

The Law of Hotel Housekeeper Occupation Health and Safety: Estonia and South Africa

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I. Introduction

The necessity and importance of proper occupational health and safety laws for hotel housekeepers becomes increasingly clear each year. The number of overnight stays in hotels in numerous countries has steadily increased year by year, causing an increase in the demand for connected services, including hotel housekeeping.

For example, in South Africa, overnight stays have nearly doubled from 9.9 million in 2000 to 18.8 million in 2012.¹ It is important to note that nearly 14 million of the visitors were foreign travelers, and as a result, approximately 70% stayed a minimum of one night in South Africa, with the average number of days ranging between 4 and 6 days.²

Tourism in Estonia has also been on an upward trajectory for the past four years, with nearly 5.7 million tourists staying overnight at various “accommodation establishments.”³ This represents a 53% growth in overnight stays in Estonia since 2004.⁴ Also, the geographical representation of tourists has spread, causing a 48% and 23% increase from Chinese and Japanese tourists staying overnight, respectively.⁵ This extensive growth in tourism to both of these nations makes the treatment of housekeepers even more vital.

II. Analysis

This analysis is intended to supplement research conducted by the Yale Law School Transnational Development Clinic, looking at the framework for health and safety laws for hotel

¹ Statistics South Africa. *Tourism, 2012*. (2013)
<http://www.statssa.gov.za/publications/Report-03-51-02/Report-03-51-022012.pdf>

² *Id.* at Figure 12.

³ Enterprise Estonia, *Tourism in Estonia in 2013* (2014).

https://d3otexg1kysjv4.cloudfront.net/docs/1498005_tourism-in-estonia-2013.pdf

⁴ *Id.*

⁵ *Id.*

housekeepers in Argentina, India, and Indonesia. We chose to look at the framework in South Africa and Estonia, both to expand the geographical reach and representation of this research, and because trade union support for hotel housekeepers in these countries – through a strong domestic labor movement in South Africa, and a Nordic union partnership in Estonia – help ensure that the research will be utilized.

A. Substantive Laws for Workplace Safety

This section, organized by the most prevalent issues faced by housekeepers, takes a deeper look into the various occupational health & safety laws both countries have in place, as well as ratification or non-ratification of relevant International Labor Organization (ILO) Conventions. It should be noted here that, although both countries' occupational health and safety laws stipulate a broad range of requirements, further research will be required to determine whether their enforcement with respect to hotel housekeepers is adequate.

1. Legal Protections Relating to Acute Trauma

South Africa's Occupational Health and Safety Act (OSHA) of 1993, under Section 43, "Regulations," establishes that the Minister of Manpower may create regulations that are "expedient in the interest of the health and safety of persons at work."⁶ This includes requiring employers to make available emergency equipment and medicine for employees, and regulating "the application of first-aid and the qualifications which persons applying first-aid shall

⁶ Occupational Health and Safety Act (1993) at §43(1.b)

possess.”⁷ The current array of regulations do not, to date, provide a simple and effective way to mitigate and assess acute traumas within the workplace.

Estonia’s OSHA protects against acute traumas through universal legislation applicable to all industries. Under Section 13, “Obligations and rights of Employers,” it specifies that employers must ensure that all workers have access to first aid equipment.⁸ In addition, Section 4 dictates that in an attempt to reduce injuries and risks, workplaces should be equipped with adequate rescue and first aid equipment, as well as safety signs and equipment.⁹ The universal and categorical approach are useful, but it would also be helpful to have greater specificity for the reality of hotel housekeeping work, such as requiring employers to include first aid kits in each housekeepers’ cart.

2. Legal Protections Relating to Musculoskeletal Injuries

The South African Compensation for Occupational Injuries and Diseases Act (COID) of 1993 gives workers the right to compensation for various injuries or diseases they may contract in the workplace. Schedule 3 outlines the numerous types of diseases and injuries that are covered by the act, which includes “any disease due to overstraining of muscular tendonous insertions,” which arise as a result of repetitive movements.¹⁰ In addition, Schedule 4 outlines exactly how much the remunerations will be based on the injury of the employee.¹¹ Although the act provides comprehensive coverage of workplace injuries, unlike Estonia, South Africa’s

⁷ OSHA at §43(1.b.ix)

⁸ Occupational Health and Safety Act (1999), §13(9), <http://www.legaltext.ee/text/en/X30078K6.htm>

⁹ OSHA at §4(4)

¹⁰ Compensation for Occupational Injuries and Diseases (1993) at Schedule 3

¹¹ COID at Schedule 4

legislation does not call upon employers to incorporate alternative methods for tasks to alleviate potential injuries.

