



by Salatiso Mdeni

Salatiso Mdeni is an Environment, Health and Safety consultant with over 6 years experience in the property management and development sector as well as over 12 years' experience in environment, health and safety in general.

To a certain degree it could be argued that in the past it was fairly easy to know what a person was responsible for in relation not only to emergency response planning but occupational health and safety as well. Sure the legislation might not have been as advanced as it is today but simply looking at the common law duty of care an employer knew that overall accountability for staff welfare vested with him / her. Furthermore there were less parties involved especially for large companies because at the time it made sense to own the premises that the business was being conducted from, and the personnel doing the maintenance were likely to be in the company's full time employ.

Unfortunately things have become more complicated now due to the number of parties that play a role towards making buildings safe.

Because of issues encountered with poor maintenance due to technical maintenance being left to accountants who would rather depreciate the assets than invest in proper planned maintenance programmes and lifecycle replacements, even the best of buildings ended up a health hazard. Also business trends necessitated focusing on one's core expertise rather than diversifying much needed cash into buying property and employing technical personnel on a full time bases.

As if the many parties involved in the safety of buildings (consequently occupants) were not enough complication, the legislative requirements further compounded the problem. The federal characteristics of our constitution mean that legislative authority is decentralised between the spheres of government resulting in more than one legislation being applicable as opposed

Emergency response planning: Who does the law hold accountable for implementation?

to only governance from the national sphere. So, instead of just the Occupational Health and Safety Act, 1993 there are now also municipal bylaws which govern emergency response planning. Therefore, in addition to technical OHS expertise one needs to engage legal gurus to decipher the requirements and ultimately know where one's accountability and responsibility starts and ends; is the employer the only accountable party? What about the owner/ landlord in a multitenant building?

To answer this one has to look at the legislation from national level then systematically follow it down to the local sphere. I could start from the Constitution but I think for the purpose of this exercise it's enough to mention Section 24 of the Bill of Rights as the supreme provision in the country in respect of safety with the rest of the legislation enabling compliance to it. The OHS Act makes it very clear that the employer is overall accountable for employee health and safety so there's no question about that. This means that even if the employer is not the one building the structure prior to occupation, he / she is obligated to ensure that the building is structurally sound as per the provisions of the national building regulations and SANS 10400, specifically section TT which deals with fire and emergency provisions / buildings. Then the local government bylaws (either called emergency or fire bylaws) come in with provisions for emergency response planning. Apart from detailing the equipment and facilities a building has to have to prevent and respond to emergencies, the bylaws go further to specify accountability for emergency response planning and testing. The City of Johannesburg Emergency Services Bylaws as an example clearly specifies the owner as accountable for emergency evacuation planning in their premises with specific duties including;

- Compilation of emergency evacuation plans,
- Coordination of fire protection committees,

- Review of emergency response plans, Identification of assembly points.

Cities of Ekurhuleni, Tshwane, Cape Town and Nelson Mandela Bay, to mention a few, also have similar bylaws with more or less similar provisions. While the above is not detailed in terms of the applicable legislation and guidance on the accountable parties, it should give one a good enough idea. It goes without saying that implementation will also be complicated by other factors as well, more specifically the type of leases between the employer and the owner as well as the outsourcing model for facilities management where this is applied.

I could go into the intricacies of the requirements from the OHS Act and municipal bylaws but that would be another 100 pages alone, for now all I wanted to clarify is:

Occupational Health and Safety Act, 1993

- Overall accountability for employee health and safety vest with the employer as per Section 8; the Environmental regulations for workplaces under this act have the overarching provisions for Emergency response Planning and
- SANS 10400 Section TT specifies the requirements for Emergency Facilities

Municipal Bylaws

These go into the operational aspects not only for emergency response but also incident prevention

- They specify the authorisations required for hazardous installations like fuel storage,
- Emergency evacuations are covered under the bylaws at a much easier format to understand,
- Certain requirements which might be contained in different SANS standards are simplified in the bylaws.

