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CHAPTER 195

HEALTH AND SAFETY AT WORK

Act 24 of 1986

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HEALTH AND SAFETY AT WORK

To provide for the health, safety and welfare of persons at work.

1. Interpretation

(1) In this Act, unless the context otherwise requires –

"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 article 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;

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

"contract of employment" means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing);

"credit-sale agreement" means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

"employee" means an individual who works under a contract of employment and related expressions shall be construed accordingly;

"health and safety regulations" means regulations made under section 8;

"hire-purchase agreement" means an agreement other than a conditional sale agreement, under which –

(a) goods are bailed in return for periodical payments by the person to whom they are bailed or hired; and

(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs –

(i) the exercise of an option to purchase by that person;

(ii) the doing of any other specified act by any party to the agreement;

(iii) the happening of any other event;

and "hire-purchase" shall be construed accordingly;

"improvement notice" means a notice under section 14;

"inspector" means an inspector appointed under section 12;

"offshore installation" means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

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

"plant" includes any machinery, equipment or appliance;

"premises" includes any place and, in particular, includes –

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and

(c) any tent or movable structure;

"prohibition notice" means a notice under section 15;

"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;

"substance for use at work" means any substance intended for use (whether exclusively or not) by persons at work;

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

(2) In this Act –

(a) "work" means work as an employee or as a self-employed person, but does not include work as a domestic servant in a private household;

(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,

and, subject to the following subsection, the expression "work" and "at work" shall be construed accordingly.

(3) The Minister may prescribe regulations under this subsection to –

(a) extend the meaning of "work" and "at work"; and

(b) in that connection provide for this Act or any health and safety regulations to have effect subject to such adaptations as may be specified in the regulations.

(4) In 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.

2. Duties of employers to their employees

(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 the preceding subsection, examples of that duty are –

(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.

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

(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.

4. Duties of employees at work

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 by this Act or by health and safety regulations, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

5. Duty not to interfere with things provided

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

6. Duty not to charge employees

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 requirement of this Act or health and safety regulations.

7. Duties of manufacturers etc. regarding articles and substances for use at work

(1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work –

(a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when properly used;

(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 there will be available in connection with the use of the article at work adequate information about the use for which it is designed and has been tested, and about any conditions

necessary to ensure that, when put to that use, it will be safe and without risks to health.

(2) It shall be the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons at work to ensure, so far as is reasonably practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(3) It shall be the duty of any person who manufactures, imports or supplies any substance for use at work –

(a) to ensure, so far as is reasonably practicable, that the substance is safe and without risks to health when properly used;

(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 there will be available in connection with the use of the substance at work adequate information 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 it will be safe and without risk to health when properly used.

(4) 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.

(5) 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.

(6) Where a person ("the ostensible supplier") supplies any article for use at work or substance for use at work to another ("the 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 his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person ("the effective supplier"),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section as supplying the article or substance to the customer, and any duty imposed by the preceding provisions of this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(7) For the purposes of this section an article or substance is not to be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was designed, manufactured, imported or supplied.

8. Power to make regulations

(1) The Minister may prescribe regulations 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 and safety arising out of or in connection with the activities of persons at work; and

(c) controlling the supply, 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) Such regulations may refer to any specified document as it may be revised or re-issued from time to time.

9. Power to approve codes of practice

(1) For the purposes of providing practical guidance to any provision of this Act or health and safety regulations, the Minister may approve such codes of practice as in his opinion are suitable for those purposes, and if necessary issue such codes.

(2) Such approval may be of any specified document or part thereof, and may be approval of that document as it may be revised or re-issued from time to time.

(3) Such approval may be revoked at any time.

10. Use of codes of practice in criminal proceedings

(1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention of any requirement or prohibition imposed by or under any such provision as it mentioned in section 9(1) being a provision for which there was an approved code of practice at the time of the alleged contravention, the following subsection shall have effect with respect to that code in relation to those proceedings.

(2) Any provision of the code of practice which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was at any material time a failure to observe any provision of the code which appears to the court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code.

11. Enforcement

It shall be the duty of the Minister to make adequate arrangements for the enforcement of this Act and health and safety regulations.

12. Inspectors

The Minister may in writing appoint as inspectors such persons as he thinks necessary for carrying into effect this Act and health and safety regulations.