Estonia's OSHA lists various types of risk factors that employees encounter in the workplace, including physiological and psychological, physical, and biological factors. Section 9 defines a physiological risk factor as "heavy physical work, repetitive movements of the same type and physical positions and movements in work which cause fatigue, or other similar factors that may gradually cause damage to health."¹² Further more, subsection 3 specifies, "the employer shall adapt the work to suit the workers as much as possible."¹³ While this law aims to prevent physical injuries by suggesting tasks to be structured around the employee's safety, it could propose systems for identifying specific alternatives, ideally in partnership with worker representatives. Also, legal frameworks should provide for monitoring systems in place to ensure that accommodations are actually being made for the employees.

3. Legal Protections Relating to Chemical Exposure

In South Africa, prior to 2003, the Regulations for Hazardous Chemical Substances Act of 1995 provided details about proper information and training that must be conducted regarding the handling of chemicals, as well as other general safety measures when handling hazardous substances.¹⁴ However, this act was amended, and the only legal protection currently in place for handling chemicals is under the aforementioned Section 43 of OSHA. It provides the Minister of Manpower to make regulations that monitor "the production, processing, use, handling, storage

¹² OSHA at §9(1)

¹³ OSHA at §9(3)

¹⁴ Regulations for Hazardous Chemical Substances Act (1995) at §3

or transport of, and the exposure of employees and other persons to, hazardous articles.”¹⁵ While consolidating legislation into a comprehensive whole, the more general overview approach to protections against hazardous chemicals risks taking a significant step away from the detailed measures necessary to ensure safety for all members of the workforce.

Estonia has a more comprehensive protection against chemicals, with several pieces of legislation that monitor and limit workers’ exposure to chemicals. Regulation No. 293 provides a list of “limit values for chemical hazards in the working environment.”¹⁶ The Chemicals Act of 1998 specifies the proper handling and use of chemicals, as well as their safety requirements.¹⁷ Regulation No. 105 further elaborates upon the Chemicals Act by setting forth the occupational health and safety requirements for the proper use of chemicals and other hazardous material in the workplace. More importantly, this regulation requires “risk assessments” to be conducted to outline the working conditions and available risk factors, as well as available safety measures.¹⁸

4. Legal Protections Relating to Medical Examination and On-Site Health Professionals

Section 17 of South Africa’s OSHA, “Health and Safety Representatives,” requires that “every employer who has more than 20 employees in his employment at any workplace, shall... designate in writing for a specified period health and safety representatives for such workplace.”¹⁹ Furthermore, Section 18 outlines what the function of these representatives is, including but not limited to: identifying potential hazards at the workplace, reviewing the

¹⁵ OSHA at §43(2.b.vii)

¹⁶ Regulation No. 293 (“Limit values for chemical hazard in the working environment”) <http://www.legaltext.ee/text/en/V20040.htm>

¹⁷ Chemicals Act (1998), <http://www.legaltext.ee/text/en/X2062K5.htm>

¹⁸ Regulation No. 105 (2001), §2(1)

¹⁹ OSHA at §17(1)

effectiveness of safety measures, and investigating the complaints by employees about their safety at work.²⁰ To supplement these representatives, the act calls for employers to create health and safety committees who “initiate, develop, promote, maintain and review measures to ensure the health and safety of his employees at work.”²¹ Section 19 continues to outline the procedures and membership of these committees, to ensure that they are in fact worker-controlled, while Section 20 describes the role of the committee, such as its ability to “make recommendations to the employer... regarding any matter affecting the health or safety of persons at the workplace.”²² Ultimately, South Africa boasts an elaborate system of on-site representatives.

Under Section 13 of Estonia’s OSHA, “Obligations and rights of Employers,” employers are responsible for organizing “the provision of medical examinations for workers whose health may be affected, in the course of the work process, by risk factors present in the working environment or the nature of work, and bear the costs related thereto.”²³ Furthermore, the act stipulates “an occupational health service provider may provide... medical examination of workers and evaluation of their state of health.”²⁴ Lastly, any occupational disease “shall be diagnosed by an occupational health doctor who shall determine the state of the worker’s health.”²⁵ The lack of a worker representative system is noteworthy.

5. Legal Protections Relating to Working Hours/Overtime/Weekly Holiday

South Africa’s Basic Conditions of Employment Act (BCE) of 1997 defines the length of the workday and workweek, the rules for overtime pay, and also the rest periods for employees in

²⁰ OSHA at §18(1.a)(1.b)(1.d)

²¹ OSHA at §19(1)

²² OSHA at §20(1.a)

²³ OSHA at §13(7)

²⁴ OSHA at §19(3.2)

²⁵ OSHA at §23(5)

South Africa.²⁶ Furthermore, the act outlines various types of leave available, number of public holidays, and rules for terminating employment.²⁷ Despite being thorough and detailed, most parts of the act do not apply to those individuals who work less than 24 hours a month.²⁸ This leaves part-time workers extremely vulnerable and without any legal protections for their labor.

