

S.I. No. 11 of 2002

THE HEALTH AND SAFETY AT WORK ACT, 2002
(NO. 2 OF 2002)

THE HEALTH AND SAFETY AT WORK ACT, 2002
(APPOINTED DAY) NOTICE

In exercise of the powers conferred upon me by section 1(2) of the Health and Safety at Work Act, 2002, the 1st day of February, 2002 is appointed the day on which the Health and Safety at Work Act, 2002 shall come into operation.

Dated the 21st day of January, 2002.

Signed
EARL D. DEVEAUX
Minister of Labour & Immigration

HEALTH AND SAFETY AT WORK ACT, 2002

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No. 2 of 2002

**AN ACT TO MAKE PROVISIONS RELATING
TO HEALTH AND SAFETY AT WORK
AND FOR CONNECTED PURPOSES.**

[Date of Assent:- 21st January, 2002]

Enacted by the Parliament of The Bahamas

Short title
and co
mencement.

1. (1) This Act may be cited as the Health and Safety
at Work Act, 2002.
(2) This Act shall come into operation on such day
as the Minister may, by notice published in the Gazette,
appoint.

Interpre-
tation.

2. (1) In this Act -

"article for use at work" means -

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

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

"code of practice" includes a standard, a specification
and any other documentary form of practical
guidance;

"Council" means the Advisory Council for Health and
Safety established by section 18;

"employee" means any person who has entered into or
works under (or, in the case of a contract which
has been terminated, worked under) a contract of

employment, whether the contract is for manual labour, clerical work or otherwise and whether it

is a contract of service or apprenticeship, and any reference to employment shall be construed accordingly;

"employer", in relation to an employee means any person or undertaking, corporation, company, public authority or body of persons including

(a) the owner of a business in which the employee is employed;

(b) any managing agent of an employer;

(c) in relation to a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under a contract of bailment (other than a hire-purchase agreement), the said owner;

(d) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or, where the club is managed by a committee, the members of the managing committee, of the club,

who or which employs any person to work under a contract of employment or uses the services of a commission agent or contract worker; and includes the heirs, successors and assigns of an employer;

"health and safety committee" means a committee established pursuant to section 20;

"inspector" means an inspector designated under section 10;

"Minister" means the Minister responsible for Labour;

"regulations" means regulations made under this Act and in the manner provided by this Act;

"personal injury" includes any disease and any impairment of a person's physical or mental condition;

"place of employment" means any building, site, workshop, structure, quarry, or other premises or place in which one or more employees or self-employed persons usually work or have worked;

"plant" includes any machinery, equipment or appliance;

"self-employed person" means an individual who works for gain or reward otherwise than under a contract of employment whether or not he himself employs others;

"substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

"supply" where the reference is to supplying articles means supplying them by way of sale, lease, hire or hire-purchase whether as a principal or agent for another;

"Tribunal" means the Industrial Tribunal established under the Industrial Relations Act.

(2) For the purposes of this Act

- (a) "work" means work as an employee or as a self-employed person;
- (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise; and
- (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person.

Application
of Act.

3. (1) The provisions of this Act shall have effect with a view to -

- (a) securing the health, safety and welfare of persons at work;
- (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work;
- (c) controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.

(2) For the purposes of this Act, risks arising out of or in connection with the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.

General
duties of
employers
to their
employees.

4. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular -

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and

- transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
 - (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
 - (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

General
duties of
employers
and self-
employed
to persons
other than
their

5. (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

6. (1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work or any article of fairground equipment -

General
duties of
manufacturers,
etc as
regards
articles
and sub-
stances
for use

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a);
- (c) to take such steps as are necessary to ensure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all such times as are mentioned in paragraph (a) and

when it is being dismantled or disposed
of; and

- (d) to take such steps as are necessary to ensure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(2) It shall be the duty of any person who designs, manufacturers, imports or supplies any articles of fairground equipment -

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for, or in connection with the entertainment of members of the public;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a);
- (c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and

without risks to health at all times when
it is being used for or in connection

with the entertainment of members of the public; and

- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of paragraph (c) as are necessary by reason of it becoming known that anything gives rise to a serious risk to health or safety.

(3) It shall be the duty of any person who undertakes the design or manufacture of any article for use at work (or of any article of fairground equipment) to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise.

