

CARICOM MODEL LAW ON OCCUPATIONAL SAFETY AND HEALTH AND THE WORKING ENVIRONMENT

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1996

CARICOM MODEL LAW ON OCCUPATIONAL SAFETY AND HEALTH AND THE WORKING ENVIRONMENT

An Act to provide for the occupational safety and health of workers in the working environment

1. This Act may be cited as the Occupational Safety and Health and the Working Environment Act

PART I PRELIMINARY

2. (1) In this Act,

"Advisory Council" means the National Advisory Council on Occupational Safety and Health constituted under section 18 of this Act;

"agricultural undertaking" means an undertaking and a part of an undertaking engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity, including field spraying;

"article" means an object which is formed to specific shape or design during its manufacture or which in its natural shape, and whose use in that form is dependent in whole or in part on its shape or design;

"biological agent" means bacteria, viruses, fungi, rickettsiae, chlamydiae, and parasites;

"branches of economic activity" means all branches in which workers are employed, including the public service;

"chemical" means a chemical element and compound, and a mixture thereof, whether natural or synthetic;

"Chief Officer" means an inspector under this Act who is appointed as Chief Occupational Safety and Health Officer for the purposes of this Act; **[Drafting instructions: use proper title of Labour Officer who is responsible for occupational safety and health in your country]**

"committee" means a joint workplace safety and health committee established under this Act;

“competent person” means a person who,

(a) is qualified because of knowledge, training and experience to organize the work and its

- performance,
- (b) is familiar with this Act and the regulations that apply to the work, and
 - (c) has knowledge of any potential or actual danger to safety or health in the workplace.

“construction” covers,

- (a) building, including excavation and the construction, structural alteration, renovation, repair, maintenance (including cleaning and painting) and demolition of all types of buildings or structures,
- (b) civil engineering, including excavation and the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways dams, river and avalanche and sea defense works, roads and highways, railways, bridges, tunnels, viaducts and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies, and
- (c) the erection and dismantling of prefabricated buildings and structures, as well as the manufacturing of prefabricated elements on the construction site;

“construction site” means any site at which any of the processes or operations described in the definition of the term “construction” are carried on; For the purpose of this Act, and the regulations, a ship being manufactured or under repair shall be deemed to be a construction site.

“critical injury” means an injury of a serious nature that -

- (a) places life in jeopardy;
- (b) produces unconsciousness;
- (c) results in substantial loss of blood;
- (d) involves the fracture of a leg, arm, hand or foot, but not a finger or toe;
- (e) involves the amputation of a leg, arm or foot, but not a finger or toe;
- (f) consists of burns to a major portion of the body; or
- (g) causes the loss of sight in an eye.

“critical substance” means a chemical, physical agent or biological agent, or combination thereof prescribed as a critical substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled; **[Drafting instruction: this term is used for drafting convenience to avoid repetition of the definition given above]**

“dock” means a workplace where all or any of the work of loading or unloading any ship as well as any work incidental thereto is done;

“domestic worker” means a person employed to do household work in another person’s home or dwelling;

“employer” means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker; and may be an operator, principal contractor, contractor or sub-contractor; and includes the heirs, successors and assigns of an employer.

“employment contract” or “contract of employment” means any contract, whether expressed or implied and whether written or oral whereupon it is agreed that one person (the worker) will perform certain services or labour for another (the employer); and the term shall include any contract of apprenticeship or probation.

[Drafting Instruction: For further information on definition, refer to CARICOM Model Law on Termination of Employment.]

“factory” means,

- (a) a building or place other than a mine or place where homework or domestic work is carried on, where,
 - (i) any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,
 - (ii) in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance or article, energy is,
 - (a) used to work any machinery or device, or
 - (b) modified in any manner,
 - (iii) any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or part thereof,
 - (iv) any work is performed by way of trade for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance or article, or
 - (v) aircraft, locomotives or vehicles used for private or public transport are maintained,
- (b) a laundry including a laundry operated in conjunction with,
 - (i) a public or private hospital,
 - (ii) a hotel
 - (iii) or a public or private institution for religious, charitable or educational purposes,
- (c) a logging operation,
- (d) an agricultural undertaking, and
- (e) a dock.

“hazardous biological agent” means any biological agent at an excessive level for which relevant information exists to indicate that the biological agent at this level is hazardous;

“hazardous chemical” means any chemical which has been classified as hazardous in accordance with Article 6 of ILO Convention No. 170 concerning Safety in the Use of Chemicals at Work or for which relevant information exists to indicate that the chemical is hazardous, **[Drafting instruction: reference should be made to the competent body in the country designated to classify chemicals and determine whether a chemical is hazardous. If no such body exists then the latter provision “for which relevant information exists to indicate that the chemical is hazardous” would be controlling.]**

“hazardous chemical, physical and biological agent” means a hazardous chemical, a hazardous physical agent, and a hazardous biological agent as defined individually in this section; **[Drafting instruction: this term is used as a short drafting term and refer to each the three agents, it is not a term implying anything other than the three agents.]**

