

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# Regulatory?

**of or relating to the control or direction of an activity by a set of rules, laws, etc.**

# Obligation and Mandate of Regulatory Bodies?

The legal obligation and mandate of these regulatory bodies is to protect the public by regulating their registrants (BC Government, 2021) by:

- determining registration requirements
- setting standards of practice
- recognizing education programs
- maintaining a registry of practicing registrants
- addressing complaints—including conducting investigations and referring serious matters for disciplinary action about their registrants—when practice and ethical standards are not met

# Regulation - activity?

is the promulgation of targeted rules, typically accompanied by some authoritative mechanism for monitoring and enforcing compliance



# Regulation?

- the process of making rules that govern behaviour
- the rules may be imposed by the gov't, or other bodies, or maybe self-imposed.
- In most instances regulations affecting businesses are imposed by government, and most often because of **market failure.**

# 4 Components of Regulation?



**REGULATOR**, target, command,  
and consequences

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Occupational Safety and  
Health Services  
PO BOX 34120-00100  
GPO, NAIROBI, Kenya**

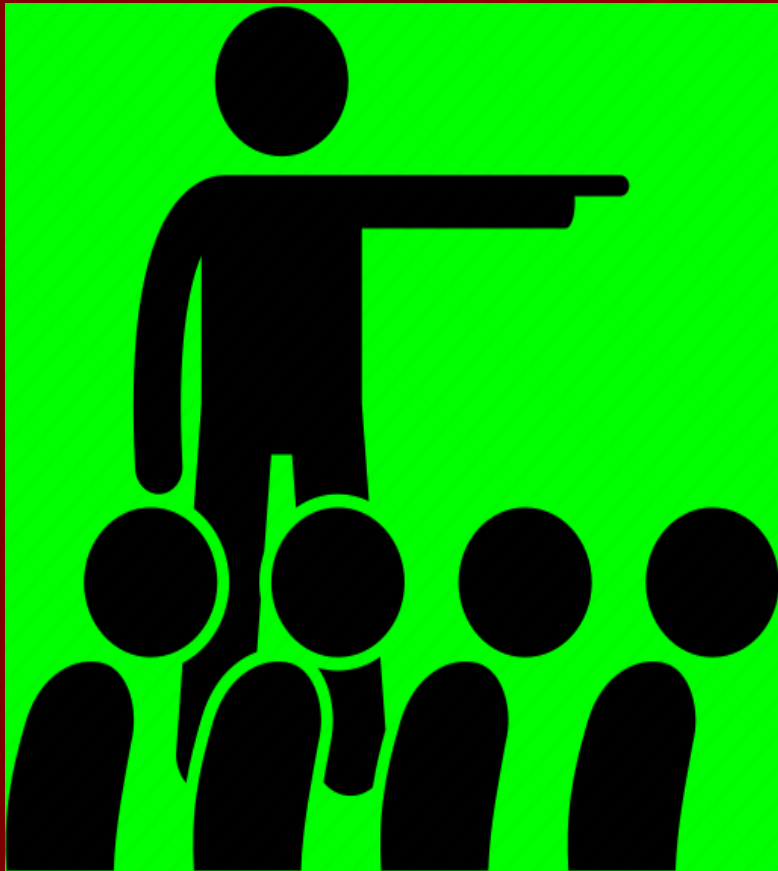
# 4 Components of Regulation?



- regulator, **target**, command, and consequences

Employers, employees,  
suppliers, manufacturers,  
etc

# 4 Components of Regulation?



- regulator, target,

**command**, and  
consequences

- Laws: OSHA 2007; WIBA, 2007
- 15 Rules under OSHA, 2007, GFM ACT

# 4 Components of Regulation?



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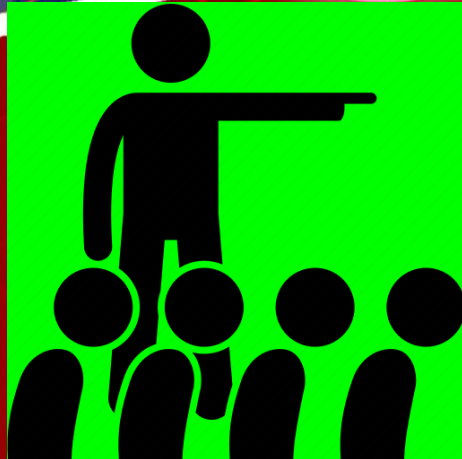
regulator, target, command, and

