

OCCUPATIONAL SAFETY AND HEALTH

SAMOA

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2002, No. 5

AN ACT to make provision for the safety, health and welfare of people at work in Samoa and to establish procedures for the administration of these matters.

[28th March 2002]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

**PART 1
PRELIMINARY**

1. Short title - This Act may be cited as the Occupational Safety and Health Act 2002.

2. Commencement - This Act shall come into force on the date that it is assented to by the Head of State.

3. Extent of application-(1) This Act is binding on all employers and employees.

(2) This Act shall bind the Government as from a date nominated by the Minister.

4. Objects of the Act-(1) The object of this Act is to enhance the productivity, morale and welfare of people at work, and of people affected by work activity.

(2) Without limiting the generality of subsection (1), this Act also has the objectives of:

- (a) Securing the safety, health, and welfare at work of employees;
- (b) Protecting persons at or near places of work, and protecting the environment, from risks to safety arising out of the activities of employees at work; and
- (c) Fostering a co-operative consultative relationship between government, employers and employees on the health, safety and welfare of employees at work.

5. Interpretation -

“Code of Practice” includes any standard, specification and any other documentary form of practical guidance approved by the Minister pursuant to section 32:

“Commissioner” means the Commissioner of Labour, or person lawfully acting in the role of Commissioner:

“Committee” and “Safety and Health Committee” means any committee established under section 22:

“Construction Work” means any work in connection with the construction, erection, installation, repair, maintenance, painting, alteration or demolition of any building, structure, road, harbour works, aerodrome, drainage, electricity, water, telephone, bridge, reservoir, pipeline, tunnel, quarry or similar work and includes any scaffolding, excavation and site preparation:

“Dangerous work” means a task or activity of any kind which may cause serious injury to any person:

“Department” means the Department of Labour:

“Employee” has the same meaning as “worker”.

“Employer” means any person or group of persons for whom any employee works for hire or reward and includes a person appointed by the employer

to be the employer's agent in control of the labour force, or, overseer, engineer, foreperson or person in charge or having the control of management of the plant or machinery:

“Harmful Noise” means noise that exceeds the maximum prescribed noise levels to which an employee can be exposed to over the course of an eight hour day:

“Improvement Notice” means a notice pursuant to section 25:

“Inspector” means an Occupational Safety and Health Inspector appointed under this Act:

“Machinery” means any prime mover, transmission machinery and any machine or appliance to which the motion of a prime mover is transmitted:

“Managerial Personnel” has the same meaning as “Employer”:

“Minister” means the Minister of Labour:

“Next of Kin” means an employee's spouse and children or anyone else so nominated by the employee:

“Person” means a human individual, and also includes any body of persons corporate or non-corporate:

“Place” includes any building, land, room, tent, vessel, movable structure or business and “premises” has the same meaning:

“Plant” means any machinery or hauling, lifting or carrying apparatus, rolling stock or appliance used in any tree felling or logging operation and also means any machinery used in construction, quarrying or mining work for hoisting, lowering, carrying or the moving from place to place of material, or for digging or removal of earth, or the sinking of piles and includes any rope, block, pulley, sling or attachment used in connection with any plant:

“Prime Mover” means any engine, motor or other appliance which provides mechanical energy derived from steam, electricity, gas or any other source:

“Representative” means a representative appointed under section 22:

“Scaffolding” means any structure, framework, swinging stage or similar equipment used for the support or protection of persons engaged in construction work for the purpose of carrying out that work or for the support of materials used in connection with any such work:

“Serious Injury” means an injury or illness of such a nature as is likely to incapacitate a person for 48 hours or longer:

“Site” in relation to construction, quarrying and mining work, means the place where the work is being carried out, and includes any area in the vicinity of any such place used for the storage of materials or plant used in connection with the work:

“Substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour:

“Transmission” means any shaft, wheel, drum, pulley, gearing, driving belt or other device by which the motion or a prime mover is transmitted to any machine or appliance:

“Worker” means any person who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise and whether it be a contract of service or apprenticeship or a contract personally to execute work, but does not include managerial personnel.

PART II ADMINISTRATION

6. Administration of this Act-(1) The Department of Labour shall be responsible for the general administration and enforcement of this Act and regulations, and of other enactments relating to labour administration.