“hazardous physical agent” means any physical agent at an excessive level for which relevant information exists to indicate that the physical agent at this level is hazardous;

“hazardous substance” means a substance or mixture of substance which by virtue of chemical, physical or toxicological properties, either singly or in combination, constitutes a hazard;

“homework” means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or any part thereof by a person for wages in premises occupied primarily as living accommodation;

“industrial establishment” means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto;

“inspector” means an inspector of the Ministry responsible for Labour, or of the National Insurance Scheme appointed for the purposes of this Act and includes the Chief Officer;
[Drafting Instruction: Other government personnel may be included here to utilize the cooperation and resources of other government departments in enforcing this Act and Regulations]

“logging” means the operation of felling or trimming trees for commercial or industrial purposes or for the clearing of land, and includes the measuring, storing, transporting or floating of logs, the maintenance of haul roads, scarification, the carrying out of planned burns and the practice of silviculture;

“major hazard installation” means one which produces, processes, handles, uses, disposes of or stores, either permanently or temporarily, one or more hazardous substances or categories of substances in quantities which exceed the threshold quantity as prescribed;

“medical officer of health” means a medical practitioner who is employed by the government and who is responsible for monitoring, investigating and making recommendations to the government on matters respecting health of the public;

“mine” means,

- (a) surface or underground sites where the following activities, in particular, take place:
 - (i) exploration for minerals, excluding oil and gas, that involves the mechanical disturbance of the ground,
 - (ii) extraction of minerals, excluding oil and gas;
 - (iii) preparation, including crushing, grinding, concentration or washing of the extracted material, and
- (b) all machinery, equipment, appliances, plant, buildings and civil engineering structures used in conjunction with the activities referred to in (a) above;

“Minister” means the Minister responsible for Labour; **[Drafting instruction: if occupational safety health (OSH) is not under the Minister of Labour, then the minister under whose portfolio falls should be listed here. Please note that it is recommended that the Minister of**

Labour have major responsibility for the OSH portfolio.]

“Ministry” means the Ministry responsible for Labour; **[Drafting instruction: please refer to the above drafting instruction]**

“occupational disease” means a disease prescribed as an occupational disease for the purpose of this Act;

“occupier” means the person who has the ultimate control over the affairs of an industrial establishment or any other place of employment or work;

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; An owner does not become an employer at a construction site by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a construction site;

“Permanent Secretary” means the Permanent Secretary responsible for the Ministry of Labour; **[Drafting instruction: please refer to the above drafting instruction]**

“physical agent” means electromagnetic radiation, ionizing radiation, non-ionizing radiation, noise, vibration, heat, cold, humidity, and pressure;

“prescribed” means prescribed by a regulation made under this Act;

“regulations” means the regulations made under this Act;

“safety and health representative” means a safety and health representative selected under this Act;

“ship” means any kind of ship, vessel, barge, lighter or hovercraft, excluding ships of war;

“shop” means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale;

“supervisor” means a person who has charge of a workplace or authority over a worker;

“Technical Examiner” of the Ministry means a person who is employed by the Ministry and who by virtue of training and experience is duly and properly qualified to examine equipment, drawings, plans, or specifications of any workplace; **[Drafting Instruction: An Engineer may be substituted here]**

“threshold quantity” means for a given hazardous substance or category of substances that quantity, as prescribed, which if exceeded identifies a major hazard installation;

“trade union” means a trade union as defined in the **[Drafting Instruction: Insert the appropriate legislation concerning trade unions]** Act that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a workplace and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons;

“work-related disease” means a condition that results from exposure in a workplace to a chemical, physical agent, or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes, the occupational diseases prescribed in regulations under this Act.

[Drafting Note: The Regulation respecting Occupational Diseases under this Act, which prescribes occupational diseases, includes a reference to the schedule of “Prescribed Diseases” in the national legislation, thus tying the notification requirement in subsection 44(2) of this Occupational Safety and Health Act to the appropriate legislation covering workers’ compensation.]

“worker” means any person working under an employment contract full or part-time; or performs services or provides labour and includes an apprentice and trainee;

“work place” means any place where a worker needs to be or go by reason of his or her work and which is under the direct or indirect control of the employer.

PART II APPLICATION

3. (1) Subject of Sections 4 and 5, this Act applies to the State and to all branches of economic activity and to all employers and workers in all branches of economic activity.

(2) The provisions of this Act and the related regulations shall prevail over and supercede any other legislative provisions [Drafting Note: Notwithstanding this provision, out-

dated factories acts should be repealed upon enactment of this Act. Any provisions in Factories Acts that cover matters other than occupational safety and health should be included in other labour legislation.]

4. (1) This Act does not apply to noncommercial work performed by the owner or occupant of a private residence in or about his or her private residence or the lands and appurtenances used in connection therewith.

(2) This Act applies to domestic (household) workers and to an owner or occupant of a private residence with respect to the work performed by the domestic worker for the owner or occupant of a private residence as follows: Sections 16, 17, 18, 19(1), 19(2), 19(3), 19(5), 19(6), 19(7), 20(1), 20(3), 23(1), 24, 26(1), 28, 33(1)(a), (d), (h), (i), (j), (l), (o), (r), 34 (1)(g), (k), 36(1), 36(2), 42, 44, 45, 48(1), 50, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75 and the regulations thereto, apply with necessary modification to workers engaged in domestic work and employers of those workers.

