

THE OCCUPATIONAL HEALTH AND SAFETY ACT, 2010

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FIRST SCHEDULE

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GOVERNMENT OF ZAMBIA

ACT

No. 36 of 2010

Date of Assent: 14th November, 2010

An Act to establish the Occupational Health and Safety Institute and provide for its functions; provide for the establishment of health and safety committees at workplaces and for the health, safety and welfare of persons at work; provide for the duties of manufacturers, importers and suppliers of articles, devices, items and substances for use at work; provide for the protection of persons, other than persons at work, against risks to health or safety arising from, or in connection with, the activities of persons at work; and provide for matters connected with, or incidental to, the foregoing.

[19th November, 2010

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Occupational Health and Safety Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title
and
commencement

2. (1) In this Act, unless the context otherwise requires—

Interpretation

“Appeals Board” means the Appeals Board established under section *twenty-eight*;

“article” means—

(a) any plant designed for use or operation, whether exclusively or not, by persons at a workplace; or

(b) any article designed for use as a component in any plant;

“authorised officer” means an officer designated as such by the Director under section *twenty-five*;

“Board” means the Occupational Health and Safety Board constituted under section *seven*;

“Chairperson” means the person appointed as Chairperson of the Board under subsection (2) of section *seven*;

“committee” means a committee established under paragraph 2 of the Schedule;

“construct” includes building, erection, excavation, alteration, repair, renovation, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, street and highway building, connecting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and any work in connection therewith;

“Deputy Director” means the person appointed as Deputy Director of the Institute under section *ten*;

“Director” means the person appointed as Director of the Institute under section *nine*;

“effective supplier” means the person who supplies an article for use at work to a person through an ostensible supplier;

“employee” means —

(a) any person, excluding an independent contractor, who works for another person, whether incorporated or not, or for a government agency, and who receives, or is entitled to receive, any remuneration; or

(b) any other person who in any manner assists in carrying on or conducting the business of an employer;

“employer” means any person—

(a) who employs or provides work for another person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or

(b) who permits any other person in any manner to assist in the carrying on or conducting of the person’s business, including any person acting on behalf of, or on the authority of, such employers;

“health and safety representative” means a health and safety representative elected under section *fourteen*;

“Institute” means the Occupational Health and Safety Institute established under section *four*;

“member” means a member of the Board;

“occupation” means any employment, business, calling, pursuit, vocation or profession;

“occupational hygiene” means the physical conditions, agents, materials or substances present in a working or community environment, which may cause sickness, impaired health and well being, or significant discomfort and inefficiency, among employees or among other persons;

“occupational disease or injury” means a disease or injury contracted or suffered as a result of one’s employment or by such disease or injury as the Minister may prescribe, by statutory instrument;

“occupational health and safety service” means a service organised for the purpose of —

- (a) protecting employees against any health or safety hazard which may arise out of their work or the conditions in which the work is carried on;
- (b) contributing towards the employees’ physical and mental adjustment, to the employees’ adaptation to their work and to their assignment to work for which they are suited; and
- (c) contributing to the establishment and maintenance of the highest possible degree of physical and mental wellbeing of the employees;

“ostensible supplier” means the person who acts as a middleman between the effective supplier and the person to whom an article for use at work is supplied and who facilitates the supply of the article;

“plant” includes any machinery, equipment or appliances, tools and anything which is used in connection with a plant or premises;

“premises” includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any installation on land, including the foreshore and other land intermittently covered by water and any other installation, whether floating or resting on other land covered with water or subsoil; and
- (c) any tent, or movable structure;

“self-employed person” means any person who on their own, or in partnership or association with any other person, is engaged in an occupation and who receives from the proceeds of that occupation any emolument other than a dividend;

“standard” means a specification or code of practice for an explicit set of requirements for an item, material, component, system or service and includes —

- (a) a test method to describe a definitive procedure which produces a test result; and
- (b) a procedure that gives a set of instructions for performing operations or functions;

which is declared under the Standards Act or any other written law to be a voluntary or compulsory standard;

“substance” means any natural or artificial substance, whether in solid, liquid, gas or vapour form;

“substance for use at work” means any substance intended for use, whether exclusively or not, by persons at work;

“supply” in relation to the supply of articles or substances, means supplying articles or substances by way of sale, lease, hire or hirepurchase, whether as principal or agent;

“Vice-Chairperson” means the person appointed as Vice-Chairperson of the Board under subsection (2) of section seven;

“welfare at work” means aspects of welfare at a workplace which relate to the health and safety of employees;

“workplace” means—

- (a) in relation to a health and safety representative, any place where the group of employees that the health and safety representative represents work, or are likely to work, or are likely to frequent, in the course of their employment or incidental to their employment; and
- (b) in relation to employees, any place where the employees work or are likely to work, or which they frequent or are likely to frequent in the course of their employment or incidental to it; and

“Workers’ Compensation Fund Control Board” means the Workers’ Compensation Fund Control Board established under the Workers’ Compensation Act, 1999.

