

THE OCCUPATIONAL HEALTH AND SAFETY ACT, 2003

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SCHEDULES

THE UNITED REPUBLIC OF TANZANIA



No. 5 OF 2003

Benjamin W. Mwahele I ASSENT,

President

05.04.03.

An Act to repeal the Factories Ordinance; to make provisions for the safety, health and welfare of persons at work in factories and other places of work; to provide for the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with activities of persons at work; and to provide for connected matters

[.....]

ENACTED by the Parliament of the United Republic of Tanzania

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Occupational Health and Safety Act, 2003 and shall come into operation on such date as the Minister may, by notice published in the *Gazette* appoint.

Short title and commencement

2.—(1) This Act shall apply to factories and all other work places as defined under this Act unless exempted by the Minister in accordance with the provisions of this Act.

Application

(2) In case of any work which would constitute a factory, the provisions of this Act shall apply as if the owner or occupier of the workplace is the occupier of the factory and the persons working there were persons employed in the factory.

(3) Where a place is situated within the close cartilage or precincts forming a factory is solely used for some purpose other than processes carried on in the factory that place shall not be deemed to form part of the factory for the purposes of this Act but shall, if otherwise would be a factory be deemed to be a separate factory.

(4) Any line or siding, not being part of a railway which is used in connection with and for the purposes of a factory if any such line or siding is used in connection with more than one factory belonging to different occupiers, the line or siding shall be deemed to be a separate factory, and the provisions of this Act shall apply as if such different occupiers were jointly the occupiers of the line or siding so deemed to be a factory.

3. In this Act, unless the context otherwise requires -“air receiver” means—

(i) any vessel, other than pipe or coil, or an accessory, fitting or part of a compressor, for containing compressed air and connected to an compressing plant; or

(ii) any fixed vessel or tank for containing compressed air or compressed exhaust gases and used for the purpose of starting an internal combustion engine;

“article” includes any solid, liquid or gas or any combination of them;

“Authority” means the Occupational Safety and Health Authority;

“authorized plant inspector” means any person whether an officer of the Government or not who is authorized by the Chief Inspector to carry out examination and tests and issue a certificate as may be required;

“approved inspection authority” means an inspection authority approved by the Chief Inspector with respect to a particular service;

“bodily injury” means physical or mental injury;

“biological monitoring” means a planned programme of periodic collection and analysis of body fluid, tissues, excreta, or exhaled air;

“Board” means the Ministerial Advisory Board established under section 6 of the Executive Agencies Act, 1997;

Interpre-
tation

Act No.30
of 1997

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Interpre-
tation

Act No.30
of 1997

“building operation” means the construction, structural alteration, repair or maintenance of a building, including re-painting, redecoration and external cleaning of the structure the demolition of a building, and the preparation for and laying the foundation, of an intended building, but does not include any operation which is a civil engineering work within the meaning of this Act;

“certificate of registration” means certificate of registration granted under this Act;

“Chief Inspector” means the chief inspector of factories and other workplaces appointed under section 4 and who shall be the Chief Executive of Occupational Safety and Health Authority appointed under the Executive Agency Act, 1997, and includes the Acting Chief Inspector;

“civil engineering work” includes, operation at bridges, aqueducts, dams, reservoirs, docks, inland navigation, waterworks, sewerage works, steel and reinforcement concrete structures, river works, roads, pipe lines, tunnels and shafts.

“Committee” means a Health and Safety Committee established under section 13;

“compliance licence” means an occupational safety and health compliance licence issued under section 17(3);

“danger” means any injury or damage to persons, property or environment;

“employee” means any person who -

- (a) is employed by or works for an employer and who receives or entitled to receive any remuneration; or
- (b) works under the direction or supervision of an employer or any other person;
- (c) is apprentice;

“employer” means any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him;

“exit medical examination” means medical examination conducted on an employee upon leaving his employment;

“explosives” means any substance capable of releasing energy in a rapid and uncontrolled manner to give rise to explosions;

“factory” means any premises in which persons are employed in any process for or incidental to -