(3) This Act applies to persons engaged in homework as follows: Sections 16, 17, 18, 19(1), 19(2), 19(3), 19(5), 19(6), 19(7), 20, 21, 23(1), 24, 26(1), 27(1), 33(1)(a), (d), (h), (i), (j), (l), (m), (n), (o), (p), (r), 34 (1)(d), (f), (g), (k), (l), 36(1), 36(2), 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 58, 59, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75 and the regulations thereto, apply with necessary modification to workers engaged in homework and employers of those workers.

5. This Act applies to self-employed persons as follows: Sections 16, 17, 18, 19(1), 19(2), 19(3), 19(5), 19(6), 19(7), 20, 21, 23(1), 24, 26(1), 33(1)(a), (d), (e), (h), (l), (o), (r), 45, 46, 47, 48, 49, 50, 51, 53, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 72, 73, 74 and 75 and the regulations in relation thereto, apply with necessary modification to a self-employed person.

PART III - REGISTRATION OF INDUSTRIAL ESTABLISHMENTS AND MINES

Registration of industrial establishments and mines 6. (1) Every industrial establishment and mine and the particulars thereof which are specified in section 7 shall be registered under this Act with the Ministry responsible for Labour. [Drafting Instruction: The purpose of registration is for the monitoring of occupational safety and health matters. If some workplaces, such as factories, are already required to be registered in another

context, the Ministry may decide not to require duplicate registration, but instead provide for the sharing of registration information with the ministry.]

(2) The Ministry shall keep a register of industrial establishments and mines registered under this Act, and shall cause to be entered therein the particulars from time to time registered in respect of such industrial establishments and mines.

**Application
for
registration**

7. (1) Every person who is the owner or employer registration of an industrial establishment or mine shall,

- (a) within thirty days after the commencement of this Act, in the case of an existing industrial establishment and mine; and
- (b) within thirty days after the industrial establishment or mine commences to operate as such, in the case of a new industrial establishment or mine

make application to the Ministry in the prescribed form for the registration of such industrial establishment or mine.

(2) Every application for registration of an industrial establishment or mine under this Act shall contain the following particulars:

- (a) the names and addresses of the owner and of the employer of the industrial establishment or mine to which the application relates;
- (b) the address and location of the industrial establishment or mine;
- (c) the nature and the object of the process carried on in the industrial establishment or mine;
- (d) the number of employees employed in the industrial establishment or mine,
 - (i) normally, and
 - (ii) at the date of application.
- (e) the hazardous chemical and hazardous physical agents present in the industrial establishment or mine, as listed in the hazardous materials inventory required to be prepared under Section 32 (1) of this Act; and
- (f) whether the industrial establishment or mine is a major hazard installation.

(3) The Ministry shall, upon the receipt of an application under subsection (1) containing the particulars specified in subsection (2), forthwith cause to be registered the industrial establishment or mine, and the particulars thereof, to which the application relates, and the Ministry shall issue to the applicant a certificate of registration of the industrial establishment or mine in the prescribed form.

[Drafting Note: Where mines are covered under separate legislation, such legislation should include the relevant provisions in this Act]

Application changes 8. Where any change takes place in any of the particulars registered under subsection 7 (3), the owner or employer for the time being of the industrial establishment or mine to which the particulars relate shall, within thirty days after the date upon which the change takes place, make application to the Ministry for the registration of the change, and the Ministry shall amend the register of industrial establishments and mines accordingly and issue to the applicant a verification of registration of the change as aforesaid.

Register correction 9. (1) The Ministry may take such steps as may be considered necessary to ascertain whether,

- (a) any industrial establishment or mine registered under this Act is being operated as an industrial establishment or mine; or
- (b) any change has taken place in the particulars registered under section 6 in respect of any industrial establishment or mine.

(2) Where the Ministry ascertains that any industrial establishment or mine registered as aforesaid is not being operated as an industrial establishment or mine, or that a change has taken place in the particulars registered as aforesaid in respect of any industrial establishment or mine, the Ministry shall remove the name of the industrial establishment or mine from the register or shall make such amendment to the register as the circumstances may require.

PART IV - ADMINISTRATION

Delegation of power 10. Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Permanent Secretary or other competent authority, the Minister or the Permanent Secretary may in writing delegate that power or duty from time to time to any officer or officers of the Ministry and of the National Insurance Scheme subject to such limitations, restrictions, conditions and requirements as the Minister or Permanent Secretary may set out in the delegation.

Appointment of inspectors 11. (1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Permanent Secretary and the Permanent Secretary may designate one or more of the inspectors as a Chief Officer.

(2) The Chief Officer may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations.

(3) The Chief Officer shall, in accordance with the objects and purposes of this Act, ensure that persons and organisations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational safety and occupational

health of workers generally.

