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# LEGAL ALERT



**Safety as a Culture, not a Compliance Checklist**



# Safety as a Culture, not a Compliance Checklist

## Introduction

Every year on April 28<sup>th</sup>, the world observes the Day for Safety and Health at Work. It is an opportunity to reflect on how employers are effectively protecting their workforce. As workplace dynamics continue to evolve, the conversation around occupational safety and health often centres on a single question: Are we compliant?

Between July 2023 and May 2024, the Directorate of Occupational Safety and Health Services (DOSHS) recorded 4,357 workers involved in workplace accidents across Kenya. These are not just normal statistics. They are breadwinners, parents, and colleagues who left for work one morning and did not return home safely or at all.

Yet, the common response in many Kenyan organisations remains largely unchanged. Most organisations focus on renewing the Work Injuries Benefits Act insurance cover, updating the safety register, scheduling the annual DOSHS inspection, and moving on. While the checklist is ticked, the underlying safety culture often does not change.

## What the law Provides on Occupational Safety

Kenya has a reasonably solid legislative framework for occupational safety and health. The Occupational Safety and Health Act, Cap. 236A of the Laws of Kenya (OSHA) is the primary statute governing workplace safety. It places clear obligations on employers to provide and maintain a safe working environment, to ensure systems of work are safe, to provide adequate information, instruction, training, and supervision, and to put in place a written safety

and health policy. OSHA also establishes DOSHS under the Ministry of Labour and Social Protection, mandated to enforce these standards through workplace inspections and investigation of accidents. Beyond OSHA, the Work Injury Benefits Act, Cap. 236B of the Laws of Kenya (WIBA) provides for compensation to workers who suffer occupational injuries and diseases.

OSHA provides for fines and imprisonment for employers who breach its provisions. DOSHS can issue improvement notices, prohibition notices, and recommend prosecution of offenders. WIBA, on the other hand, exposes non-compliant employers to significant financial liability. However, workplaces continue to record preventable fatalities and serious injuries. Annual reports from the Kenya National Bureau of Statistics and DOSHS consistently document thousands of occupational accidents across sectors.

## What a Compliance Culture Looks Like

Most employers treat safety as a regulatory exercise and rarely integrate it into the culture of the organisation. When safety is treated as a compliance exercise, it manifests in predictable ways. The safety policy is framed, safely stored/filed, and barely discussed again. Safety training happens during induction, and while incidents are recorded in a register, they are investigated mostly to close the file, not necessarily to improve existing systems. Personal Protective Equipment (PPE) is often stored until an inspection date. Reporting incidents is quietly discouraged because recorded incidents affect



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performance metrics and invite scrutiny. Workers who raise concerns are sometimes labelled difficult and, in some instances, the said workers have complained of alleged victimization at the workplace if they lodge a complaint for compensation, for the injury suffered.

Compliance with OSHA should be the minimum standard any employer should meet. It should be the baseline, not the benchmark. An organisation that treats safety purely as a regulatory exercise will always find itself in a reactive position. It will conduct a risk assessment because an inspector is coming and to evaluate risks for the organisation. It will hold a fire drill because the certificate is due for renewal, not because it is an important exercise for its staff. It will issue PPE in compliance with the law and then fail to check whether anyone is using them correctly. Under OSHA, an employer doing all of the above is arguably compliant. However, this approach prioritises documentation over actual protection. When safety is driven purely by the fear of an audit or an inspector's visit, it becomes a very cosmetic exercise.

A truly safe workplace is one where safety is embedded in how decisions are made at every level. This happens when an organisation treats safety as a value, something it holds because it is the right thing to do, not because DOSHS might show up. A safety culture must be led from the top and reinforced at every level of the organisation.

## What a Safety Culture Should Look Like

A safety culture is the sum of the beliefs, behaviour, and norms that shape how people act when no one is watching, and especially when following the safe

route is inconvenient. In organisations where safety is regarded as a culture, it shows up not only in documents, but in daily decisions, in how leadership behaves, and in what the organisation rewards and tolerates.

This culture starts with leadership. In workplaces where safety is genuinely valued, the leadership does not simply hand safety duties to the safety officer and move on. They follow up. They ask whether issues have been addressed and whether workers are actually safer, as a result.

In Kenya, where hierarchical workplace structures remain common, this top-down commitment is not optional, but it is essential. When employees see that safety matters as a priority for leaders, they view it as important and consider it a priority as well.

Further, organisations that take safety seriously also invest in it. They budget proactively for training, equipment maintenance, medical surveillance, and wellness programmes, before an incident forces the conversation. Employers who view those costs as investments, rather than impositions tend to have far safer workplaces. The reverse is also true. When safety budgets are the first to be cut, the message to employees is that their safety is not taken seriously, nor is it guaranteed.

One of the most important elements of a safety culture is the meaningful involvement of employees themselves. Section 9 of OSHA provides for the establishment of safety and health committees, in workplaces with more than twenty (20) employees. These committees are not supposed to be ceremonial. Workers, particularly those on the front



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lines of any operation, often have the most direct and detailed knowledge of what is dangerous in practice. Organisations that treat these committees seriously, genuinely listen to what workers require, and act on it and as a result, build systems far more durable than a compliant safety register. They create workplaces where safety is owned collectively, not outsourced to a department.

This same logic extends to how near misses are treated. A near miss is a situation where something almost caused a disaster in the workplace. It is one of the most valuable sources of safety insights available. In a compliance culture, near misses go unreported because workers fear blame, there is no system to capture them, or experience has taught them that nothing will change anyway. However, in a safety culture, near misses are investigated with the same seriousness as actual incidents, because the only difference between a near miss and a fatality is often luck, and an astute leadership understands that luck runs out, and the damage may be irreversible.

## How Organisations Can Bridge the Gap in Safety Culture

For organisations willing to be honest about the gap between their current practice and a genuine safety culture, the shift does not require a complete overhaul. It requires intention, consistency, and a willingness to move from performance to principle. It begins with visible leadership commitment, not through memos, but through consistent actions that prioritises safety as a core organisational value.

This should be followed by conducting an honest assessment of the current safety culture, not just compliance status, while meaningfully engaging

employees in identifying hazards and designing controls that address them. Additionally, it involves reviewing whether the safety committee is functioning as OSHA intends, or whether it exists only on paper, while also investing in training that builds genuine competence and awareness, not just induction processes. Finally, it is also good practice to create psychological safety for employees to raise concerns, without fear of being sidelined or dismissed.

It is important to note that none of this replaces compliance with OSHA. The policies, risk assessments, trained first aiders, accident registers, and DOSHS notifications remain necessary and non-negotiable. However, compliance becomes easier and more meaningful, when it is underpinned by a culture that values the people behind the policies.

## Conclusion

On this World Day for Safety and Health at Work, it is important to understand that the real measure of an organisation's commitment to its people, is not whether the DOSHS inspector finds everything in order, but whether workers feel safe, heard, and protected. Building and promoting this kind of safety culture is not a legal obligation. It is a deliberate and intentional choice.



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## DISCLAIMER

*This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Pamella Ager, Managing Partner ([pamella@oraro.co.ke](mailto:pamella@oraro.co.ke)), and Sandra Kavagi, Partner ([sandra@oraro.co.ke](mailto:sandra@oraro.co.ke)) – or your usual contact at our firm for legal guidance.*



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