- (a) the making of any article or part of any article; or

- (b) the altering, repairing, ornamenting, finishing, clearing or washing or the breaking up or demolition of any article or
- (c) the adapting for sale of any article, being premises in which or within the close or cartilage or precincts of which the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control; and include:
 - (i) any yard or dry dock, including the precincts thereof; in which ships or vessels are constructed, reconstructed, repaired, refitted, finished or broken;
 - (ii) any premises in which the business of washing or filling of bottles or containers or packing articles is carried on incidentally to the purposes of any factory;
 - (iii) any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to transport undertaking or other industrial or commercial locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out;
 - (iv) any premises in which printing or other similar process, or bookbinding is carried on by way of trade or for purposes of gain or incidentally to another business so carried on;
 - (v) any premises in which mechanical power is used in connection with the making or repair of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain;
 - (vi) any premises in which articles are made or prepared incidentally to the carrying on of building operations or civil engineering works;
 - (vii) any premises in which persons are regularly employed in or in connection with the generating of electrical energy for supply by way of trade, or for supply for the purposes of any industrial or commercial undertaking or of any public building or public institution, or for supply to streets or other public places;
 - (viii) any premises in which mechanical power is used for the purposes of or in connection with a water supply, being premises in which persons are regularly employed;

- (ix) any sewage works in which mechanical power is used and any pumping station used in connection with any sewage works;
- (x) any site in which building or civil engineering works are being carried on;
- (xi) any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the factory or workplace if the persons working there were in the employment of the owner or occupier;
- (xii) any premises belonging to or in the occupation of the Government, or any local authority, where the work carried there is by way of trade, or for the purpose of gain;

“hazard” means a source of or exposure to danger;

“health and safety equipment” means any article or part thereof which is manufactured, provided or installed in the interest or the health or safety of any person, property or environment;

“Inspector” means an occupational safety and health officer in the service of the Government or any other person appointed by the Chief Inspector to be an Inspector for the purpose of this Act;

“lifting tackle” includes chains, Claris hips, rope slings rings, holes, shackles and swivels.

“local authority” has the meaning ascribed for it under the Local Government (District Authorities) Act, 1982 and Local Government (Urban Authorities) Act, 1982;

“machinery” means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy.

“maintained” means work maintained in an efficient state in efficient working order and in good repair;

“manual labour” means work ordinarily performed by tradesmen of every type and description, labourers and drivers of all modes of transport, but does not include clerical work or similar occupation;

“maximum permissible pressure” means the pressure specified in the relevant certificate or the pressure specified in the report of the last

Act Nos:
7 & 8 of
1982

examination;

“medical surveillance” means a planned programme or specialized examination or periodic examination, which may include clinical examinations, biological monitoring or medical tests of employees by an occupational health practitioner or, an occupational medicine practitioner;

“Minister” means the Minister responsible for labour;

“occupational disease” means any disease arising out of or in the course of employment;

“occupational health” includes occupational hygiene, occupational medicine and biological monitoring;

“Occupation Health Practitioner” means a health and safety professional with postgraduate training in occupational health;

“occupational hygiene” means the anticipation, recognition, evaluation and control of conditions arising in or from a workplace, which may cause illness or adverse health effects to persons;

“Occupational Medicine Practitioner” means a medical doctor with postgraduate training in occupational medicine or occupational health;

“organism” means any biological agent which is capable of causing illness to persons;

“plant” includes fixtures, fittings, implements, equipment, tools and appliances, and anything which is used for any purpose in connection with such plant;

“premises” includes any building, vehicle, vessel, train or aircraft;

“prime-mover” means an engine, motor or other appliance which provides mechanical energy driven from steam, water, wind, electricity, combustion of fuel or other source;

“properly used” means used with due regard to any information, instruction or advice supplied by the designer, manufacturer, importer, seller or supplier;

“register” means a register of factories and workplaces established under section 15 and includes any other register kept in every factory workplace;

“risk” means the probability that injury of or damage to person, property or environment will occur;

“safe working pressure” means the pressure specified in the relevant certificate under this Act or the pressure which is specified in the report of the last examination;

“sanitary convenience” include urinals, water-closets, earth-closets, privies, ash-pits, and any similar conveniences;

“sell” includes -

- (a) to offer or display for sale or import into Mainland Tanzania for sale; or
- (b) to exchange, donate, lease or offer or display for leasing;
- “steam boiler” means any closed vessel in which for any purpose steam is generated under pressure greater than atmospheric pressure, and includes hot water boiler and any economizer used to heat water being fed to any such vessel, and super-heater used for heating steam;
- “steam container” means any vessel other than a steam pipe or coil with a permanent outlet to the atmosphere or into a space where pressure does to the atmosphere or into a space where pressure does not exceed atmospheric pressure and through which steam is passed at atmospheric pressure or at approximately that pressure for the purpose of heating, boiling, drying, evaporating or other similar purposes;
- “steam receiver” means any vessel or apparatus, other than steam under pressure greater than atmospheric pressure;
- “substance” includes any solid, liquid, vapour, gas or aerosol, or combination thereof;”
- “trade union” means a trade union as defined under the Trade Unions Act, 1998;
- “transmission machinery” means a shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance;
- “user” means in relation to plant or machinery, means the person who uses plant or machinery for own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of or any person employed in connection with that plant or machinery.
- “worker” means an employee or a self-employed person, and for such purpose an employer or a self-employed person is deemed to be at work during the time that he is in the course of employment.
- “workplace” means any premises or place where a person performs work in the course of his employment;