(2) For the purposes of this Act, risks arising out of, or in connection with, the activities of persons at work, includes risks attributable to the manner of conducting an undertaking, a plant or substance used for the purposes of an undertaking or the condition of the premises or part of the premises used for the purposes of an undertaking.

3. This Act applies to all places of work, except as otherwise provided by this Act. Application

PART II

THE OCCUPATIONAL HEALTH AND SAFETY INSTITUTE

4. (1) There is hereby established the Occupational Health and Safety Institute, which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to this Act, to do all such acts and things as a body corporate may, by law, do or perform. Establishment of Institute

(2) The Schedule applies to the Institute.

5. (1) The seal of the Institute shall be such device as the Board may determine and shall be kept by the Secretary. Seal of Institute

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or one other member authorised in that behalf by a resolution of the Board.

(3) Any document purporting to be a document under the seal of the Institute or issued on behalf of the Institute shall be received in evidence and shall be deemed to be executed or issued, as the case may be, by the Institute without further proof, unless the contrary is proved.

6. The functions of the Institute are to—

- Functions of Institute
- (a) develop and implement programs to provide incentives for employers to implement measures to eliminate or reduce risks to health or safety or to improve occupational hygiene, occupational health and safety;
 - (b) investigate and detect occupational diseases and injuries at workplaces;
 - (c) conduct medical examinations for occupational health and safety purposes catering for all industries including agriculture and construction;
 - (d) provide an occupational laboratory service;
 - (e) promote studies and carry out investigations and research on occupational health and safety;
 - (f) prepare and maintain statistics on employees morbidity and mortality;
 - (g) conduct and encourage awareness educational programmes relating to the promotion of occupational health and safety; and

(h) carry out such other functions as are necessary or incidental to the performance of its functions under this Act.

Constitution
of Board

7. (1) There is hereby constituted an Occupational Health and Safety Board which shall comprise the following part-time members appointed by the Minister:

- (a) a representative of the Ministry responsible for agriculture;
- (b) a representative of the Ministry responsible for health;
- (c) a representative of the Ministry responsible for labour;
- (d) a representative of the Ministry responsible for livestock;
- (e) a representative of the Ministry responsible for mines;
- (f) a representative of the Attorney-General;
- (g) a representative of the Federation of Employers;
- (h) a representative of a trade union;
- (i) the Director, as *ex-officio* member; and
- (j) two other persons.

(2) The Minister shall appoint the Chairperson and Vice-Chairperson from amongst the members of the Board.

(3) A member shall hold office for a period of three years from the date of appointment and may be re-appointed for a further term of three years.

(4) A member may resign from the Board upon giving one month's notice, in writing, to the Minister.

(5) The office of a member shall become vacant—

- (a) upon the member's death;
- (b) if the member is absent, without reasonable excuse, from three consecutive meetings of the Board of which the member has had notice;
- (c) if the member is declared bankrupt;
- (d) if the member becomes mentally or physically incapable of performing duties as a member;
- (e) upon the expiry of one month's notice of the member's intention to resign; or
- (f) if the member is convicted of an offence under this Act or any other written law and has been sentenced therefor to imprisonment for a period exceeding six months without the option of a fine.

(6) Whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates office but that member shall hold office only for the unexpired part of the term.

(7) The Schedule applies to the Board.

8. The functions of the Board are to—

Functions of
Board

- (a) carry out the functions of the Institute;
- (b) coordinate all the activities relating to occupational health and safety;
- (c) set and maintain standards for the protection of the health and safety of employees at workplaces;
- (d) inform and advise the Minister on matters relating to occupational health and safety; and
- (e) carry out such other functions as are necessary or conducive for the performance of its functions under this Act.

Director

9. (1) The Board shall appoint a Director of the Institute on such terms and conditions as the Board may determine.

(2) The Director shall be the chief executive officer of the Institute and shall be responsible, under the supervision of the Board, for the day-to-day administration of the Institute.

(3) The Director shall be an *ex-officio* member of the Board.

(4) The Director may, by directions, in writing, and subject to such terms and conditions as the Director thinks fit, delegate to the Deputy Director any of the functions of the Director under this Act.

10. (1) The Board shall appoint a Deputy Director of the Institute on such terms and conditions as the Board may determine.

Deputy
Director and
other staff

(2) The Deputy Director shall assist the Director in the performance of the Director's functions under this Act.

(3) The Board shall appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of the Institute's functions under this Act.