Similarly, in Estonia, the Employment Contract Act (ECA) clearly outlines the bare necessities for an employment contract, ranging from the information of each party, the job functions, and the wages²⁹ to the amount of hours in the workday and workweek, overtime structure and pay, and also holidays. Although the act expresses the workday, workweek, and annual holidays to be 8 hours, 40 hours, and 28 days, respectively, each clause begins with the phrase, “it is presumed that.”³⁰ The lack of direct language gives employers a loophole.

6. Legal Protections Relating to Work Environment (Noise, Temperature, Lighting and Ventilation)

Under Section 8 of South Africa’s OSHA, “General duties of employers to their employees,” it is required that “every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.”³¹ In addition, subsection 2 lists the multiple ways in which an employer can ensure the safety of workers, such as “providing such information, instructions, training and supervision

²⁶ Basic Conditions of Employment Act (1997) at §2

²⁷ BCE at §2, §3, §5

²⁸ BCE at §2.1

²⁹ Employment Contracts Act (2008), §5(1) and §44(7),

<http://www.ilo.org/dyn/travail/docs/2491/Employment%20Contracts%20Act%20%20as%20amended%20up%20to%2004.06.2012.pdf>

³⁰ ECA at §43(1), §43(2) and §55

³¹ OSHA at §8(1)

as may be necessary to ensure... the health and safety at work of his employees.”³² Overall, South Africa’s legislation provides a general overview of ensuring safety in the workplace, whereas Estonian legislation outlined alternatives and standards for the various aspects in the work environment.

As mentioned earlier, Estonia’s OSHA identifies various types of risk factors encountered in the workplace. Section 6 outlines what constitutes a physical risk in the work environment, such as proper lighting and ventilation, and also calls on employers to “implement measures to prevent health risks arising from physical risk factors or reduce them as much as possible.”³³ Furthermore, the act calls for adequate temperatures in the workplace³⁴, as well as appropriate levels of noise to prevent any harmful effects on the workers.³⁵

7. Legal Protections Relating to Sexual Harassment

In South Africa, the Code of Good Practice on the Handling of Sexual Harassment Cases of 1995 seeks to “eliminate sexual harassment in the workplace.”³⁶ In addition to defining sexual harassment, the code defines and provides examples of the various forms of sexual harassments, including physical, verbal, and non-verbal conduct.³⁷

In Estonia, the Gender Equity Act (GEA) of 2004 calls for equal treatment for all employees and protects against sexual harassment. Section 11, “Employers as persons promoting gender equity,” requires employers to promote an equal workplace by “ensuring that employees are protected from harassment related to the sex of a person and sexual harassment in the

³² OSHA at §8(2.e)

³³ OSHA at §6(2)

³⁴ OSHA at §6(4)

³⁵ OSHA at §6(5)

³⁶ Code of Good Practice on the Handling of Sexual Harassment Cases (1995) at §1(1)

³⁷ *Id.* at §3 and §4

working environment.”³⁸ The act also states that employers must “inform employees of the rights ensured by this act.”³⁹

8. Legal Protections Relating to Mental Stress

None of the available legislation in South Africa mentions or addresses the dangers of mental stress, as well as any way to prevent and reduced stress in the workplace. However, Section 9 of OSHA defines a psychological risk factor as “monotonous work or work not suitable to the abilities of a worker, poor work organisation, working alone for an extended period of time, or other similar factors that may gradually cause changes in the mental state of a worker.”⁴⁰ In an attempt to prevent and help alleviate mental stress in the workplace, the act calls on the employer to implement “breaks to be included in the working time for workers during the working day or working shift.”⁴¹ Since housekeepers are constantly completing strenuous work by themselves for lengthy periods of time, the proper enforcement of this act is crucial.

III. Conclusion

Despite the fact that these national legislative frameworks do provide protections from numerous issues housekeepers face in the workplace, the lack of an international protocol is concerning. While some countries have succeeded in creating intricate programs that provide broad protection and detailed contract language, others either have limited or no legislation at all. International standards are necessary because they bring attention to the issue these workers face and bring to light the reality of the workers that many are unaware of. By setting universal

³⁸ Gender Equity Act (2004), §11(4), <http://www.legaltext.ee/text/en/X80041K1.htm>

³⁹ GEA at §11(5)

⁴⁰ OSHA at §9(2)

⁴¹ OSHA at §9(3)

standards and providing solutions specific to the housekeeping industry, a great step will be made towards eradicating and alleviating the pressures these workers face on the job. These standards would serve to bring together best practices on this issue, rather than presenting an incursion into the sovereignty of nations, promoting uniformity without being invasive. They could present recommendations and accommodations for the workplace, and define and outline the minimum standards these workers have a right to as human beings.