**Certificate of
appointment**

12. (1) The Permanent Secretary shall issue a certificate of appointment, bearing his or her signature or a facsimile thereof, to every inspector.
- (2) Every inspector, in the exercise of any powers or duties under this Act, shall produce his or her certificate of appointment upon request.

**National
advisory
council**

13. (1) There shall be a non-profit council to be known as the National Advisory Council on Occupational Safety and Health composed of not fewer than twelve and not more than twenty members appointed by the Minister.

(2) The members of the Advisory Council shall be appointed for such term as the Minister determines and shall be representative of management,

labour

(selected from a panel designated by trade unions and employers organizations), technical or professional persons and the public who are concerned with and have knowledge of occupational safety and health.

(3) The Minister shall designate a chairman and a vice chairman of the Advisory Council from among the members appointed.

(4) The Minister may fill any vacancy that occurs in the membership of the Advisory Council.

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Minister and shall be paid out of the moneys appropriated therefor by the Legislature.

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings.

(7) The function of the Advisory Council is and it has power,

- (a) to advise the Minister on matters relating to occupational safety and health which may be brought to its attention or be referred to it, including the formulation of a national policy on occupational safety and health;
- (b) to make recommendations to the Minister relating to programs of the Ministry in occupational safety and health, including enforcement and the implementation of a national policy on occupational safety and health; and
- (c) to promote public awareness of occupational safety and health.

(8) The Advisory Council shall file with the Minister not later than the first day of June in each year an annual report upon the affairs of the Advisory Council for the previous calendar year.

(9) The Annual Report of the Advisory Council shall be incorporated into the Annual Labour Administration Report and the Minister shall submit the Report to the Legislature if it is in session or, if not, at the next ensuing session.

Appointment

14. (1) The Minister [or the Advisory Council] may appoint technical

of committees under committees, which are not committees as defined in subsection 2(1), or persons to assist or advise the Minister [or the Advisory Council] on any matter arising under

this Act [or relating to any of its functions]. (Co-ordination with the Advisory Council should be ensured).

(2) Any person appointed under subsection (1) who is not an officer in the public service of the Government may be paid such remuneration and expenses as may be fixed by the Minister or other Competent Authority.

Assessment to defray expenses

15. (1) **[Optional Section]** The Government may fix an amount that shall be assessed and levied by the **[Drafting Instructions: National Insurance Scheme or another appropriate government department]** upon employers under the National Insurance and Social Security **Legislation** to defray the expenses of the administration of this Act and the regulations and such amount shall not exceed **[Drafting Instruction: Amount to be decided by the Minister; amount should be significant]** for the fiscal year in which this Act comes into force and shall be subject to increase in each subsequent fiscal year by a sum not exceeding 10 per cent of the amount fixed for the preceding fiscal year. **[Drafting Note: This Section is to provide guidance where there is agreement in a country that NIS or Social Security funds shall be used to contribute to the implementation of the Act with the aim of preventing and reducing work-related injuries, accidents and deaths.]**

(2) The **[Drafting Instruction: National Insurance Scheme or another appropriate government department]** shall add to the assessments and levies made under the National Insurance and Social Security Legislation upon employers under that legislation a sum calculated as a percentage of the assessments and levies and which percentage shall be determined as the proportion that the amount fixed under subsection (1) bears to the total sum that the **[Drafting Instruction: National Insurance Scheme or another appropriate government department]** fixes and determines to be assessed for payment by such employers and the National Insurance and Social Security Legislation applies to such sum and to the collection and payment thereof in the same manner as to an assessment and levy made under that Legislation.

(3) The **[Drafting Instruction: National Insurance Scheme or another appropriate government department]** shall collect the assessment and levy imposed under this section and shall pay the amounts so collected to the **[Drafting Instruction: If appropriate, insert government department responsible for treasury. [Drafting Instruction: Regulations should be adopted to prescribe the collection procedures.]**

**PART V
GENERAL OCCUPATIONAL SAFETY
AND HEALTH REQUIREMENTS**

Dangerous machines

16. (1) In every industrial establishment, no person shall work at a machine, unless he or she has been fully instructed as to the dangers arising in connection with its operations, and the precautions to be observed, and
- (a) has received sufficient training in work at the machine; or
 - (b) is under adequate supervision by a person who has special knowledge and experience in the operation of the machine.
- (2) Persons under the age of 18 shall not operate machines which are of such a dangerous character that a young person ought not to work at them.

Protective clothing devices

17. (1) All persons entering an area in an individual establishment where they are likely to be exposed to the risk of head, bodily injury, injury from air contaminant or any other bodily injury, shall be provided with suitable protective clothing or devices of an approved standard and adequate instructions in the use of such protective clothing or devices, and no person shall be permitted to be in any such area unless he is wearing such protective clothing or device.
- (2) In every area where protective clothing or devices are required to be worn under subsection (1), a notice to that effect shall be conspicuously displayed.

18. (1) Where, in connection with the carrying on of a process, there is given off dust or fumes or other impurity of such a character and to such an extent as to be likely to be injurious or offensive to employees in an industrial establishment, all practicable measures shall be taken by the employer to protect the employees against inhalation of the dust or other impurity and to prevent its accumulation in any workroom, and where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained as near as possible to the point of origin of the dust or fumes or other impurity, so as to prevent contamination of the air of the workroom.