PART III

HEALTH AND SAFETY COMMITTEES

Duty of employer to establish health and safety committee

11. An employer of ten or more persons at any workplace shall establish a health and safety committee.

Composition of health and safety committee

12. (1) A health and safety committee established in accordance with section *eleven* shall—

(a) consist of an equal number of members, not less than two on each side, representing the employer and the employees:

Provided that the representatives of the employees shall be chosen by the employees or designated by a trade union; and

(b) be chaired by a person elected from amongst the employee representatives or by the employer or the senior most member of management on an alternating basis.

(2) In this section, “trade union” has the meaning assigned to it in the Industrial and Labour Relations Act.

Cap. 269

Functions of health and safety committees

13. (1) The functions of a health and safety committee are to—

(a) promote cooperation between the employer and the employees in achieving and maintaining healthy and safe working conditions;

(b) share information about occupational health, safety and welfare with employees;

(c) investigate and resolve any matter that may be a risk to the health and safety of employees at a workplace;

(d) review the measures taken on the health and safety of employees at a workplace; and

(e) formulate, review and disseminate to the employees the standards, rules and procedures relating to health and safety to be carried out at the workplace.

(2) The Minister may, by statutory instrument, make regulations to provide for—

(a) the procedure of a health and safety committee;

(b) the election, functions and powers of health and safety representatives; and

(c) any other matters necessary for the effective performance of functions by the health and safety committees and representatives under this Act.

14. (1) The representatives of the employees on a health and safety committee shall elect from amongst themselves a health and safety representative who shall coordinate health and safety activities at their workplace.

Health and safety representatives

(2) Where there are only two representatives of the employees on the health and safety committee, the employees whom they represent shall elect a health and safety representative from the two representatives on the committee.

(3) An employer shall display or cause to be displayed in a conspicuous place, the names of the health and safety committee representatives.

(4) A health and safety representative who —

- (a) hinders or obstructs an employer or employee;
- (b) intimidates or threatens an employer or employee;
- (c) uses or discloses, for any purposes not connected with the exercise of any functions or powers under this Act, information that is acquired from an employer or employee; or
- (d) performs any functions contrary to the provisions of this Act;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

PART IV

HEALTH AND SAFETY AT WORKPLACES

15. For the purposes of this Part, in determining what is, or was, at any particular time, reasonably practicable in relation to ensuring health and safety at a workplace, regard shall be had to the following matters:

Determination of what is reasonably practicable

- (a) the likelihood of the hazard or risk concerned occurring;
- (b) the degree of harm that would result if the hazard or risk occurred;
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the availability and suitability of ways to eliminate or reduce the hazard or risk; and

Duties of
employers
to
employees

(e) the cost of eliminating or reducing the hazard or risk.

16. (1) Notwithstanding any other written law, an employer shall—

(a) ensure, so far as is reasonably practicable, the health, safety and welfare of the employees of the employer at a workplace; and

(b) place and maintain an employee in an occupational environment adapted to the employee's physical, physiological and psychological ability.

(2) Without prejudice to the generality of subsection (1), an employer shall—

(a) provide plant and systems of work that are, so far as is reasonably practicable, safe and without any risks to human health and maintain them in that condition;

(b) ensure, so far as is reasonably practicable, that articles, devices, items and substances provided for the use of the employees at a workplace are used, handled, stored and transported in a manner that is safe and without any risk to the health and safety of the employees at the workplace;

(c) provide such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety of the employees at their workplace;

(d) so far as is reasonably practicable, maintain a workplace under the employer's control, in a condition that is safe and without any risk to the health and safety of employees at their workplace;

(e) so far as is reasonably practicable, provide and maintain the means of access to, or exit from, a workplace that are safe and without any risk to the health and safety of the employees using it;

(f) provide and maintain a working environment for the employees that is, so far as is reasonably practicable, safe and without any risks to their health and safety, and which is adequate as regards facilities and arrangements for their welfare at the workplace;

(g) inform and consult a health and safety representative—

(i) where an authorised officer visits the workplace, and give the health and safety representative an opportunity to meet the authorised officer;

- (ii) on the circumstances and future prevention of any injury or illness;
 - (iii) on the circumstances of any injury for which a claim has been submitted to the Workers' Compensation Fund Control Board; or
 - (iv) with a view to making and maintaining arrangements to enable the employer and the employees to cooperate effectively in promoting and developing measures to ensure the health and safety of the employees at the workplace, and checking the effectiveness of those measures;
- (h) provide for measures to deal with emergencies and accidents, including adequate first-aid arrangements;
- (i) provide at the employer's expense all appropriate protective clothing or equipment to be used in the workplace by employees, who in the course of employment, are likely to be exposed to the risk of bodily injuries, and adequate instructions in the use of such protective clothing or equipment; and
- (j) do for, or provide to, the employees, free of charge, anything which by law is required to be provided to those employees by the employer.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

17. (1) An employee shall, at a workplace—

- (a) take reasonable care for the employee's own health and safety and that of other persons who may be affected by the employee's acts or omissions at the workplace;
- (b) not operate any machine or engage in a process which is unsafe or is an imminent risk to the employee's own health or safety and that of others; and
- (c) cooperate with the employer or any other person in relation to any duty imposed on the employer or that other person, so far as is necessary to enable that duty or requirement to be performed or complied with.