Act No.
10 of
1998

PART II

ADMINISTRATION

4.—(1) The Minister shall appoint the Chief inspector from amongst persons who possess the necessary qualifications, experience and competence to perform the functions under this Act.

(2) The Chief Inspector appointed under subsection (1) shall

Appointment and powers of Chief Inspector

Act No.
30 of
1997

perform his functions in accordance with the Executive Agencies Act 1997 and this Act.

(3) Without prejudice to the generality of subsection (2), the functions of the Chief Inspector shall include—

- (a) to keep record of publication on health and safety standards which are incorporated in the Regulations, Rules or Orders;
- (b) to keep record of amendments of substitution of any health and safety standard so published;
- (c) to keep and maintain register of factories;
- (d) to keep records and other register of any other matters which need to be registered under this Act;
- (e) to do such other functions as may be required under this Act;
- (f) to make available for inspection by interested persons, any register or extract therefrom.

(4) The Chief Inspector may delegate any power conferred upon him by this Act, to any officer or authorise any such officer to perform any duty assigned to him by this Act.

(5) No delegation of a power under sub-section (4) shall prevent the exercise of that power by the Chief Inspector himself.

(6) The Minister may designate any other officer serving in the authority to act as Chief Inspector during the absence or incapacity or, where no person has been designated as Chief Inspector; until a Chief Inspector is designated.

Appoint-
ment of
inspec-
tors

5.—(1) The Chief Inspector may designate any person as an inspector to perform, subject to the control and directions of the Chief Inspector, any or all of the functions assigned to an inspector by this Act.

(2) Every inspector shall be furnished with a certificate of his appointment and when visiting any factory or workplace to which any of the provisions of this Act applies shall, if so required, produce the certificate to the occupier or other person holding a responsible management position at a factory or workplace.

(3) Where an inspector is designated under subsection (1) and performs any function under this Act in the presence of any person affected thereby, the inspector shall on demand by that person produce to him the certificate referred to in subsection (2).

(4) No inspector shall publish or disclose to any person the details of

any manufacturing, commercial, working process or any information concerning the affair of any other person, which may come to his knowledge in the course of his duties under this Act, except -

- (a) in so far as is necessary for the purpose of prosecution for an offence;
- (b) to the extent to which it may be necessary for the proper administration of this Act; or
- (c) at the request of a health and safety representative or a health and safety committee entitled thereto.

(5) An inspector shall treat as absolutely confidential the source of any complaint bringing to his notice a contravention of the provisions of this Act, and shall give no intimation to the occupier or his representative that a visit of inspection was made in consequence of that complaint.

(6) Any person who—

- (a) is the occupier of a factory or workplace; or
- (b) is directly interested in a factory or workplace or in any process or business carried therein or in a patent connected therewith; or
- (c) is employed in a factory or workplace,

shall not act as an inspector.

6.—(1) An inspector shall, for the purpose of the performance of this Act have powers to do all or any of the following —

Powers of
inspec-
tors

- (a) without prior notice, to enter, inspect and examine, by day or night, a factory or workplace, and every part thereof, when he has reasonable cause to believe that any person is employed therein;
- (b) to enter, inspect, and examine, any place which he has reasonable cause to believe to be a factory or workplace and any part of any building of which a factory or workplace forms part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used;
- (c) to exercise such other powers as may be necessary to inspect and examine any machinery, plant, or appliance, in a factory or workplace;
- (d) to take with him any assistant or a police officer if he has

- reasonable cause to apprehend any serious obstruction in the execution of his duty;
- (e) to require the production of a register, a certificate, notice, a document, an article, any substance, plant or machinery or a part or a sample in pursuance of this Act;
 - (f) to inspect, examine and copy any of the documents mentioned under paragraph (e);
 - (g) to seize any documents or article mentioned under paragraph (e) if in the opinion of the inspector the seizure may serve as evidence at the trial of any person charged with an offence under this Act;
 - (h) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act, are complied with;
 - (i) to require any person whom he finds in a factory or workplace to give such information as it is in his powers to give information as to who is the occupier of the factory or workplace;
 - (j) to direct any employer, employee, or user including any former employer, employee or user, to appear before him at such time and place as may be determined by him and question that employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;
 - (k) to examine any person, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, and to require every such person to sign a declaration of the truth of the matter to which he is so examined:

Provided that, no person shall be required under this provision to answer any question or give any evidence intending or likely to incriminate himself;

- (l) in the case of an inspector who is a registered occupational medicine practitioner, to carry out such medical examinations as may be necessary for the purpose of his duties under this Act; and
- (m) to exercise such other powers as may be necessary for carrying this Act into effect.
- (n) to carry out investigation on any matter under this Act and

to prepare the relevant report.

(2) The occupier of every factory or workplace, his agent and servant shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, the taking of samples, biological monitoring or for the exercise of his powers under this Act in relation to that factory or workplace.

(3) Any person who—

(a) willfully delays an inspector in the exercise of any power under this section; or

(b) fails to comply with the requirements of an inspector under this section;

(c) obstruct an inspector in the execution of his duties, commits an offence and is liable upon conviction to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

7.—(1) An inspector may investigate the circumstances of any incident which has occurred at or originated from a factory or workplace or in connection with the use of a plant or machinery which resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of any person in order to determine whether it is necessary to hold a formal investigation.

Investigations

(2) After completing the investigation under subsection (1), the inspector shall submit a written report, together with all relevant statements, documents and information gathered by him, to the Chief Inspector for further action.

(3) A prescribed fee and all other related expenses for the investigation shall be borne by the owner or occupier of the factory or workplace.

8.—(1) The Chief Inspector, upon receipt of a complaint may, direct an inspector to conduct a formal inquiry into any incident which has occurred at or originated from a factory or workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the Chief Inspector could have resulted, in the injury, illness or death of any person.

Formal inquiries

(2) The Inspector shall after the conclusion of an inquiry under this

section prepare and submit a report on inquiry to the Chief Inspector for further action.

(3) The Chief Inspector may, after considering the report under subsection (2)

- (a) advise accordingly;
- (b) issue improvement notice;
- (c) issue prohibition notice; or
- (d) refer the matter to court.

(4) The Minister shall upon consultation with the Chief Inspector make rules prescribing procedures for conducting inquiry under this section.

Appeal
against
decision
of
inspector

9.—(1) Any person aggrieved by a decision of the inspector under this Act may appeal against the decision to the Chief Inspector.

(2) Any person who wishes to appeal in terms of subsection (1), shall within thirty days after the inspector's decision lodge an appeal with the Chief Inspector in writing, setting out the grounds of appeal.

(3) The Chief Inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm or set aside or vary the decision or substitute for that decision any other decision as may be appropriate.

(4) Any person aggrieved by the decision of Chief Inspector under subsection (3) or in the exercise of any power under this Act, may within thirty days appeal against that decision to the Minister.

(5) Where the Minister has received appeal he shall, within thirty days, determine the appeal.

(6) In determining the appeal the Minister may, vary, confirm or otherwise direct the Chief Inspector the manner in which the matter complained of be treated.

Power
of
Inspec-
tor to
pro-
ceedings
before a
Magis-
trate
Court

10.—(1) An inspector may, prosecute, conduct, or defend before a Magistrate's Court any charge, complaint, or any other proceeding arising under this Act, or in the discharge of his duty as an inspector.

(2) It shall not be an objection to the competence of an inspector to give evidence as a witness in any prosecution brought at his instance or conducted by him.

11.—(1) Subject to the provisions of subsection (2) and (3), every employer who has more than twenty employees in his employment at any factory or workplace shall—

- (a) within four months after the commencement of this Act; or
- (b) after commencing business; or
- (c) from such time as the number of employees exceeds four designate in writing for a specified period, a health and safety representatives for that factory or workplace, or for the different sections thereof.

Safety
and
health
representatives

(2) Any employer and his employees or their representatives shall make their own arrangements and procedures for the nomination or election, the term of office; and subsequent designation of health and safety representatives in terms of subsection (1):

Provided that, where such consultation fails, the matter shall be referred to an inspector for arbitration and decision.

(3) Every employee employed in a full-time capacity at a specific factory or workplace and is acquainted with conditions and activities at that factory or workplace or section thereof, shall be eligible for designation as a health and safety representative for that factory or workplace or section;

(4) The number of health and safety representatives at a factory or workplace or section thereof shall—

- (a) in the case of shops and offices be at least one health and safety representative for hundred employees or part thereof;
- (b) in the case of a factory or workplace at least one health and safety representative for every fifty employees or part thereof:

Provided that, those employees performing work at a workplace other than that where they ordinarily report for duty, shall be deemed to be working at the factory or workplace where they so report for duty.