(2) The functions of the Department under this Act shall be directed toward enhancing the productivity, morale

and welfare of people at work and people affected by work activity by way of promoting the safety, health and welfare of people at work; and protecting other persons against risks to health or safety arising out of or in connection with work activities.

(3) Without prejudice to the general provisions of subsection (2) of this section the functions of the Department shall include:

- (a) The provision of general and specific guidance, advice and assistance to employers and employees on the provision of this Act and Regulations and Codes of Practice made under this Act;
- (b) The formulation of codes of practice, regulations and model procedures;
- (c) The conducting of education and training programs relevant to occupational safety and health;
- (d) The enforcement of the provisions of the Act, regulations and codes of practice pursuant to this Act;
- (e) As appropriate, the collection of written and statistical data from employers and other sources, concerning the implementation of this Act.

7. Appointment of Occupational Safety and Health Inspectors-(1) The Minister may make arrangements for the administration of this Act and for the enforcement of any duty prescribed by this Act, regulation, order or approved code of practice under this Act.

(2) The Public Service Commission acting on the advice of the Commissioner shall, appoint such number of persons to be Occupational Safety and Health Inspectors as may be necessary for the purposes of this Act.

(3) Where necessary, the Commissioner may appoint by writing under his hand, an officer of his Department to act in the capacity of an Inspector under this Act until such time as the Commissioner revokes the appointment and upon such general or special directions or conditions imposed by the Commissioner.

(4) Each person appointed shall be issued an identity card confirming their appointment.

(5) No person shall be appointed to be an Inspector unless that person has passed such examination set by the Commissioner of Labour to test the person's knowledge of the provisions of this Act and of work conditions generally as the Minister requires.

(6) There may from time to time be appointed such number of Trainee Safety and Health Inspectors as may be expedient for the purposes of this Act.

(7) While under the supervision of an Inspector, a Trainee appointed under subsection (6) of this section shall be deemed to be an Inspector for the purposes of this Act.

8. Powers of the Commissioner and Occupational Safety and Health Inspectors-

(1) In accordance with the objects and provisions of this Act, the Commissioner, or any officer appointed by him, and an Inspector shall take appropriate action so as to:

- (a) Provide information, advice and guidance which will facilitate the implementation of this Act by employers and workers;
- (b) Promote and facilitate voluntary compliance with the provisions of this Act;
- (c) Take legal action to enforce compliance with this Act where evidence can be demonstrated that voluntary compliance is unlikely to be achieved within a period reasonable in the circumstances;
- (d) Prepare such reports as may be required for the efficient administration of this Act, including reports on any perceived inappropriateness of its provisions to circumstances pertaining;
- (e) Make such inspections, investigations, examinations, tests, and inquiries and take such samples and photographs, and video or film as are necessary to ascertain whether the provisions of this Act have been or are being complied with; and where any such sample is taken, the Inspector concerned shall, if so requested, deliver part of it to the employer concerned;

(2) The Commissioner, or any officer authorised by him, and an Inspector shall have the right to:

- (a) Enter any business during the day or night where persons are believed to be employed, except private residences;
- (b) Enter in the presence of the occupier, any private residence during the day solely for the purpose of investigating a complaint lodged with the Department by a domestic employee;
- (c) Require the production of any book, notice, record, list or other document required by this Act or other Act administered by the Department to be kept or exhibited by the employer, and inspect, examine, and copy or take notes from it;
- (d) To question alone or in the presence of any other person, the employer or any person who is, or has in the preceding month, been employed in the place and require that person to sign a statement relating to the matter in question;

PROVIDED THAT no person shall, on being questioned by an Inspector be required to answer any question tending to be self incriminating;

- (e) To subpoena any person as a witness in any legal action taken under this Act;
- (f) Exercise such other powers and authorities as may be necessary to carry this Act into effect;
- (g) Require any process or method of work to be stopped immediately if the process or method of work poses an immediate danger to the safety or health of employees, people lawfully on the premises or members of the public.

(3) Every Inspector exercising a power under this section shall produce the identity card to the employer, the employer's representative or an employee or an employee's representative, if requested.

(4) Except for the purposes of this Act and the exercising of the functions under this Act, no Inspector shall disclose to any person any information acquired in the

course of the exercise of those functions unless directed in writing by the Minister or a Judge, to release that information to the Minister or the Court.