## consequences

- **Laws: OSHA 2007;  
WIBA, 2007**
- **15 Rules under OSHA,  
2007, GFM ACT**



# 4 Components of Regulation?



1. Regulator- DOSHS
2. Target(s) – EMPLOYERS, EMPLOYEES, SUPPLIERS, MANUFACTURERS ,APPROVED PERSONS AND INSTITUTIONS
3. Command – OSHA, 2007, WIBA, 2007,15 RULES
4. Consequences – FEES, FINES

# Regulatory Approaches-4?

- government agencies to restrict
- direct the activities of regulated parties using terms and conditions within statutory and regulatory instruments, operating permits, licences, approvals or codes of practice

# Regulatory GOALS-4?

- **restrictive regulation,**
- **reactive regulation,**
- **proactive regulation,**
- **transparent regulation.**



# Perspective?

a way of thinking about and  
understanding something

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# Regulatory Perspective?

Legal prescriptions on how safety & matters should be handled at the workplace

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# Regulatory Principles-5?

1. transparent,
2. accountable,
3. proportionate,
4. consistent and
5. targeted in carrying out our regulatory duties.

# Regulatory Perspective?

1. transparent,
2. accountable,
3. proportionate,
4. consistent and
5. targeted in carrying out our regulatory duties.

# Types of Regulations – 3No

1. Regulations imposing obligations for the benefit of other parties (e.g. consumer rights, health and safety, border control regulations).
2. Regulations requiring financial payments – taxes, rates, levies,
3. Regulations for information – requiring businesses to record or disclose information to the government

# Regulatory Environment?

- The regulatory environment has a significant influence on the internal control practices of firms
- **DIRECT ACTIONS**

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# Regulatory Environment?

- **DRIVE CULTURE:** Leadership, People Policies, Governance, Purpose

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# Regulatory Environment?

- The use and usefulness of management reporting on **OSH** and **auditor** reporting on internal control

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# Regulatory **COMMANDS**?

- The use and usefulness of management reporting on **OSH** and **auditor** reporting on internal control

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# REGULATIONS IMPOSING OBLIGATIONS ON EMPLOYERS

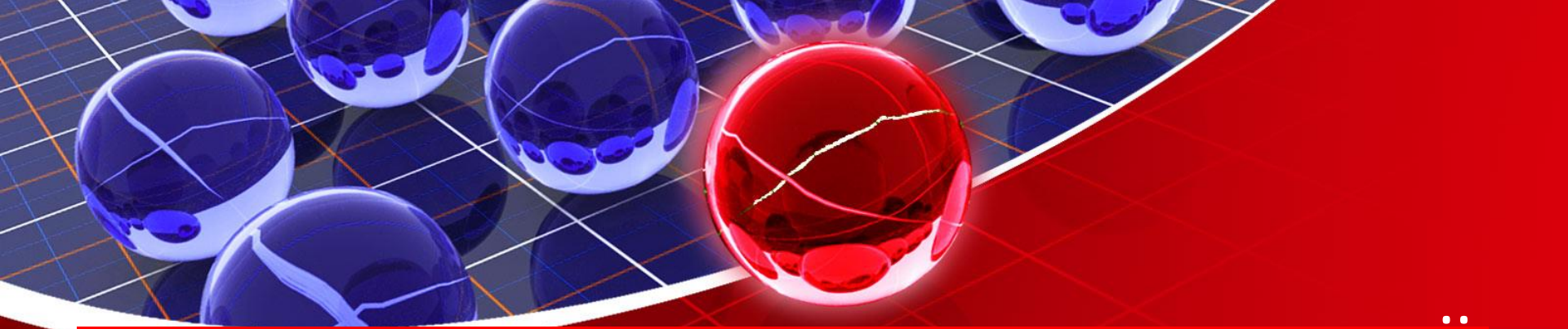
## 1. RISK ASSESSMENT – S6(3) – OSHA, 2007