(2) Where an employee has reasonable grounds to believe that any item, device, article, plant or substance, condition or aspect of the workplace is, or may be, dangerous to the employees' occupational health or safety at or near the workplace, the employee shall immediately inform the employer, the committee or health and safety representative.

Duties of
employees
at
workplaces

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Duties of employers and self-employed persons to persons other than employees

18. (1) An employer shall, so far as is reasonably practicable, conduct the employer's undertaking in such a way that persons who are not employed by that employer and who may be affected by activities at the employer's workplace are not exposed to risks to their health or safety.

(2) A self-employed person shall conduct that person's undertaking, so far as is reasonably practicable, in such a way as to ensure that, that person and other persons who are not employed by that person and who may be affected by that person's activities are not exposed to risks to their health or safety.

Duties of person in control of workplace or plant

19. (1) A person who has the management or control of—

(a) a workplace or of the means of access to, or exit from, any workplace; or

(b) any plant or substance in a workplace;

shall take such measures as are reasonable for a person in that position to take so as to ensure, so far as is reasonably practicable, that the workplace, or means of access to, or exit from, that workplace are available for use by persons using the workplace, and any plant or substance in the workplace provided for use in that workplace is safe and does not cause any risk to the health or safety of the persons using them.

(2) For the purposes of subsection (1), a person who, by virtue of any contract or lease, has an obligation to—

(a) maintain or repair any workplace or any means of access to, or exit from, that workplace; or

(b) ensure the health and safety of persons using any workplace, against risks arising from any plant or substances in that workplace;

shall be treated as the person in control of the workplace.

(3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

20. (1) A person who designs or constructs a building or structure, or part of a building or structure who knows, or ought reasonably to know, that the building or structure or part of the building or structure is to be used as a workplace shall ensure, so far as is reasonably practicable, that it is designed or constructed to be safe and without risks to the health or safety of persons using it as a workplace for a purpose for which it was designed.

Duties of
designers,
manufacturers,
suppliers
and
importers

(2) A person who designs, manufactures or supplies any plant or substance for use by persons at work shall —

- (a) ensure that the plant or substance is safe and without risks to health if it is used for the purpose for which it was designed, manufactured or supplied;
- (b) carry out or arrange the carrying out, of such testing and examination as may be necessary for the performance of the duty imposed under paragraph (a); and
- (c) provide, or arrange for the provision of, adequate information about the plant or substance to the person to whom it is supplied concerning the purpose or purposes for which the plant or substance was designed, manufactured or supplied and any conditions necessary to ensure that the plant or substance is safe and without risks to health or safety if it is used for the purpose for which it was designed.

(3) Where a person designs, manufactures or imports an article, device, item or substance, or supplies an article, device, item or substance to another person, the person who designed, manufactured or imported the article, device, item or substance shall make an undertaking, in writing, that the article, device, item or substance, as the case may be, when properly used, shall not cause any risk to the health or safety of the persons using it or other persons.

(4) Notwithstanding subsection (3), the person for whom the article, device, item or substance is designed, manufactured or imported, or to whom it is supplied shall make an undertaking that the person will take reasonable steps to ensure that the article, device, item or substance is used in such a way that it does not cause any risk to the health or safety of the persons using it or other persons, whether at a workplace or not.

(5) Where it is proved by a court that the person for whom the article, device, item or substance was designed, manufactured or imported, or to whom it was supplied—

(a) has failed to comply with the undertaking made in accordance with subsection (3) and a risk occurs to the health or safety of the persons using the article, device, item or substance or to other persons, whether at a workplace or not, the person who designed, manufactured, imported or supplied the article, device, item or substance, shall not be liable for the risk caused; or

(b) complied with the undertaking made in accordance with subsection (3), but a risk is caused to the health or safety of the employees using it or to other persons, whether at a workplace or not, the person who designed, manufactured, imported or supplied the article, device, item or substance shall be liable for the risk caused.

(6) Where an ostensible supplier supplies any article, device, item or substance for use at work to a customer under a hire purchase agreement, conditional sale agreement or credit sale agreement, and the ostensible supplier—

(a) carries on the business of financing the acquisition of goods by others by means of such agreements; and

(b) in the course of that business acquired an interest in the article, device, item or substance supplied to the customer as a means of financing its acquisition by the customer from the effective supplier;

the effective supplier shall, for the purposes of this section, be treated as having supplied the article, device, item or substance and any duty imposed on the suppliers under this Act shall fall on the effective supplier.