(5) Where an inspector is of the opinion that, the number of health and safety representatives for any factory or workplace or section thereof, including a factory or workplace or a section thereof with four or fewer employees, is inadequate, he may by Notice in writing direct the employer to designate such number of employees as health and safety representatives for that factory or workplace or section thereof as the inspec-

tor may determine in accordance with the arrangements and procedures referred to in subsection (2).

(6) All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.

Functions
of safety
and
health
representatives

12.—(1) The functions of a health and safety representative appointed for the factory or workplace under this Act shall include —

- (a) to review the effectiveness of health and safety measures;
- (b) to identify potential hazards and major incidents at a factory or workplace;
- (c) to collaborate with his employer, examine the causes of incidents at the factory or workplace;
- (d) to investigate complaints by any employee relating to that employee's health or safety at work;
- (e) to make representations to the employer or a health and safety committee or where such representations are unsuccessful, to an inspector;
- (f) to inspect any document which the employer is required to keep in terms of this Act in so far as is reasonably necessary to perform his functions;
- (g) to accompany an inspector on any inspection;
- (h) to participate in any internal health or safety audit.
- (i) to report accidents, near-misses, injuries, illnesses, deaths and non-compliance to the inspector.

(2) An employer shall provide such facilities, assistance and training as a health and safety representative may reasonably require for the carrying out of his functions.

Safety
and
Health
Committees

13.—(1) An employer shall in respect of each factory or workplace where two or more health and safety representatives have been designated, establish one or more Committees and, at every meeting of such a Committee, consult with the Committee for the purpose of initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.

(2) The Committee shall consist of such number of members at least one third of whom shall be women as the employer may from time to time determine except that—

- (a) where one Committee has been established in respect of a factory or workplace, all the health and safety representatives for that factory or workplace shall be members of the Committee;
- (b) where two or more Committees have been established in respect of a factory or workplace, each health and safety representative for that factory or workplace shall be a member of at least one of those Committees; and
- (c) the number of persons nominated by an employer on any Committee established in terms of this section shall not exceed the number of health and safety representatives on that Committee.

(3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by him, and shall be members of the Committee for the period of their designation in terms of this section.

(4) The Committee shall hold meetings as often as may be necessary but at least once every three months at a time and place determined by the committee:

(5) An inspector may by notice in writing direct the members of a Committee to hold a meeting at a time and place determined by the inspector.

(6) Where more than ten percent of the employees at a specific factory or workplace has made a written request to an inspector, the inspector may by a written notice direct that such a meeting be held.

(7) The committee shall determine the procedures of the meetings.

(8) The Committee may co-opt one or more persons by reason of a particular knowledge of health or safety matter as an advisory member or as advisory members of the Committee but such member shall not have the right to vote.

(9) If an inspector is of the opinion that the Committees established for any particular factory or workplace is inadequate, he may in writing direct the employer to establish for that factory or workplace such number of Committees as the inspector may determine.

Functions
of Health
and
Safety
Commit-
tees

14.—(1) The Committee —

- (a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the factory or workplace or any section thereof for which such Committee has been established;
- (b) shall discuss any incident at the factory or workplace or section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report the incident to an inspector; and
- (c) shall keep record of each recommendation made to an employer in terms of subsection (1)(a) and of any report made to an inspector in terms of subsection (1)(b);
- (d) shall perform such other functions as may be prescribed.

(2) An employer shall take the prescribed steps to ensure that, a Committee complies with the provisions of this Act in the performance of the duties assigned to it under this Act.

PART III

REGISTRATION OF FACTORIES OR WORKPLACES

Register
of facto-
ries and
work-
places

15. There shall be a register of factories and workplaces in which the Chief Inspector shall enter such particulars in relation to every factory and workplace as he may consider necessary for the purpose of this Act.

Registra-
tion of
factories
and work
places

16.—(1) Any person being the owner or occupier of a factory or work place shall, before operating, be required to register such factory or workplace under this Act.

(2) Before any person occupies or uses as a factory or workplace any premises, which were not so occupied or used by him at the commencement of this Act, that person shall apply for the registration of the premises.

Procedure
for regis-
tration

17.—(1) Subject to the provisions of section 16, such person shall send to the Chief Inspector a written application containing the particulars set out in the First Schedule to this Act together with the prescribed registration fees.