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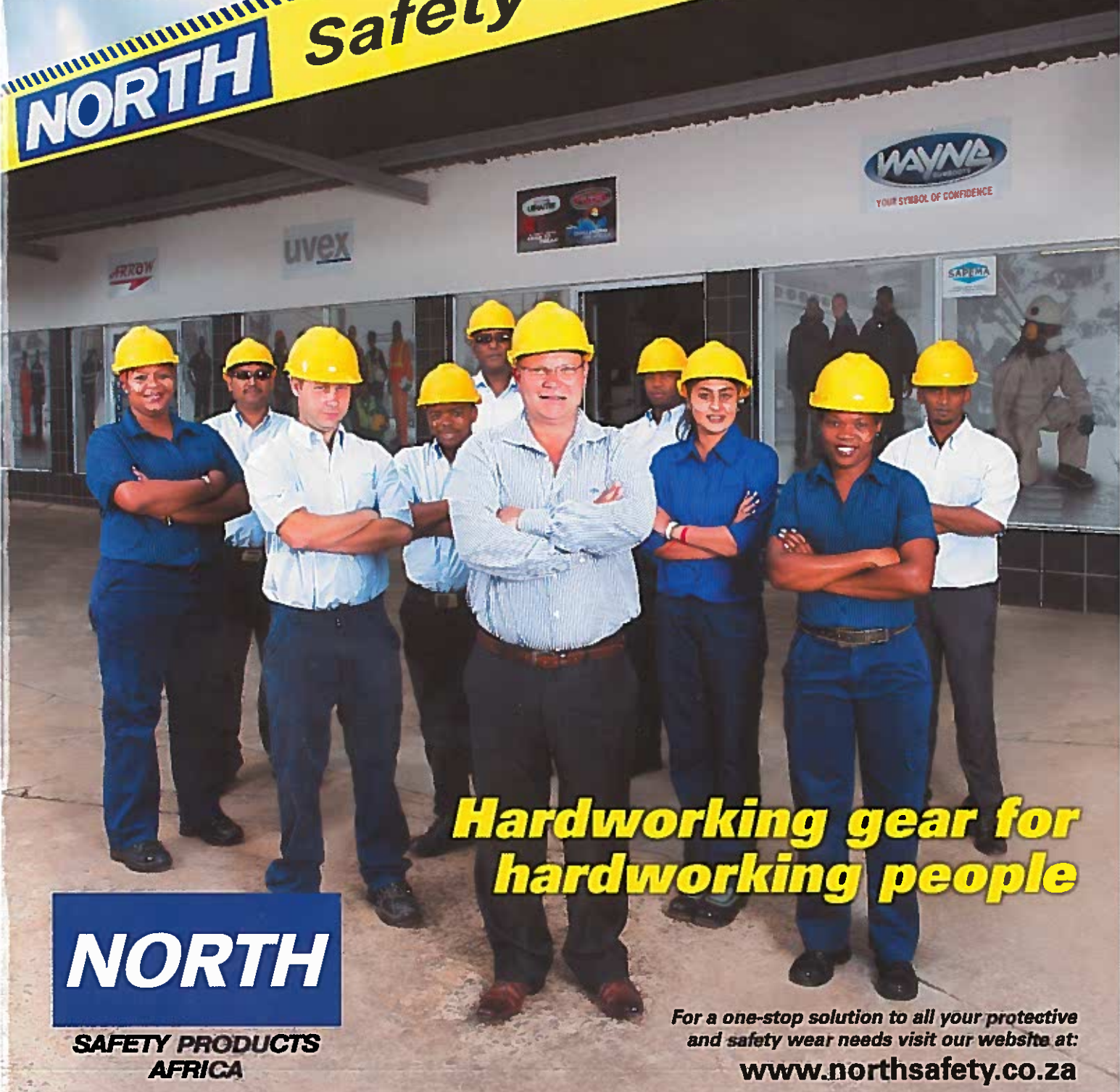
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