(7) For the purposes of this section, an article, device, item or substance is regarded as properly used where it is used with due regard to any relevant information or advice relating to its use which is made available by a person who designed, manufactured, imported or supplied the article, device, item or substance.

(8) The duties under this section —

(a) apply whether or not the plant, article, device, item or substance is exclusively designed, manufactured or supplied for use by persons at work;

(b) extend to the design, manufacture or supply of components for, or accessories to, any plant for use by persons at work;

(c) extend to the supply of the plant, article, device, item or substance by way of sale, transfer, lease or hire and whether as principal or agent; and

(d) extend to the supply of the plant, article, device, item or substance to a person for the purpose of supply to others.

(9) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

21. (1) An architect and engineer shall carry out their duties in such a manner as to ensure the occupational health and safety of persons at, or near, a workplace.

Duties of architect and engineer

(2) In this section —

“architect” means a person registered as an architect under the Zambia Institute of Architects Act; and

Cap. 442

“engineer” has the meaning assigned to it in the Engineering Institution of Zambia Act, 2010.

Act No. 17 of 2010

(3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

22. (1) A person who designs, constructs, manufactures, supplies or imports an article, device, item or substance shall, in addition to the requirements of this Act, conform to standards set by the Zambian Bureau of Standards or other relevant body.

Compliance with standards

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

23. (1) A person shall not interfere with or misuse anything provided in the interest of health or safety under this Act.

Duty not to interfere with or misuse things

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

24. (1) An employer shall not dismiss an employee, alter the employee’s position or terms of employment or threaten to dismiss the employee or alter the employee’s position or terms of employment to that employee’s detriment because the employee—

Prohibition of dismissal or victimisation of employee

- (a) makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health;
- (b) is or has been a member of a health and safety committee or is or has been a health and safety representative;
- (c) exercises or has exercised a power as a health and safety representative or a member of a health and safety committee;
- (d) assists or has assisted, or gives or has given any information to an authorised officer, a health and safety representative or committee;
- (e) complies with the directives of an authorised officer; or
- (f) gives evidence before any court.

Act No. 4 of
2010

(2) A disclosure made by an employee under this Act shall be a protected disclosure for the purposes of the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010.

(3) Any employee who has been subjected to any dismissal or victimisation under subsection (1) may—

- (a) apply to any court having jurisdiction, including the Industrial and Labour Relations Court, for appropriate relief; or
- (b) pursue any other process allowed or prescribed by any law.

PART V

ENFORCEMENT

Designation
of authorised
officers

25. (1) The Board may, for the purpose of enforcing this Act, appoint any suitable person as an authorised officer on such terms and conditions as the Board may determine.

(2) The Board shall provide an authorised officer with an identity card for the purpose of inspections, which shall be *prima facie* evidence of the authorised officer's appointment as such.

(3) An authorised officer shall, in performing any function under this Act—

- (a) be in possession of the identity card referred to under subsection (2); and
- (b) show the identity card to any person who requests to see it or is subject to an investigation under this Act.

(4) For the purposes of this Act, "authorised officer" includes—

- (a) an authorised officer appointed under section *one hundred and forty-four* of the Mines and Minerals Development Act, 2008;

Act No. 7 of
2008

- | | |
|--|--------------------|
| (b) an inspector of factories appointed under section <i>six</i> of the Factories Act; | Cap. 441 |
| (c) an authorised officer appointed under section <i>eighty-one</i> of the Environmental Protection and Pollution Control Act; | Cap. 204 |
| (d) an inspector appointed under Part IX of the Public Health Act; | Cap. 295 |
| (e) a health inspector in terms of the Food and Drugs Act; | Cap. 303 |
| (f) a radiation safety officer appointed under section <i>thirty-five</i> of the Ionising Radiation Protection Act, 2005; | Act No. 16 of 2005 |
| (g) an authorised person appointed under section <i>eighteen</i> of the Workers Compensation Act, 1999; and | Act No. 10 of 1999 |
| (h) an inspector appointed under section <i>four</i> of the Energy Regulation Act. | Cap. 430 |
- 26. (1) An authorised officer may, with a warrant, at any reasonable time—**
- Powers of authorised officers
- (a) enter, inspect and search any premises used as a workplace, including a private dwelling, where information or documents which may be relevant to an investigation may be kept;
 - (b) enter, inspect and examine any premises where the authorised officer has reasonable grounds to believe that any person is employed or is about to be employed in that workplace;
 - (c) search any person on any premises if there are reasonable grounds to believe that the person has possession of any document or article that has a bearing on an investigation:
 - Provided that a person shall only be searched by a person of the same sex;
 - (d) examine any document or article found on any premises that has a bearing on an investigation;
 - (e) require the production of any record, report or document on any premises or information to be given about any document or article by—
 - (i) the owner of the premises;
 - (ii) the person in control of the premises;
 - (iii) any person who has control of the document or article; or
 - (iv) any other person who may have the information;