(5) Subject to such exceptions as may be prescribed, an Inspector:

- (a) Shall not have any direct or indirect interest in any business under that Inspector's supervision;
- (b) Shall as far as possible treat as confidential the source of any complaint relating to a defect or breach of the law.

9. Employer to allow entry and inspection-(1) Any person who obstructs or fails to assist an Inspector who is exercising his powers and functions under this Act is guilty of an offence.

(2) All registers or other records required by this Act shall be retained for a minimum period of 3 years by an employer.

10. Duty not to charge employees – It shall be an offence for an employer to levy, or permit to be levied on any employee any charge in respect of anything done or provided in pursuance of any requirement of this Act.

PROVIDED THAT this section shall not prevent an employer from recovering from an employee the cost of any lost or damaged protective or safety equipment, gear or clothing entrusted to that employee and which is lost or damaged by reason of the fault of that employee.

PART III GENERAL DUTIES OF CARE

11. General duty of employers to employees - An employer must take all reasonably practicable steps to protect the safety, health and welfare at work of employees and to provide and maintain a safe and healthy working environment including substances, systems of work and any building or public or private area in which work takes place.

12. Identification and assessment of hazards-(1) Each employer must establish and maintain effective methods for:

- (a) Systematically identifying existing and potential hazards to employees;
- (b) Systematically identifying, at the earliest practicable time, new hazards to employees;
- (c) Regularly assessing the extent to which a hazard poses a risk to employees.

(2) Such methods may include but not necessarily be limited to self inspection and hazard identification processes approved by the Commissioner and notified or published from time to time in the Savali, and shall be carried out in cooperation with workplace representatives and Committees elected in accordance with any Code of Practice, or otherwise recognised under this Act.

13. Management of identified hazards-(1) Each employer must take appropriate steps to control hazards which are identified and assessed as posing a threat to the safety, health or welfare of employees, and where practicable, the hazard shall be eliminated.

(2) If elimination is impracticable then steps shall be taken to isolate hazards from employees.

(3) If elimination or isolation is impracticable, then the employer must take steps:

(i) to minimise the likelihood that the hazard will be a cause or source of harm to the employees; and

(ii) to ensure that protective clothing and gear is provided, such as meets the standards outlined in this Act, including Codes of Practice and Regulations issued under this Act; and

(iii) to monitor the exposure of employees to the hazard; and

(iv) to monitor, with their informed consent, the health of employees in relation to exposure to the hazard.

(4) The steps taken under this section shall include action to protect the environment, and persons in the environment from emissions, leakage or spillage from any machine, process or substance used or stored in the course of the employer's business or operations.

14. Training and supervision-(1) Each employer must take all reasonably practicable steps to provide to his employees, in appropriate languages, the information, instruction, training and supervision necessary to protect each employee's health and to deal with emergencies that might reasonably be expected to arise in the course of work.

(2) Without limiting the generality of subsection (1), an employer contravenes the requirements specified if the employer fails to ensure that an employee undertakes any work with machinery:

(a) With proper instruction about the dangers likely to arise in connection with that work or machinery and the precautions to be taken; or

(b) The employee:

(i) is a person with training and experience of that work or machinery; or

(ii) is effectively supervised by a person who possesses knowledge and experience of that work or machinery,

so as to enable the employee to avoid those dangers and take those precautions.

15. Protective clothing and equipment - Each employer shall:

(a) Provide, maintain and make accessible to employees the protective clothing and equipment necessary to avoid injury and damage to their health; and

(b) Take all reasonably practicable steps to ensure that employees use that protective clothing and equipment whenever the circumstances for which it is provided arise; and

(c) Make provision, in the place of work, for protective clothing and equipment so provided to be cleaned and securely stored without risk of damage when not required.

16. General duty of employees - Each employee shall:

- (a) Take all reasonable care to protect his or her health and safety at work, and, of fellow workers and, as appropriate, other persons in the vicinity;
- (b) Use protective clothing and equipment supplied in accordance with this Act and its related Codes of Practice and Regulations; and
- (c) Not use protective clothing and equipment supplied in accordance with this Act and its related Codes of Practice and Regulations for any purpose not directly related to the work for which it is provided.

17. Dangerous work arising-(1) An employee who believes, on reasonable grounds, that there is a serious danger (being a danger that differs in kind or form, and is greater than the dangers inherent in the work the employee is employed to do) to the worker or that a serious danger to the public has arisen or might arise from work for his employer, shall bring that belief to the attention of the employer.