# REGULATIONS IMPOSING OBLIGATIONS ON EMPLOYERS

## 2.WORK ENVIRONMENT SURVEILLANCE

# **REGULATIONS IMPOSING OBLIGATIONS ON EMPLOYERS - WORK ENVIRONMENT SURVEILLANCE**

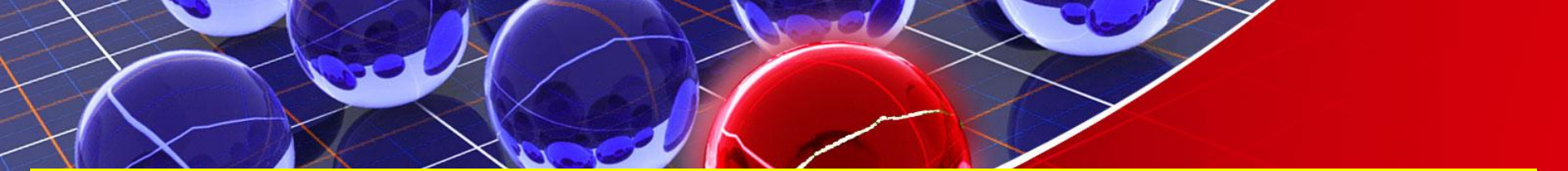
- 1. Safety and Health Audits**
- 2. Fire Safety Audits**
- 3. Air Quality Monitoring**
- 4. Health/Medical examinations**
- 5. REPORTING-Accident/injury/dangerous occurrences**



# EMPLOYER OBLIGATIONS



**1. Ensure the safety,  
health and welfare at  
work of all employees.**



.


**2. Ensure that non-employees are not exposed to risks to their health and safety.(VISITORS, ATTACHEES....)**

# 3. Carry out suitable risk assessments for the safety and health of workers

SEND REPORT TO DIRECTOR, DOSHS

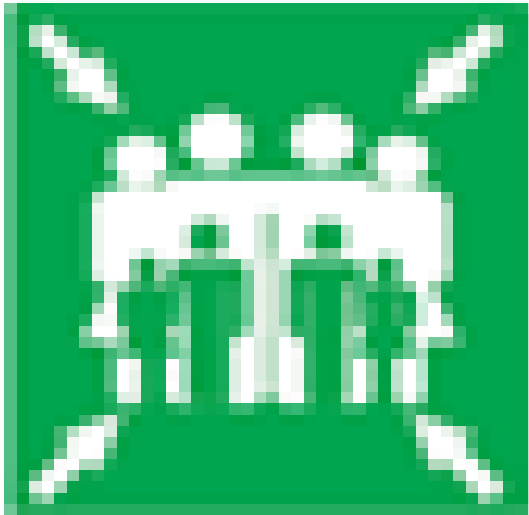






**4. Take immediate steps to stop any operation or activity where there is a prominent and serious danger to safety and health and to take away persons from the danger.**

# Fire Assembly Point



4

Fire  
assembly  
point

# First Aid

- FIRST AIDERS (LN 160, 1977)
- TRAINING OF FIRST AIDERS – approved training institutions



12/4/2023

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# Registration of Workplaces

- All workplaces
- On payment of prescribed fees
- KES 6,500



# FIRE

- FIRE safety audit every 12 months
- Fire safety team
- Firefighting equipment
- Water – at least 10,000 liters
- Fire Drill



# Safety and Health Audits

- Every 12 months
- All workplaces
- Approved safety and health advisors

**Fine: KES 500,000 or to imprisonment for a term not exceeding six months or to both.**

# AIR QUALITY MONITORING

- Every 12 months
- All workplaces
- Approved air quality monitors

# PROVISION OF WELFARE FACILITIES

- 91—Supply of drinking water.
- 92—Washing facilities.
- 93—Accommodation for clothing.
- 94—Facilities for sitting.
- 95—First-aid.
- 101. (1) Personal protective clothing and appliances



A microscopic view of several cells, some with blue and red highlights, set against a grid background.

# Safety and Health Policy

1. Develop Safety and Health Policy Statement *and*
2. Communicate to all employees

A decorative background image showing a microscopic view of several cells. One cell in the center is highlighted in red, while others are in shades of blue and purple. The cells are set against a dark grid pattern.

# **MEDICAL EXAMINATION OF WORKERS**

- The employees and former employees shall be under an obligation to undergo medical examination in accordance with **MEDICAL EXAMINATION Rules**
- **OBLIGATION ON BOTH EMPLOYER AND EMPLOYEE**

# REPORT ACCIDENTS TO DOSHS

- Report any Accident To Director DOSHS
- Non-Fatal – within 7 days
- Fatal – within 24hrs
- **OBLIGATION ON BOTH  
EMPLOYER AND EMPLOYEE**



# Training and Supervision

the provision of such **information, instruction, training and supervision** as is necessary to ensure the safety and health at work of every person employed;

# HEALTH AND SAFETY COMMITTEE

- FORMED in all workplaces regularly employing **20** or more employees.
- To have equal representation from management & workers
- Management side to include occupier or his appointed representative.
- Workers reps elected by workers; to reflect gender & departmental balance