13. Powers of inspectors

(1) An inspector may, for the purposes of carrying into effect any of the provisions of this Act or health and safety regulations, exercise the powers set out in subsection (2).

(2) The powers of an inspector referred to in subsection (1) are the following, namely –

(a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in subsection (1);

(b) to take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;

(c) without prejudice to paragraph (b), on entering any premises by virtue of paragraph (a) to take with him –

(i) any other person duly authorised by his (the inspector's) enforcing authority; and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

(d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in subsection (1);

(e) as regards any premises which he has power to enter to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (d);

(f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d);

(g) to take samples of any articles or substances found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises;

(h) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in subsection (1));

(i) in the case of any such article or substance as is mentioned in paragraph (h), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –

(i) to examine it and do to it anything which he has power to do under that paragraph;

(ii) to ensure that it is not tampered with before his examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under section 14 or 15;

(j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

(k) to require the production of, inspect, and take copies of or of any entry in –

(i) any books or documents which by virtue of any statutory provisions are required to be kept; and

(ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d);

(l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section;

(m) any other power which is necessary for the purpose mentioned in subsection (1).

(3) Before exercising the power conferred by subsection (2)(h) in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(4) Where under the power conferred by subsection (2)(i) an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(5) No answer given by a person in pursuance of a requirement imposed under subsection (2)(j) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(6) Nothing in this section requires any person to disclose any document that he could not be required to disclose in civil proceedings before the Supreme Court.

14. Improvement notices

If an inspector is of the opinion that a person –

(a) is contravening one or more of the provisions of the Act or health and safety regulations; or

(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 (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 16) as may be specified in the notice.

15. Prohibition notices

(1) This section applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which any of the provisions of this Act 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 about 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 section 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 involves or, as the case may be, will involve a contravention of any provision of this Act or health and safety regulations, 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 contraventions of provisions so specified in pursuance of paragraph (c) have been remedied.

(4) A direction given in pursuance of subsection (3)(d) shall take immediate effect if the inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the notice in any other case.

16. Provisions supplementary to sections 14 and 15

(1) An improvement notice or prohibition notice may include directions as to the measures to be taken to ensure compliance with the notice; but the person on whom the notice is served may take instead any other measures that are equally effective for the purpose.

(2) An improvement notice, or a prohibition notice that does not take immediate effect, may be withdrawn at any time before the end of the period specified in it; and that period may be extended or further extended by an inspector at any time (unless an appeal against the notice is pending).

(3) A person on whom an improvement notice or a prohibition notice is served may, within the period of 21 days from the date of service, appeal to a Senior Magistrate's Court.

(4) On such an appeal, the court 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 court may in the circumstances think fit.

(5) Where an appeal under this section is brought against an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or abandoned.

(6) Where an appeal under this section is brought against a prohibition notice, the court may direct that the operation of the notice is to be suspended until the appeal is finally disposed of or abandoned; and the operation of the notice is to be suspended accordingly.

17. Powers in case of imminent danger

(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 rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered 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 rendered 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) above 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).

18. Disclosure of information

No inspector may disclose any information acquired in the course of the exercise of his power except –

(a) for the purposes of his functions; or

(b) for the purpose of any legal proceedings; or

(c) with the consent of the person from whom the information was acquired.

19. Offences

(1) It is an offence for any person to fail to discharge any duty to which he is subject under this Act or health and safety regulations, or to contravene any provision thereof.

Penalty: Fine of VT 100,000.

(2) It is an offence for any person –

(a) to contravene any requirement imposed by an inspector under section 13 or 17;

(b) to contravene any requirement imposed by an improvement notice or a prohibition notice (including such notice as modified on appeal);

(c) to disclose information contrary to section 18;

(d) intentionally to obstruct an inspector acting in the course of his duties;

(e) falsely to pretend to be an inspector.

Penalty: Fine of VT 100,000.

20. Civil liability

(1) Nothing in this Act shall give rise to a right of action in civil proceedings.

(2) Unless otherwise provided for in the regulations, breach of a duty imposed by health and safety regulations shall, so far as it causes damage be actionable.

21. Publication

Health and safety regulations, and approvals under section 9, shall be published in the Gazette and shall not come into operation until such publication.