- (f) take for analysis a sample of any substance or thing which an authorised officer has reasonable grounds to suspect may be, or may contain or be contaminated by, a substance that is a risk to health;
 - (g) require the occupier of any workplace or premises to provide the authorised officer with such assistance and facilities as are necessary to enable the authorised officer to exercise the functions under this Act;
 - (h) examine, take extracts from or make copies of, any book or document found on the premises that has a bearing on an investigation;
 - (i) use any computer system on any premises, or require the assistance of any person on the premises to use that computer system, to—

 - (i) search any data contained in, or available to the computer system;
 - (ii) reproduce any record from the data; or
 - (iii) seize any output from the computer for examination or copying;
 - (j) take any plant, substance or thing from any premises if the authorised officer believes, on reasonable grounds, that the plant, substance or thing has been used in the commission of an offence under this Act; and
 - (k) attach and, if necessary, remove from the premises for examination and safeguarding any document or article that appears to have a bearing on an investigation.
- (5) An authorised officer who removes any document or article from any premises under paragraph (k) of subsection (4) shall—
- (a) issue a receipt for the document or article to the owner of, or person in control of, the premises; and
 - (b) return the document or article as soon as practicable after achieving the purpose for which it was removed.
- (6) In the exercise of powers of entry and search under this section, an authorised officer may use such reasonable force as is necessary and justifiable in the circumstances, and may be accompanied or assisted by such other persons as the authorised officer considers necessary for assistance to enter into, or upon, any premises.

(7) A person who—

- (a) delays or obstructs an authorised officer in the performance of the authorised officer's functions;
- (b) refuses to give an authorised officer such reasonable assistance as the authorised officer may require for the purpose of exercising the authorised officer's powers;
- (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer any questions asked by an authorised officer;
- (d) impersonates, or falsely represents that the person is an authorised officer;
- (e) without reasonable excuse, fails to produce or conceals any record, report or document requested by an authorised officer; or
- (f) gives an authorised officer false or misleading information in answer to an inquiry made by the authorised officer;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(8) An authorised officer shall furnish the Director with a written report and any other information relating to an inspection, as the Director may require.

(9) Nothing in this section requires a person to disclose or produce information or a document, if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

27. (1) Where an authorised officer has reasonable grounds to believe that any contravention of this Act is likely to cause death or bodily harm to an employee or other persons, the authorised officer shall order the closure of the workplace.

Notice of
contravention

(2) Notwithstanding subsection (1), where an authorised officer has reasonable grounds to believe that there is no immediate danger to any person in a workplace, the authorised officer shall —

- (a) permit work to continue during such period and under such restrictions and conditions as the authorised officer may consider necessary to ensure the health or safety of such persons as the authorised officer may specify in writing; and
- (b) require the employer to remedy the contravention immediately or within such period as the authorised officer may specify.

(3) An employer who is aggrieved with the decision of an authorised officer may, within seven days of the receipt of the decision, appeal to the Appeals Board.

(4) The Appeals Board shall, within thirty days of the receipt of the appeal determine the appeal.

(5) An employer who is aggrieved with the decision of the Appeals Board may, within thirty days from the date of receipt of the decision, appeal to the High Court.

(6) Subject to subsection (7), an employer shall, pending the decision of the High Court, protect all persons from being exposed to the danger specified in the notice.

(7) The Appeals Board may, where it determines that there is no immediate danger to any person at a workplace, permit work to continue during such period and under such restrictions or conditions as the Director may specify to ensure the health or safety of the employees.

Appeals
Board

28. (1) There shall be an Appeals Board which shall determine appeals against any action of an authorised officer.

(2) The Appeals Board shall consist of the following members who shall be appointed by the Minister:

- (a) the Director of Clinical Care Services in the Ministry responsible for health;
- (b) the Chief Inspector of Factories appointed under the Factories Act;
- (c) the Director of the Mines Safety Department in the Ministry responsible for mines;
- (d) the Director of the Environmental Council of Zambia;
- (e) a representative of the Attorney-General;
- (f) one representative from an employers' organisation;
- (g) a representative of an employees' organisation; and
- (h) a representative of the Ministry responsible for agriculture.

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(3) The Appeals Board may appoint technical experts to assist in the performance of its functions under this Act." and

(4) The Chief Justice may, by statutory instrument, make rules regulating appeals to the Appeals Board.