(2) Where steam is discharged into a room where persons are normally required to work, effective steps shall be taken to dissipate the steam from that room.

19. (1) In any industrial establishment, no person shall, enter or be permitted to enter a chamber, tank, vat, pit, pipe flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve

risk

of persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) In every industrial establishment no person shall enter or be permitted to enter any confined space such as is referred to in subsection (1) until all practical measures have been taken to remove the fumes which may be present and to prevent the ingress of fumes and

- (a) unless -
 - (i) the sludge or other deposit likely to give off dangerous fumes has been removed and the space containing no other material likely to give off dangerous fumes;
 - (ii) the space has been adequately ventilated and tested for dangerous fumes and has a supply of air adequate for respiration; and
 - (iii) a certificate in writing, of validity which shall not exceed eight hours, has been given by a competent person, based on a test carried out by that person, that the space is free from dangerous concentrations of dangerous fumes and fit for persons to enter; or
- (b) unless the person is wearing suitable breathing apparatus and a belt securely attached to a lifeline, the end of which is held by a person standing outside the confined space.

(3) In every industrial establishment in which work is to be done in a confined space and in which dangerous fumes are likely to be present, there shall be provided and kept readily available for instant use of sufficient supply of breathing apparatus of a type approved by the Chief Officer, of belts, ropes or other appropriate life lines and of suitable reviving apparatus and oxygen, which apparatus, belts, ropes or other appropriate life lines shall be maintained and shall be thoroughly examined by a competent person and a report on every such examination, signed by the person making the examination and containing the required particulars, shall be kept available for inspection.

(4) A sufficient number of employees shall be trained and practiced in the use of the apparatus mentioned in subsection (3) and in a method of restoring respiration and at least one such person shall be available at any time when work is being carried on in any confined space referred to in subsection (1).

(5) No person shall enter or remain in any confined space in which the proportion of oxygen in the air is or is likely to be substantially reduced, unless either

- (a) he or she is wearing breathing apparatus; or
- (b) the space has been and remains adequately ventilated and a competent person has tested and certified it as safe for entry without breathing apparatus.

(6) No person shall be permitted to enter a furnace, boiler, chamber, kiln, tank, vat, pipe, flue or other confined space for the purpose of working or

making an examination therein until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

(7) No portable electric light of voltage exceeding twenty-four volts shall be permitted for use inside any confined space referred to in subsection (1) and, where the fumes present are likely to be flammable, no lamp or light, other than one with a flame-proof enclosure or one that is intrinsically safe, shall be permitted to be used in such confined space, except that where the conditions are arduous, a centre-tapped transformer shall be used so that the potential differences between the live conductors and earth will not exceed twelve volts.

**Fire Exits,
drills and
emergency
exiting**

20. (1) In every industrial establishment, adequate fire exits shall be provided, and the doors that are provided for use as fire exits shall, while work is in progress at that industrial establishment, be either left unlocked, or secured in such a way as to be capable of being readily and quickly opened from the inside.

(2) Such warning signs as the fire authority may specify shall be prominently displayed in an industrial establishment in which explosives or highly flammable materials are stored or used.

(3) The contents of every room in which employees work shall be so arranged that there is for all employees in the room a free passageway leading to a means of escape in case of fire.

(4) Where in an industrial establishment more than twenty persons are employed in the same building, or where explosive or highly flammable materials are stacked or used in a building where persons are employed, effective steps shall be taken to ensure that all workers are familiar with the means of escape, their use and the routine to be followed in case of fire and a record of the number and frequency of evacuation drills shall be kept and presented, upon demand, for inspection.

**Cleanliness,
sanitary
conveniences**

21. (1) Every industrial establishment shall be clean and free from effluvia arising from any sanitary convenience or other source, and, without prejudice to the generality of the foregoing provision -

- (a) accumulations of dirt and refuse shall be removed daily, where practicable, by suitable methods from the floors, benches, furniture, furnishings and fittings of workrooms, and from the staircases and passages;
- (b) the floors of every workroom shall be cleaned at least once every week by washing or, if is effective and suitable, by sweeping or other method;
- (c) all dirt and refuse and all waste matter, whether resulting from a process carried on in the industrial establishment or from other cause, shall be removed daily or at reasonable intervals and be suitably disposed of;

- (d) effective means shall be provided, maintained and used to prevent the breeding of insects, rats mice or other vermin;
- (e) effective means shall be provided and maintained for the draining of wet floors where necessary; and
- (f) all inside walls and partitions, and all ceilings or tops of rooms, and all walls, sides and tops of passages and staircases shall be suitably washed or cleaned.

(2) Where it appears to the Chief Officer that in any industrial establishment any of the provisions of this section is not required for the purpose of keeping the industrial establishment clean, or is by reason of special circumstances inappropriate or inadequate for that purpose, he or she may, direct that the occupier of that industrial establishment be exempt from compliance with those provisions or that those provisions shall apply as varied by that directive.