(2) An employer to whose attention a matter is brought under subsection (1) must consider it and, where the employee's belief is reasonable, take all reasonably practicable steps to eliminate the danger to the employee or the public, whether by stopping the work or otherwise.

(3) A disagreement between an employee and employer as to whether steps should be taken under subsection (2) may be referred by either party to the Commissioner who may issue directions accordingly to resolve the disagreement consistent with the objects of this Act.

(4) A person to whom a direction is issued must comply with the direction.

18. Employer not to dismiss employees on certain grounds - An employer must not:

- (a) Dismiss an employee; or
- (b) Injure the employee in his or her employment; or

- (c) Prejudicially alter the employee's position; or
- (d) Threaten to take action in relation to the employee referred to in paragraph (a), (b) or (c), because the employee;
 - (i) has complained or proposes to complain about a matter related to the safety, health or welfare of employees at work; or
 - (ii) has assisted or proposed to assist, by the giving of information or otherwise, in the conduct of an investigation or in the performance of the functions of an Inspector or other Public Officer or a Safety and Health Committee, or Representative; or
 - (iii) has ceased to perform work in accordance with section 17 of this Act; or
 - (iv) is, has been, or proposes to become a member of a Safety and Health Committee or a Safety and Health Representative.

19. Duty of designers, manufacturers and suppliers

- Every person who designs, manufactures or supplies any article, or substance or machinery for use at a place of work, shall:

- (a) Ensure so far as is reasonable that the article, substance or machinery is so designed and constructed or manufactured as to be safe and without risk to health and safety when it is used properly and in accordance with relevant information or advice relating to its use which has been provided by the designer, manufacturer or supplier; and
- (b) Take such steps as are necessary to ensure the provision of adequate information in the English and Samoan language to purchasers and users about the use of which each such article, substance or machinery has been designed and about any requirements necessary to ensure that it will be safe and without risk to health when properly used.

20. Accident register – Every employer shall keep a register containing details of every accident/incident which causes or which nearly causes death, serious injury, or illness to any person whether employed at the workplace or not. Such register shall comprise copies of all accident report forms and all accident investigation sheets as approved from time to time by the Commissioner and notified or published in the Savali.

21. Accident notification and investigation-(1)
Where there occurs in or about an employers' place of work an accident that causes death or serious injury or illness to any person, the employer shall:

- (a) Notify the Commissioner as soon as possible; and
- (b) Give written notice of the occurrence within seven (7) days.

(2) Every notice under subsection (1) of this section shall be in accordance with the forms applicable under section 20, and shall specify:

- (a) The name, place of residence, and age, of every person killed or suffering serious injury or illness as a result of the accident concerned; and
- (b) The nature and circumstances of the accident; and
- (c) Such details as are sufficient to enable an Inspector to locate with accuracy the place where the accident occurred.

(3) If the Commissioner considers that the accident should be investigated he shall, as soon as practicable after receiving the notice, make such enquiries as are necessary to determine the nature and cause of the accident and where necessary, the nature and extent of the injury or illness it caused.

(4) Except for the purpose of caring for an injury, no person shall do any act likely to prevent the discovery of the cause of the accident until the Inspector has visited the scene thereof and completed an inquiry.

22. Safety and Health Employees Committee, or Representative-(1) Subject to the provision of this section, an employees' committee or representative may be

established or appointed in every business should the employees decide to elect such a committee or appoint a representative.

(2) The function of a committee, or representative is to further the interests of the employees and the employer in relation to safety and health matters.

(3) Should such a committee be formed or representative be appointed in any workplace the approved Code of Practice for Safety and Health Committees and Representatives prescribing the procedures and requirements will apply.