Prohibition
of disclosure
or
publication
of
information

29. (1) An authorised officer shall not —

- (a) except in the performance of the duties of an authorised officer under this Act, publish or disclose to any person the details of any materials, manufacturing processes

or operations which may come to the authorised officer's knowledge in the course of that authorised officer's duties; or

- (b) unless authorised by the complainant, divulge the source of any complaint disclosing to that authorised officer a breach of any of the provisions of this Act.

PART VI

OCCUPATIONAL HEALTH AND SAFETY SERVICES

30. (1) An employer who employs or intends to employ any number of persons permanently at the employer's workplace shall inform the Director of that fact.

Designation
of
occupational
health and
safety
service

(2) The Director shall, after being informed under subsection (1), inform the Minister who may designate the workplace or class of a workplace referred to in that subsection as one requiring an occupational health and safety service.

(3) The designation referred to in subsection (2) shall take into consideration the type of industry being carried on, the number of persons employed and the degree of the hazard.

(4) Where a workplace has been designated under subsection (3)—

(a) the Director may, with the approval of the Minister, require the employer to provide—

- (i) an occupational health and safety service in that workplace for the treatment of the employees; and
- (ii) for the employment or payment of such medical, nursing and auxiliary staff and health and safety staff as the Minister may consider necessary; or

(b) the Minister may require that the designated workplace shall be serviced by the specified occupational health and safety service and may specify the service or facilities and staff which the employer shall be required to provide at the workplace.

(5) An employer who is required under paragraph (a) of subsection (4) to provide an occupational health and safety service at that employer's workplace shall submit drawings and specifications of the proposed service to the Director for approval as to the standard of the facilities to be provided.

(6) Any occupational health and safety service to be provided or to be continued under this section shall be approved by the Minister or an authorised officer acting on behalf of the Minister.

(7) For the purposes of this section, the minimum requirements for an occupational health and safety service shall be as the Minister may prescribe by statutory instrument.

Returns and statistics

31. An occupational health and safety service shall submit to the Institute such periodical returns and statistics as the Director may require.

Health and safety policy

32. (1) The Director may direct—

(a) any employer in writing; and

(b) any category of employees, by notice in the *Gazette*;

to prepare a health and safety policy concerning the protection of the health and safety of the employees, including a description of the organisation and arrangements for carrying out reviews to that policy.

(2) Any direction under subsection (1) shall be accompanied by the guidelines concerning the contents of the policy.

(3) An employer shall prominently display a copy of the policy referred to in subsection (1), signed by the chief executive officer, in the workplace where the employees normally report for the service.

PART VII

GENERAL PROVISIONS

Exemptions

33. The Board may grant exemption from any requirement under this Act and the exemption may be conditional or unconditional, and for such period as the Board may determine for the purpose of ensuring compliance with this Act.

General penalty

34. A person who contravenes any provision of this Act for which no specific penalty is provided is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

General offences

35. A person who—

(a) without any reasonable excuse, deliberately creates a risk, or the appearance of a risk to the health or safety of persons at a workplace with the intention of causing a disruption of work at that place;

(b) aids, abets, counsels or procures a person to commit an offence under this Act;

- (c) in any record or document, wilfully furnishes information or makes a statement which is false in any material particular;
- (d) tampers with any safety equipment installed or provided by an employer; or
- (e) wilfully or recklessly does anything at a workplace which threatens the health or safety of any person or the employees;

commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

36. Where an offence under this Act is committed by a body corporate or an unincorporate body, every director or manager of the body corporate or an unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Offences by
body
corporate or
unincorporate
body

37. (1) In the exercise of its functions under this Act, the Institute may issue such guidelines as are necessary for the better carrying out of the provisions of this Act.

Institute to
issue
guidelines

(2) The Institute shall publish the guidelines issued under this Act in a daily newspaper of general circulation in Zambia, and the guidelines shall not take effect until they are so published.

(3) The guidelines issued by the Institute under this Act shall bind all persons regulated under this Act.

38. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to the generality of sub-section (1), regulations may provide for—

- (a) occupational diseases and injuries and hazardous industries and occupations;
- (b) the occupational health and safety standards to be established at workplaces or classes of workplaces;
- (c) the conditions for the design, construction and use of a plant to protect the occupational health and safety of employees;

- (d) the requirements with respect to the testing, labelling or examination of the substance or material that may affect the occupational health and safety of employees;
- (e) the use of protective equipment or devices by employees or classes of employees;
- (f) the occupations for which initial, periodic and benefit medical examination of persons may be required in order to verify safe conditions of work or to detect early changes in health;
- (g) the measures for detecting and investigating cases in which the health of persons has been affected, including medical examinations, and the making of biological, hearing or other tests;
- (h) the responsibilities of employers, employees, contractors and other persons under this Act and the health and safety measures they should take;
- (i) the reporting of, and dealing with, accidents occurring at workplaces;
- (j) the prohibition of certain categories of employees from performing specified work or the performance thereof on specified conditions;
- (k) the making, keeping and inspection of records of matters relating to risks to health and the furnishing of returns and information relating to those matters;
- (l) prescribing the forms to be used for the purposes of this Act;
- (m) specifying the classes of persons who by reason of age, sex or pregnancy are, or may be, specially subject to risk of injury or illhealth caused by the hazards of the working environment; and
- (n) prescribing anything relating to occupational health and safety which is necessary or expedient in the interest of the health and safety of employees or which may be prescribed under this Act.