Disposal of waste

22. Every employer shall, before the expiration of one year from the date on which this Act comes into force or of such longer period as the Minister or other Competent Authority may, upon application in writing by an employer, approve, make arrangements for the safe and efficient disposal of wastes and effluents resulting from any processes carried on therein and such arrangements shall be designed so as to ensure that the disposal does not result in any danger to persons, property or to the environment. **[Drafting Instruction: this section may be taken care of in separate Disposal of Waste or Environmental Protection legislation.]**

23. (1) In every part of an industrial environment where employees are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both, in accordance with approved standards.

(2) In every industrial establishment, effective provision shall, so far as is practicable, be made for the prevention of -

- (a) glare, either directly from a source of light or by reflection from a smooth or polished surface; and
- (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any person.

(3) In every industrial establishment, all glazed windows and sky lights used for the lighting of workrooms shall be kept clean from inside and outside and shall be free from any obstruction.

Noise and vibration

24. Every employer shall take adequate steps to prevent hearing impairment caused by noise, including programmes for hearing conservation, and diseases caused by vibration, from occurring to persons in, or in the vicinity of, the industrial establishment and shall comply with such directives as -

- (a) the Chief Officer may issue, in order to reduce the level of noise or vibration generated by a machine, device or process; and

- (b) the Chief Medical Officer or other competent person may issue, in order to protect persons employed from hearing impairment caused by noise or from diseases caused by vibration.

Overcrowding 25. An industrial establishment shall not be so overcrowded as to cause risk of injury to the health of the persons employed therein.

Ventilation 26. (1) In every industrial establishment there shall be adequate and suitable ventilation by the circulation of fresh air.
(2) The numbers of complete changes of air in each workroom shall be not less than six per hour for sedentary workers and not less than ten per hour for active workers.

Drinking Water 27. (1) In every industrial establishment, effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all persons employed thereof, a sufficient supply of cool, wholesome, drinking water, except that no such point shall be situated within six meters (or twenty feet) of a washing place, water closet, urinal or other sources of contamination unless a shorter distance is approved in writing by the Chief Officer.
(2) In every industrial establishment, there shall be legibly and conspicuously displayed near any tank, pipe or other source of water or liquid unfit for human consumption, a notice to that effect.

Washing facilities 28. In every industrial establishment there shall be maintained for both men and women employed therein, adequate, clean and easily accessible washing facilities which are provided with soap and suitable hand drying materials or devices and such other provisions as are prescribed.

Sanitary conveniences 29. In every industrial establishment there shall conveniences be provided and maintained -

- (a) adequate, clean and easily accessible sanitary conveniences for men and women employed therein;
- (b) suitable receptacles or disposal units for the use of women;
- (c) adequate lighting and ventilation in sanitary conveniences and an open or ventilated space separating workrooms from such conveniences; and
- (d) safe and covered access to sanitary conveniences;

Change rooms 30. In every industrial establishment, where workers are required to change into work clothes, there shall be provided and maintained, distinct and apart from any sanitary convenience or lunchroom, adequate and suitable changing rooms for both men and women and accommodation for their clothing not worn during

working hours.

- First-aid** 31. (1) In every industrial establishment, there shall be provided and maintained so as to be readily accessible during all working hours, such number of first aid boxes or cupboards, equipped with medical supplies, as may be prescribed.
- (2) The Chief Officer shall, where necessary, direct in writing that an industrial establishment provide for deluge showers, eye baths and other similar first aid devices.
- (3) Each first aid box or cupboard shall be under the control of responsible persons who are trained in first aid treatment and who shall always be readily available during the working hours of the industrial establishment.
- (4) Where the industrial establishment provides a first-aid room and an ambulance, it may be exempted by the Chief Officer from subsections (1) and (3).
- Restrooms or Lunchrooms** 32. In every industrial establishment the employer shall provide and maintain for the persons employed therein, adequate and suitable restrooms or lunchrooms and lunchrooms shall be convenient for the eating of meals and both shall be provided with adequate lighting ventilation and drinking water.

PART VI DUTIES OF EMPLOYERS, WORKERS, AND OTHER PERSONS

- Duties of employers** 33. (1) An employer at any work place including a construction site shall ensure that,
- (a) a safe, sound, healthy and secure working environment is provided as far as is reasonably practicable;
 - (b) the measures and procedures prescribed by this Act and the regulations are carried out;
 - (c) every supervisor and every worker performing work complies with this Act and the regulations;
 - (d) every reasonable precaution is taken in the circumstances for the protection of a worker;
 - (e) reasonable precaution is taken in the circumstances to protect the general public who comes into contact with the work site;
 - (f) a written occupational safety and health policy is prepared and reviewed at least annually in consultation with the committee or safety and health representative, if any, or a worker selected by the workers to represent them, and develop and maintain a program to implement that policy;
 - (g) a copy of the occupational safety and health policy is posted at a conspicuous location in the workplace;
 - (h) the equipment, materials and protective devices and clothing as prescribed are provided;
 - (i) the equipment, materials and protective devices and