PART IV SPECIFIC DUTIES OF CARE

23. Measures to minimise accidents and injuries -
Without limiting the generality of the duties outlined under Part III of this Act, all employers and employees shall take measures and adopt work practices which will eliminate, isolate or minimise the incidence of accidents and injuries which might derive from:

- (a) Transporting of employees to work, from work or during working hours;
- (b) Storage, stacking or securing any material which is or is likely to be corrosive, irritant, toxic, explosive or otherwise capable of endangering safety or health;
- (c) Working with loads which must be lifted or moved or supported, either manually or by a mechanical or other device;
- (d) The need to have free access and egress to and from every place where an employee is required to walk including into and out of buildings, and including fire exits;
- (e) Falling from heights which are likely to cause injury, or falling onto or into anything which is potentially harmful;
- (f) Floors, steps, stairs, ramps, landings, passage-ways, gangways, and ladders which are not soundly constructed and maintained;

- (g) Dust, gas, liquid, mist, vapours or other substance liable to give rise to explosion or to explode on ignition or to seriously impair the quality of air available to an employee;
- (h) Electrical equipment, fittings, tools and wiring which is not of sound construction or which is not properly maintained or installed;
- (i) Machinery, moving parts or otherwise dangerous parts of machinery;
- (j) Tree felling and logging;
- (k) Earthmoving work of any kind, including by manual or mechanical equipment or by blasting;
- (l) Building construction work of any kind, including temporary structures, scaffolding, and underwater construction;
- (m) The use of hand tools and power tools, especially their suitability for the work for which they are used, and their proper maintenance;
- (n) Fishing and other work at sea.

24. Measures to protect health - Without limiting the generality of the duties mentioned in section 23, all employers and employees shall take measures and adopt work practices which will eliminate, isolate or minimise risks to the health and safety of employees by ensuring that:

- (a) Each place of work is kept clean and free from any smell or leakage from any drain or sanitary convenience;
- (b) Each place of work is ventilated to provide an adequate supply of fresh air, to carry off and render harmless all steam, fumes, dust, smoke and other impurities;
- (c) Each place of work has sufficient and suitable natural or artificial light and all glazed windows and skylights are kept clean.
- (d) There is provision of adequate and convenient access to suitable sanitary conveniences for the use of employees, both male and female;

- (e) There is provision of an adequate and conveniently accessible supply of wholesome drinking water for the free use of employees;

- (f) There is provision of adequate and conveniently accessible facilities for personal washing by employees;
- (g) There is provision, in cases where an employee's clothing is likely to become contaminated while at work, of facilities or arrangements by which contaminated clothing can be laundered before being removed from the place of work by the employee;
- (h) There is provision and maintenance, for the use of employees whose work is done standing, of suitable facilities for sitting sufficient to enable them to take advantage of any opportunity for resting which may occur in the course of their work;
- (i) There is provision and maintenance of suitable seats for employees who can conveniently and satisfactorily do some or all of their work from a seated position;
- (j) There are available arrangements so that meals can be eaten in areas which are clean, sheltered and adequately lit and ventilated;
- (k) Noise that is likely to impair the hearing of workers is controlled, isolated or insulated, or where the noise itself cannot practicably be so controlled, that the employees are provided with suitable protective equipment;
- (l) Effective arrangements are taken to eliminate, isolate or minimise the harmful and potentially harmful effects to employees of any chemicals, corrosives, contaminants, atmospheric pollutants or other substances which are either stored or used in the workplace;
- (m) There is provision and maintenance of suitable and effective fire fighting equipment to standards approved by law, with fire exits clearly marked and employees fully aware of emergency evacuation procedure;
- (n) There is provision and maintenance of suitable and adequate supplies of first aid facilities,

appliances and requisites, and the availability at all times of persons who have Red Cross approved or equivalent qualifications in the application of basic first aid.

PART V INSPECTIONS AND NOTICES

25. Commissioner may issue improvement notice-(1)

Where the Commissioner is of the opinion that a person:

- (a) Is contravening this Act; or
- (b) Has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated,

he may issue to the person an improvement notice requiring the person to remedy the contravention or the matters or activities giving rise to his or her opinion that the contravention will be repeated.

(2) An improvement notice shall:

- (a) State that the Commissioner is of the opinion that the person -
 - (i) is contravening this Act; or
 - (ii) has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated;
- (b) State the reasons for that opinion;
- (c) Specify the provision of this Act in respect of which that opinion is held; and
- (d) Specify the day (being a day later than 7 days after the day on which the notice is issued) before which the person is required to remedy the contravention or the matters or activities giving rise to his opinion that the contravention will be repeated.

(3) An improvement notice will not be invalid or ineffective on the grounds that any matter referred to in subsection (2) is not contained in it, if it is sufficient to identify to an employer the nature of the problem and the need for its rectification within a reasonable time.