(4) It shall be the duty of any person who erects or installs any article for use at work in any premise~ where that article is to be used by persons at work (or who erects or installs any article of fairground equipment) to ensure, so far as is reasonably practicable, that nothing about the way in which the article is erected or installed makes it unsafe or a risk to health at any such time as is mentioned in paragraph (a) of subsection (1) or, as the case may be, in paragraph (a) of subsection (2).

(5) It shall be the duty of any person who manufactures, imports or supplies any substance -

(a) to ensure, so far as is reasonably practicable, that the substance will be safe and without risks to health at all

times when it is being used, handled processed, stored or transported by person at work;

- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a) ;
- (c) to take such steps as are necessary to ensure that persons supplied by that person with the substance are provided with adequate information about any risks to health or safety to which the inherent properties of the substance may give rise, about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health at all such times as are mentioned in paragraph (a) and when the substance is being disposed of; and
- (d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of paragraph (c) as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(6) It shall be the duty of any person who undertakes the manufacture of any substance to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the substance may give rise (at all such times as are mentioned in paragraph (a) of subsection (5)).

(7) Nothing in the preceding provisions of this section shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions.

(8) Any duty imposed on any person by any of the preceding provisions of this section shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.

(9) Where a person designs, manufactures, imports or supplies an article (for use at work or an article of fairground equipment and does so for or to another) on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health (at all such times as are mentioned in paragraph (a) of subsection (1) or, as the case may be, in paragraph (a) of subsection (2)), the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed (by virtue of that paragraph) to such extent as is reasonable having regard to the terms of the undertaking.

(10) Nothing in subsection (8) or (9) shall relieve any person who imports any article or substance from any duty in respect of anything which

(a) in the case of an article designed outside The Bahamas was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article; or

(b) in the case of an article or substance manufactured outside The Bahamas was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance.

(11) For the purposes of this section an absence of safety or a risk to health shall be disregarded in so far as the case is or in relation to which it would arise is shown to be one of the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of paragraph (a) of subsection (1), (2) or (5) has been performed regard shall be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied or, as the case may be, by the person by whom the substance has been manufactured, imported or supplied.

General
duties of
employees
at work.

7. It shall be the duty of every employee while at work -

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his

acts or omissions at work; and

- (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Duty not to interfere.

8. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any provisions of this Act.

Duty not to charge employees.

9. No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any of the provisions of this Act.

10. The Minister may designate any suitably qualified public officer as an inspector to ensure compliance with this Act.

Improvement notices.

11. If an inspector is of the opinion that a person -

- (a) is contravening any provision of this Act;
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice (in this Act referred to as "an improvement notice") stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning

it within such period (ending not earlier than the period within which an appeal against the notice can be brought under section 14) as may be specified in the notice.

Prohibi-
tion notices.

12. (1) This section applies to any activities which are being or are likely to be carried on by or under the control of any person, being activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this section applies an - inspector *is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury,, the inspector may serve on that person a notice (in this Part referred to as "'a prohibition notice").

(3) A prohibition notice shall -

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his opinion any of those matters involve or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (d) direct that the activities to which the notice relates shall not be carried on by

or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) and any associated contravention or provisions so specified in pursuance of paragraph (c) have been remedied.

- (4) A direction contained in a prohibition notice in pursuance of subsection (3) (d) shall take effect -
- (a) at the end of the period specified in the notice; or
 - (b) if the notice so declares, immediately.

Provisions supplementary to sections 10 and 11.

13. (1) In this section "a notice" means an improvement notice or a prohibition notice.
- (2) A notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions -
- (a) may be framed to any extent by reference to any approved code of practice; and
 - (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (3) Where any of the relevant statutory provisions applies to a building or any matter connected with a building and an inspector proposes to serve an improvement notice after consultation with the relevant building authorities relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure

conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if the relevant building were being newly erected unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform as aforesaid.

(4) In subsection (3) "the relevant building", in the case of a building, means that building, and, in the case of a matter connected with a building, means the building with which the matter is connected.

(5) Before an inspector serves in connection with any premises other than a private dwelling used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures of affecting the means of escape in case of fire with which the premises are or ought to be provided, he shall consult with the fire brigade of the Royal Bahamas Police Force.