Savings and
transitional
provisions

39. The Second Schedule applies in relation to the savings and transitional provisions.

FIRST SCHEDULE
(Section 3)

ADMINISTRATION OF INSTITUTE

PART I

THE BOARD

1. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure. Proceedings
of Board

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) The Chairperson, or the Vice-Chairperson with four other members shall constitute a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;
or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such other member as the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

(7) The Board may invite any person, whose presence is, in its opinion, desirable, to attend and to participate in the deliberations of a meeting of the Board, but such person shall have no vote.

(8) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

Committees
of Board

2. (1) The Board may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

(2) Subject to subparagraph (1), the Board may appoint as members of a committee, persons who are, or are not, members of the Board, except that at least one member of a committee shall be a member of the Board.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

Allowances
of member

3. There shall be paid to a member or a member of a committee such allowances as the Board may determine with the approval of the Minister.

Disclosure
of interest

4. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration, and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

Prohibition
of
publication
of
information
to
unauthorised
person

5. (1) A person shall not, without the consent in writing given by, or on behalf of, the Institute, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subparagraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

6. An action or other proceeding shall not lie or be instituted against a member of the Board or a member of a committee of the Board for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise of or performance, or purported exercise or performance of any of the powers, functions or duties conferred under this Act. Immunity

PART II

FINANCIAL PROVISIONS

7. (1) The funds of the Institute shall consist of such moneys as may— Funds of Institute

- (a) be appropriated to the Institute by Parliament for the purposes of the Institute;
- (b) be paid to the Institute by way of grants or donations; and
- (c) otherwise vest in, or accrue to, the Institute.

(2) The Institute may, subject to the approval of the Minister—

- (a) accept moneys by way of grants or donations from any source within or outside Zambia; and
- (b) raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

(3) There shall be paid from the funds of the Institute —

- (a) the salaries, allowances, pensions and loans of the members of staff of the Institute;
- (b) such reasonable travelling and other allowances for the members and the members of any committee when engaged on the business of the Institute, at such rates as the Board may determine; and
- (c) any other expenses incurred by the Institute in the performance of its functions under this Act.

- (4) The Board may invest in such manner as it considers appropriate such funds of the Institute which it does not immediately require for the performance of its functions.
- Financial year** **8.** The financial year of the Institute shall be a period of twelve months ending on 31st December in each year.
- Accounts** **9.** (1) The Institute shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Institute shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Institute.
- Annual report** **10.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Institute shall submit to the Minister a report concerning its activities during the financial year.
- (2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Institute and there shall be appended to the report —
- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.
- (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 39)

SAVINGS AND TRANSITIONAL PROVISIONS

- Definition of Bureau** **1.** In this Schedule "Bureau" means the Occupational Health Safety and Research Bureau.
- Staff of Bureau** **2.** (1) For the avoidance of doubt, a person who, before the commencement of this Act, was an officer or employee of the Bureau, shall continue to be an officer or employee of the Institute, as the case may be, as if appointed or employed under this Act.
- (2) The service of the persons referred to in subparagraph (1) shall be treated as continuous service.
- (3) Nothing in this Act, affects the rights and liabilities of any person employed or appointed by the Bureau before the appointed date.

3. (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the Institute by virtue of this Act and without further assurance—

Transfer of
assets and
liabilities

(a) the affairs of the Bureau; and

(b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Bureau.

(2) Except as provided in this Act, every deed, bond and agreement, other than an agreement for personnel service, to which the Government was a party immediately before the appointed date, whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—

(a) the Institute had been party to it;

(b) for any reference to the Government there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Institute; or

(c) for any reference to any officer of the Bureau, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the appointed date, a reference to such officer of the Institute as the Institute shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the Government are deemed to be transferred to the Institute in respect of which transfer a written law provides for registration, the Institute shall make an application in writing to the appropriate registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

Legal
proceedings

4. (1) Any legal proceedings or application of the Government pending immediately before the appointed date by, or against, the Government may be continued by, or against, the Institute.

(2) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Government, may be instituted by, or against, the Institute.
