

THE OCCUPATIONAL SAFETY AND HEALTH ACT, 2004 AND THE OCCUPATIONAL SAFETY AND HEALTH (AMENDMENT) ACT, 2006

Introduction

The Occupational Safety and Health Act No. 1 of 2004 as amended by the Occupational Safety and Health (Amendment) Act No. 3 of 2006 (OSHA), was proclaimed on February 17, 2006 and has been operational since that date. This Act is of significance given that as of August 17, 2007 it repealed and replaced the Factories Ordinance Chapter 30, No. 2 which has governed health and safety in Trinidad and Tobago since 1948 and which was left operational for a few months after the new Act was proclaimed. The Factories Ordinance was left in force for this period as the arrangements for the implementation arm of the Occupational Safety and Health Authority, which is provided for in the Act, were put in place.

The objective of the OSH (Amendment) Act was among other things, to strengthen the system of law which promotes voluntary compliance by facilitating a shift to stronger self-governance by the employer and the workers and a more regulatory role by the Government. The amendment is a benefit to both employers and employees. On one hand, it ensures that the promotion of high safety and health standards does not hinder business performance, productivity and efficiency while, on the other, it addresses employee rights issues such as sufficient protection and avenues for redress in accordance with the law and good industrial relations practices.

The OSHA brings the legislation in step with the country's rapid industrialization spurred by increased activities in the construction and petrochemical sectors. This new Act is considered to be revolutionary and a model piece of legislation in the Caribbean.

Key features of the OSHA

➤ Widening of the scope of categories of protected workers

While under the Factories Ordinance only workers in factories were protected, under the OSHA, the scope of protection is broadened to "*industrial establishments*" which is defined as factories, shops, offices and places of work, not including premises occupied for residential purposes only. In other words, the law now covers all persons at work except domestic workers who work in households, which are not defined as industrial establishments.

➤ Addresses the roles and responsibilities of a wide cross-section of persons

The Act takes cognizance of the fact that although Government has a key role in the prevention of accidents and diseases in the workplace, the process is really managed at the enterprise level. As a consequence, safety and health issues require broad participation from workers and employers with Government assisting in an advisory and

regulatory capacity. The OSHA outlines the roles and responsibilities for a number of agents including employers, employees, occupiers and suppliers and manufacturers.

Employers

According to the Act, the major responsibility for occupational safety and health rests with the employer. He has a duty of care to ensure in accordance with the Act, the safety, health and welfare at work of all employees and any third party that can be affected by the work.

Employees

Employees must assume personal responsibility for their own safety and actions at work and must be aware of and respect all potential hazards. They are required to take reasonable care for their own safety and health and for the safety and health of other persons who may be affected by their acts or omissions at work. As an employee one must comply with the employer's occupational safety and health and welfare rules, instructions, safe work practices, established procedures, permit requirements and codes. Each employee must also comply with all applicable occupational safety and health legislation, regulations and orders under the Act and shall report to the employer, any contraventions of the Act and related regulations.

Occupiers

Occupiers or those with ultimate control over the affairs of an industrial establishment must ensure that the employer discharges his duty of care for the safety and health of employees and members of the public on or in the vicinity of the premises. This will include the provision and maintenance of safe means of access and egress and emergency response planning for those using their premises. The Occupier is also required to take steps within the standards established by the Environmental Management Authority, to protect the safety and health of the public in the vicinity of such premises from dangers created by the operations or processes within.

Suppliers and Manufacturers

A duty is imposed on anyone in the supply chain who designs, manufactures, imports or supplies any technology, machinery, plant, equipment or material for use at work to ensure that such items are safe and without risk to the safety and health of employees when properly used.

➤ **Promotes consultation on OSH issues at the enterprise level**

Employers and occupiers of industrial establishments of twenty-five (25) or more employees are required to prepare, in consultation with the worker representatives, a general policy with respect to occupational safety and health. Such an employer is also expected to establish a joint (trade union/employee representative and employer) Safety and Health Committee to review health and safety measures as well as investigate matters considered to be unsafe or a risk to health at the industrial establishment.

➤ **Provides mechanisms for the administration of the Act**

Parts XII to XIV of the Act speak to the structure and mechanism necessary to enforce this legislation. The Act provides for the establishment of two entities: the Occupational Safety and Health Authority and the Occupational Safety and Health Agency. The Authority is the advisory and policy-making body which guides the operations of the Agency. The Agency, however, serves as the regulatory, investigative and informational body through the work of inspectors.

➤ **Provides for the protection of pregnant employees and young persons**

Special provisions are made for pregnant employees. The employer has the duty to ensure that she is not exposed to chemicals or subject to working conditions that may be dangerous to her health or that of the unborn child. For an employee whose regular work would pose a danger to her health or that of the unborn child, the employer has the duty to offer her alternative employment, if possible, during her pregnancy and six months after the birth of the child.

The Act also seeks to protect young persons in employment. A young person is defined as a child of the age of sixteen years and under the age of eighteen years. Young persons who are to be employed for more than three months are to be examined by a medical practitioner to ascertain fitness for work in that establishment. The Act requires that they be adequately trained and also places conditions on the hours they work.

➤ **Addresses the health of employees**

The OSHA also deals with occupational diseases. The Act contains a comprehensive list of occupational diseases comparable with lists provided by the International Labour Organization. Additionally, the Act speaks to the prevention of these occupational hazards rather than compensation which is dealt with in other legislation.