- clothing provided by the employer are suitable and adequate and maintained in good condition;
- (j) the equipment, materials and protective devices and clothing provided by the employer are used as prescribed;
 - (k) a floor, roof, wall, pillar, support or other part of a workplace is capable of supporting all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under the **[Drafting Instruction: Insert any building code standards applicable]** code or Act; and
 - (l) the workplace, machinery, equipment and processes under his or control are safe and without risk to safety and health as far as is reasonably practicable; and
 - (m) that the machine, device, tool or equipment is in good condition;
 - (n) that the machine, device, tool or equipment complies with this Act and the regulations; and
 - (o) as far as reasonably practicable, the chemicals, physical agents and biological agents under his or her control are without risk to safety and health when the appropriate measures of protection are taken;
 - (p) after being notified by a female worker that she is pregnant, adapt the working conditions of the female worker who has notified pregnancy with respect to occupational exposure, to ensure that she is not involved in the use of or exposure to chemicals, substances or other terms or conditions of work hazardous to the health of the mother or unborn or nursing child. Where appropriate and available, alternative work should be assigned with the right to return to the previous job;
-
- (q) a worker or a person in authority over a worker is acquainted with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment, chemical, physical agent or biological agent;
 - (r) subject to such age as may be prescribed, only employ or allow to work in or about a workplace, a person over such age as the age of completion of compulsory schooling, and in any case, not less than fifteen years;
 - (s) information, instruction and supervision are provided to a worker to protect the safety and health of the worker;
 - (t) a copy of this Act and any explanatory material prepared by the Ministry outlining the rights, responsibilities and duties of workers is posted in the workplace;

- (u) assistance and cooperation are afforded by the employer to a committee and a safety and health representative in the carrying out by the committee and the safety and health representative of any of their functions;
- (v) the committee or a safety and health representative is provided the results of a report respecting occupational safety and health that is in the employer's possession and, in that report is in writing, a copy of the portions of the report that concern occupational safety and health;
- (w) workers are advised of the results of a report referred to in clause (v) and, if the report is in writing, make available to them on request copies of the portions of the report that concern occupational safety and health;
- (x) in a medical emergency for the purpose of diagnosis or treatment, information in the possession of the employer, including confidential business information, to a legally qualified medical practitioner and to such other persons as may be prescribed is provided upon request;

(2) Subsections (1) (f) and (g) do not apply with respect to a workplace

at which five or fewer employees are regularly employed.

Additional duties of employer

34. (1) In addition to the duties imposed by Section 33, an employer shall,
- (a) establish an occupational health service for workers as prescribed;
 - (b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;
 - (c) keep and maintain accurate records of the handling, storage, use and disposal of chemicals, physical agents or biological agents as prescribed;
 - (d) accurately keep and maintain and make available to the worker affected such records of the exposure of a worker to chemicals, physical agents or biological agents as may be prescribed;
 - (e) notify the Chief Officer of the use or introduction into a workplace of such chemicals, physical agents or biological agents as may be prescribed;
 - (f) monitor at such time or times or at such interval or intervals the levels of chemicals, physical agents or biological agents in a workplace and keep and post accurate records thereof as prescribed;

- (g) comply with a standard limiting the exposure of a worker to chemicals, physical agents or biological agents as prescribed;
- (h) establish a medical surveillance program for the benefit of workers as prescribed;
- (i) provide for safety-related medical examinations and tests for workers as prescribed;
- (j) where so prescribed, only permit a worker to work or be in a workplace who has undergone such medical examinations, tests or X-rays as prescribed and who is found to be physically fit to do the work in the workplace;
- (k) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker;
- (l) carry out such training programs for workers, supervisors and committee members as may be prescribed;
- (m) adopt provisions to protect the privacy of workers and ensure that health surveillance is not used for discriminatory purposes or in any manner prejudicial to their interests, where a prescribed occupational health service is established under Subsection 34(1)(a), prescribed safety-related medical examinations and tests are provided under subsection 34(1)(i), and only workers who have undergone prescribed medical examinations and tests are permitted to work under subsection 34(1)(j); and

(2) For the purposes of subsection 34(1)(a), a group of employers with the approval of the Chief Officer, may act as an employer.

(3) If a worker participates in a prescribed medical surveillance program or undergoes prescribed medical examinations or tests, his or her employer shall pay,

- (a) the worker's costs for medical examinations or tests required by the medical surveillance program or required by regulation;
- (b) the worker's reasonable travel costs respecting the examinations or tests; and
- (c) the time the worker spends to undergo the examinations or tests, including travel time, which shall be deemed to be work time for which the worker shall be paid at his or her premium rate as may be proper.

(4) In addition to providing information and instruction to a worker as required by subsection 33(1)(q), an employer shall provide,

- (a) to every worker, training on the safe and healthy manner of carrying out his or her work; and
- (b) subject to subsection 34(b), to every committee member who represents workers, if any, or a safety and health

representative, if any, training on this Act and the regulations that apply to the work.