# REGULATIONS REQUIRING FINANCIAL PAYMENTS – FEES, LEVIES

# Registration of Workplaces

- All workplaces
- On payment of prescribed fees
- KES 5,000



# REGULATIONS FOR INFORMATION – REQUIRING EMPLOYERS TO RECORD OR DISCLOSE INFORMATION TO THE GOVERNMENT

## SELF ASSESSMENT (DOSH FORM 23(REVISE 2022):

- DETAILS ON NATURE OF WORK
- LOCATION OF WORKPLACES
- **RAW MATERIALS IN USE**
- **NUMBER & GENDER OF EMPLOYEES,**  
**etc**

# Establishing committees of occupational safety and health management system

REQUIRED UNDER L. N. 31/2004

THE FACTORIES AND OTHER PLACES OF WORK (SAFETY AND HEALTH COMMITTEES) RULES, 2004

ANCHORS AND PROVIDES THE FOUNDATION FOR OSH MANAGEMENT

# **CONSEQUENCES -Offences, Penalties and legal proceedings**

**The general penalty -  
300,000/- or jail term not  
exceeding 3 months or  
both fine and term.**

**IF NOT EXPRESSED**

# **Offences, Penalties and legal proceedings**

**Should commitment of  
offence proceed after  
conviction, a daily fine  
not exceeding 10,000/-  
is instituted.**

# Offences, Penalties and legal proceedings

A fine not exceeding **KES 1,000,000** or a jail term not exceeding 12 months instituted on the event of an accident due to the occupier having contravened provisions of the Act .

# Offences, Penalties and legal proceedings

A fine not exceeding **KES 200,000** or 6 months jail or both in respect of forgeries, false declaration, conniving, **FALSE** pretense and lies .





# THE WORK INJURY BENEFITS ACT, 2007



# AN ACT of Parliament :

to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes.

A decorative graphic at the top of the slide features a grid of blue and red spheres. The spheres are arranged in a pattern, with a prominent red sphere in the center-right. The background is a dark blue grid with a red diagonal line.

# Sect 45

- shall provide and maintain such appliances and services for the rendering of first aid



# Employer Obligations

- keep a register or other record of the earnings and other prescribed particulars of all employees;
- (b) at all reasonable times produce the register or record on demand to the Director for inspection; and
- (c) retain the register, record or reproduction referred to in paragraph (1) (a) for a period of at least six years after the date of the last entry in that register or record
- Report all injuries to DOSHS





# Employee obligations

- Report all injuries to employer
- Attend medical evaluation clinic for determination of INCAPACITY
- OTHERWISE, LAPSES - 12 MONTHS

# FUTURE REGULATIONS?

1. Programmes for regulatory reform should have clear objectives and frameworks for implementation.
2. Regulations should be regularly reviewed to ensure they meet their objectives efficiently and effectively.
3. Regulations, institutions that implement regulations and regulatory processes should all be transparent and non-discriminatory.
4. The scope, effectiveness and enforcement of competition policy should be reviewed and where necessary strengthened.
5. Economic regulations (those designed to affect the price or availability of goods or services) should only be used to stimulate competition and efficiency, and should be eliminated except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Regulations that create barriers to trade and investment should be eliminated through continued liberalisation.
7. Linkages with other policy objectives that support reform should be developed

**(Organisation for Economic Cooperation and Development (OECD))**

# **FUTURE REGULATIONS- Three scenarios for the future of work?**

**1. DISMANTLING LABOUR LAWS**

**2. TECHNOLOGICAL REVOLUTION**

**3. ECOLOGICAL CONVERSION**

**(ILO, 2016)**



# FUTURE REGULATIONS-OSH?

1. Prosecutorial Powers conferred by Parliament
2. Regulate Business Outsourcing
3. Regulate the Gig economy
4. Regulate working from Home, create certainty

# Why OSH important?

**LEGAL** - The law says so!

The Occupational Safety & Health Act, 2007, Constitution, other laws

**MORAL** - >3 million people suffer ill health caused (or made worse) by work each year, long latency periods, effects may be invisible

**ECONOMIC** - Accidents cost (4 -10% of GNP) - direct and indirect costs



# Other considerations

- The OSHA, 2007
  - ensure that no person is harmed by the conduct of the ‘activities/undertakings’
- Common Law ‘Duty of Care’
  - take all reasonable steps to provide for the safety of staff and *persons lawfully present*
- **contractual duty** to staff to provide for their safety in the context of the ‘undertaking’