26. Commissioner may issue prohibition notice-(1)

Where the Commissioner is of the opinion that at a workplace there is occurring or may occur an act which involves or will involve an immediate threat or risk to the health and safety of a person, he may issue to the person who has, or the person he reasonably believes has control over the act or the activity in which the act may occur, a prohibition notice prohibiting the continuation of the act or the carrying out of the activity until the Commissioner certifies in writing that the immediate threat or risk has been removed or, in his opinion, the act will not occur.

(2) A prohibition notice shall:

(a) State that the Commissioner is of the opinion that in the workplace there is occurring or may occur an act which involves or will involve an immediate threat or risk to the health or safety of a person;

(b) State the reasons for that opinion;

(c) Specify the act which, in the Commissioner's opinion, involves or will involve the risk and the matters which give or will give rise to the risk; and

(d) Where, in the Commissioner's opinion the act involves or will involve a contravention or likely contravention of this Act, specify the relevant provision and state the reasons for that opinion.

(3) Where the Commissioner issues a prohibition notice in respect of an act relating to the use of any plant at a workplace, he may place a mark on the plant, or any part of the plant, to indicate that the plant, or the part so marked, is not to be used until he certifies, under subsection (1) of this section, in respect of the act in respect of which the prohibition notice was issued.

27. Commissioner may issue penalty notice-(1)

The Commissioner may serve a penalty notice on a person if it appears that the person has committed an offence under this Act (or the regulations under this Act) or a provision of any associated health and safety legislation.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the Act or regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.

(6) The regulations may:

(a) Prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) Prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c) Prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of this or any other Act relating to proceedings which may be taken in respect of offences.

28. Issuing of notices - For the purposes of sections 26 and 27 of this Act, a notice under those sections may be issued to a person by:

(a) Delivering it personally to the person;

(b) Leaving it at the person's usual or last known place of residence or business with some other person, apparently resident or employed there and who is apparently in charge or in a position of authority; or

- (c) Posting it in a registered letter addressed to the person at the person's usual or last known place of residence or business.

29. Notices may include directions-(1) The Commissioner may include in an improvement notice or a prohibition notice or a penalty notice, directions as to the measures to be taken to remedy the matters to which the notice relates.

- (2) A direction under subsection (1) of this section may:
 - (a) Refer to an approved code of practice; and
 - (b) Offer the person to whom it is issued a choice of ways in which to remedy the matters to which the notice relates.

30. Appeals against notices-(1) A person to whom an improvement notice or a prohibition notice is issued or, where that person is a worker, that person's employer, may, within seven days after the notice is issued or such further time as the Court allows, appeal in writing to the Supreme Court against the notice.

- (2) Pending the decision by the Court on an appeal under subsection (1) of this section, the operation of the notice shall:
 - (a) In the case of an improvement notice, be suspended; and
 - (b) In the case of a prohibition notice, continue unless the Commissioner decides otherwise.

PART VI REGULATIONS AND CODES OF PRACTICE

31. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations, not inconsistent with this Act, prescribing matters:

- (a) Required or permitted by this Act to be prescribed; or
 - (b) Necessary or convenient for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1) of this section, regulations may be made for or with respect to:
- (a) Regulating or prohibiting -

- (i) the manufacture, supply or use of any plant;
 - (ii) the manufacture, supply, use, storage or transport of any substance; or
 - (iii) the carrying on of any process or the carrying out of any operation;
- (b) The safety and health of workers engaged in particular industries or other workplaces;
 - (c) The certification of operators in prescribed plant or machinery;
 - (d) The registration of a workplace of any plant or substance;
 - (e) The licensing of a person carrying out processes or activities under this Act;
 - (f) Conditions applying to registrations and licences (including conditions by prescribed persons);
 - (g) The service of notices under this Act;
 - (h) The powers of the Inspectors in relation to investigations at workplaces;
 - (i) Procedures for the appointment of health and safety representatives;
 - (j) Composition, election or appointment of persons to health and safety committees;
 - (k) Labelling requirements for chemicals and Material Safety Data Sheets;
 - (l) Notification and record keeping of accidents and other matters;
 - (m) Forms for the purposes of this Act;
 - (n) Prescribing of fines, not exceeding the fines imposed by section 36, for a breach of the regulations;
 - (o) Prescribing matters to be dealt with penalty notices.
- (3) The regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method as formulated, issued, prescribed or published by any authority or body whether:
- (a) Wholly or partly, or as amended by the regulations;
 - (b) As formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

- (c) As amended after the making of the regulations, but only where the Minister has published in the Gazette a notice that the particular amendment is to be incorporated in the regulations.
- (4) The regulations may provide that a prescribed employer or a member of a prescribed class of employers shall:
 - (a) Monitor the health of his or her workers;
 - (b) Keep information and records relating to the health and safety of his or her workers;
 - (c) Authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body;
 - (d) Exempt any person or class of persons, either absolutely or subject to conditions, from any provision of the regulations,or may do any combination of those things.