(6) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served -

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of section 11 or subsection (4) of section 12, as the case may be; and
- (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal
against
improve-

14. (1) In this section "a notice" means an improvement notice or a prohibition notice.

(2) A person on whom a notice is served may within

ment or
prohibit-
tion
notice

such period from the date of its service as may be prescribed appeal to the Tribunal; and on such an appeal the Tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the Tribunal may in the circumstances think fit.

(3) Where an appeal under this section is brought against a notice within the period allowed under subsection (2), then -

(a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;

(b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the Tribunal so directs (and then only from the giving of the direction).

Power to
deal with
cause of
imminent
danger

15. (1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be made harmless (whether by destruction or otherwise).

(2) Before there is made harmless under this section -

(a) any article that forms part of a batch of similar articles; or

(b) any substance,
the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and made harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall

(a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and

(b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where paragraph (b) applies the inspector cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a).

Power to
customs
officer to
detain
articles
and sub-
stances

16. (1) A customs officer may, for the purpose of facilitating the exercise or performance by an inspector of any of the powers or duties of the inspector under any of the provisions of this Part, seize any imported article or imported substance and detain it for not more than two working days.

(2) Anything seized and detained under this Section shall be dealt with during the period of its detention in such manner as the Comptroller of Customs may direct.

(3) In subsection (1) the reference to two working days is a reference to a period of forty-eight hour calculated from the time when the goods in question are seized, but disregarding so much of any period as falls on a Saturday, Sunday or public holiday.

Offences.

17. Any person who contravenes any provision of this Act is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars.

Advisory
Council.

18. (1) There shall be an Advisory Council for Health and Safety which, subject to this Act, shall be responsible for such matters as the Minister may prescribe.

(2) The Council shall consist of a Chairman appointed by the Minister and not less than ten other persons of whom -

- (a) three shall be appointed by the Minister after consultation with such organizations representing employers as, he considers appropriate;
- (b) three shall be appointed by the Minister after consultation with such organizations representing employees as he considers appropriate;
- (c) one shall be appointed by the Minister of Health; 1
- (d) one shall be appointed by the Minister responsible for Building Regulation;
- (e) one shall be appointed by the Director of Fire Services; and
- (f) the inspector designated by the Minister under section 10(1).

(3) A member of the Council, other than the inspector, shall hold office for a period not exceeding three

years, and shall be eligible for re-appointment.

(4) The Chairman and other members of the Council, other than the inspector, shall be paid such remuneration (whether by way of honorarium, salary or fee) as the Minister may determine.

(5) The Council may regulate its own proceedings.

Regulations

19. (1) Subject to subsection 2, the Minister may make regulations respecting any matter deemed necessary or advisable to carry out the intent and purpose of this Act.

(2) Before making any regulations under subsection (1), the Minister shall consult the Council and such organizations as appear to him to be representative of the employees and the places of employment concerned.

(3) Different regulations may be made for different places of employment.

(4) Regulations under this Act shall be subject to the negative resolution procedure.

Codes of practices.

20. For the purpose of providing practical guidance with respect to the requirements of any provision of the regulations, the Minister may, after consultation with the Council and any interested persons as he considers advisable, approve and issue such codes of practice, or any amendment, repeal or revision thereof, as in his opinion are suitable for that purpose.

Exemptions.

21. The Minister may, on the advice of the Council and after consultation with any interested persons as he considers advisable, exempt conditionally or otherwise any person or class of persons from any provision of this Act, the regulations or codes of practice, provided that the standard of health and safety of any employee at work is not thereby adversely affected.

Establish-
ment of
health and
safety
committees.

22. At every place of employment where twenty or more persons are employed, the employer shall cause a committee to be established to be known as a health and safety committee in accordance with regulations made under this Act.

Conflict
with other
Acts and
savings.

23. Nothing in this Act or the regulations shall derogate from the Environmental Health Act, the Buildings Regulation Act, the Town Planning Act or any regulations made thereunder or any other Act or regulations relating to health and safety at work, but in the event of any conflict between this Act and any of the aforementioned Acts or regulations, the provisions of this Act or the regulations, as the case may be, shall, in so far as they relate to health and safety at work, prevail.

Expenses.

24. All expenses incurred for the purposes of this Act shall be defrayed out of moneys provided by Parliament.

Act binds
The Crown.

25. This Act binds the Crown.