32. Codes of practice-(1) For the purpose of providing practical guidance on any matter relating to this Act, the Minister may on the recommendation of the Commissioner, by notice in the Gazette or the Savali, approve a national code of practice.

(2) A code of practice may consist of a code, standard, rule, specification or provision relating to matters in this Act formulated, prepared or recommended by the Commissioner in liaison with the inspectorate, and may apply, incorporate or refer to a document formulated or published by any other body or authority exercising powers and responsibilities similar to those vested in the Minister or Department under this Act.

(3) A notice under subsection (1) shall indicate where a copy of the approved code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public without charge, and the times during which it may be inspected, and the Minister shall make the code and those documents available for that purpose accordingly.

(4) Any codes of practice may take into account current and relevant international or overseas codes of practice in its development.

33. Use of codes of practice in proceedings - Where in proceedings for an offence against this Act, it is alleged that a person contravened or failed to comply with a provision of this Act in relation to which an approved code of practice was in force at the time of the alleged contravention or failure.

(a) The approved code of practice shall be admissible in evidence in those proceedings; and

(b) If the court is satisfied in relation to a matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that -

(i) a provision of the approved code of practice is relevant to that matter; and

(ii) the person failed at a material time to observe that provision of the approved code of practice,

that matter shall be taken as proved unless the Court is satisfied that in respect of that matter the person complied with that provision of this Act otherwise than by way of observance of that provision of the approved code of practice.

PART VII OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

34. Offences - Any person who contravenes or fails to comply with any provision of this Act or the regulations shall be guilty of an offence against this Act.

35. Circumstances preventing compliance may be defence - Where this Act requires any act or thing to be done by a person, other than in terms of the person taking all reasonably practicable steps to do the act or thing it is a defence to a prosecution of the person for refusing or failing to do the thing if the person proves that, because of an emergency prevailing at the time of the refusal or failure, it was not reasonably practicable to do the act or thing.

36. General penalties-(1) Subject to subsection (2), any person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a fine not exceeding:

- (a) Where that person is a corporation, 150 penalty units; or
- (b) In any other case, 10 penalty units.

(2) In relation to a contravention which was likely to cause the death of, or bodily injury to, any person, the fine shall not exceed:

- (a) 1000 penalty units in the case of a corporation; or
- (b) 100 penalty units in any other case.

37. Offences by corporations-(1) Where an offence against this Act is committed by a corporation and is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of an officer of the corporation or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.

(2) When in proceedings under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.

(3) In subsection (1) of this section, “officer”, in relation to a corporation means:

- (a) A director, secretary or executive officer of the corporation;
- (b) Any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; or
- (c) A person exercising any power of management in the corporation.

38. Protection against civil and criminal proceedings

- No action or proceedings, civil or criminal, shall lie or be continued against the Minister, Commissioner, or any person acting under his authority in accordance with this Act, or any Inspector or any other body established by or under this Act, for anything done or omitted in good faith in

the exercise or purported exercise of a function or power under this Act.

39. Authority to prosecute - Proceedings for an offence against this Act may be instituted only with the written consent of the Commissioner of Labour or the Attorney General.

40. Time for instituting proceedings for offences - Notwithstanding anything in any other Act, proceedings for an offence against this Act may be instituted within the period of three years after the act or omission alleged to constitute the offence.

41. Repetition of certain offences - additional penalty-(1) This section applies to proceedings for a second or subsequent offence against this Act which comprises a repetition of the Act or omission which constituted the previous offence.

(2) If the defendant in proceedings to which this section applies is a natural person, a sentence of imprisonment for a period not exceeding two years may be imposed in addition to or in substitution for any other fine which may be imposed under this Act.

**The Occupational Safety and Health Act 2002 is administered
in the Ministry of Commerce, Industry and Labour**