(5) **[Optional Section - Drafting Note, these matters may be covered in the National Policy rather than the legislation]** In relation to the training that a worker, a committee member who represents workers, if any, or a safety and health representative, if any, receives under sub-section 34(4), his or her employer shall pay or obtain financing for the worker's, committee member's or representatives,

- (a) costs for the training;
- (b) reasonable travel to the location where the training is provided; and
- (c) time spent to undergo the training which shall be deemed to be work time for which the worker, committee member or representative shall be paid at his or her premium rate as may be proper.

(6) **[Optional Section - See Drafting Note above]** If a trade union exists at the workplace, the employer shall involve the trade union in the provision of the training required by subsection 34 (4)(b).

Duties of supervisors

35. **[Optional Section: Drafting Instruction: these duties may be included under the employer's duties]**

- (1) A supervisor shall ensure that a worker,
- (a) works in the manner and with the protective devices and clothing, measures and procedures required by this Act and the regulations; and
 - (b) uses or wears the equipment, protective devices and clothing that the worker's employer requires to be used or worn.
- (2) Without limiting the duty imposed by subsection (1), a supervisor shall,
- (a) advise a worker of the existence of any potential or actual danger to the safety or health of the worker of which the supervisor is aware;
 - (b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and
 - (c) take every precaution reasonable in the circumstances for the protection of a worker.

36. (1) A worker shall,
- (a) work in compliance with the provisions of this Act and the regulations;
 - (b) use or wear the equipment, protective devices and clothing that the worker's employer requires to be used or worn;
 - (c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device and

- clothing of which the worker is aware and which may endanger himself, herself or another worker;
 - (d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows;
 - (e) take care of the personal protective equipment, devices and clothing that the worker's employer provides; and
 - (f) exercise reasonable care so far as not to cause injury to self and others.
- (2) No worker shall,
- (a) remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;
 - (b) use or operate any equipment, machine, device or article or work in a manner that may endanger himself, herself or any other person; or
 - (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.
- (3) A worker is not required to participate in a prescribed medical surveillance program unless the worker consents to do so. **[Drafting Instruction: This is a matter of policy that the government must decide.]**
- (4) No worker shall be required to use equipment or machinery without any protective device required by the regulations or by his or her employer being in position.

Duties of owners

37. (1) The owner of a workplace that is not a construction site shall,
- (a) ensure that,
 - (i) such facilities as are prescribed are provided,
 - (ii) any facilities prescribed to be provided are maintained as prescribed,
 - (iii) the workplace complies with the regulations, and
 - (iv) no workplace is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and
 - (b) where so prescribed, furnish to the Chief Officer any drawings, plans or specifications of any workplace as prescribed.
- (2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to date no more than six months last past on such scale and showing such matters or things as may be prescribed.
- (3) Where so prescribed, an owner or employer shall,
- (a) not begin any construction, development, reconstruction,

alteration, addition or installation to or in a workplace until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by a technical examiner of the Ministry for compliance with this Act and the regulations; and

- (b) keep a copy of the drawings as reviewed in a convenient location at or near the workplace and such drawings shall be produced by the owner or employer upon the request of an inspector for his or her examination and inspection.
- (4) A technical examiner of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information.
- (5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing.

Duties of owners of construction sites

38. (1) Before beginning construction work, the owner shall determine whether any critical substances are present at the construction site and shall prepare a list of all critical substances that are present at the site.

(2) If any work on a construction site is tendered, the person issuing the tenders shall include, as part of the tendering information, a copy of the list referred to in subsection (1) -

(3) An owner shall ensure that a prospective employer at a construction site on the owner's property has received a copy of the list referred to in subsection (1) before entering into a binding contract with the employer.

(4) The employer at a construction site shall ensure that each prospective contractor and subcontractor for the construction work has received a copy of the list referred to in subsection (1) before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the construction site.

(5) An owner who fails to comply with this section is liable to the employer at a construction site and every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the construction site of a critical substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection (1).

(6) An employer at a construction site who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the construction site of a critical substance that was on the list prepared under subsection (1).

Duties of Occupiers

39. (1) The occupier of every industrial establishment shall be under a duty to take steps to protect the safety and health of persons at the work place from dangers created by the operation or processes carried on therein, and shall

take special care to ensure that the machinery, facilities and equipment used therein are of such integrity and that such adequate safety systems exist as to prevent the occurrence of unsafe, dangerous or other hazardous conditions.

(2) Except as otherwise expressly provided, it shall be the duty of every occupier of an industrial establishment to ensure that Part V and such other provisions of this Act and such regulations as impose duties on the occupier are complied with.

(3) The occupier of every industrial establishment shall ensure that reasonable precaution is taken under the circumstances to protect the general public who comes into contact with the work site.

Duties of Suppliers

40. **[Optional Section]** (1) Every person who designs, manufactures, imports, supplies, transfer or installs any machine, device, tool, equipment or substance for use in or about a workplace shall ensure,

- (a) that as far as is reasonably practicable, the machinery, device, tool, equipment or substance does not entail dangers for the safety and health of those using it correctly;
- (b) that the machinery, device, tool or equipment is in good condition;
- (c) that the machinery, device, tool, equipment or substance complies with this Act and the regulations; and
- (d) if it is the person's responsibility under the rental, leasing or similar arrangement to do so, that the machinery, device, tool or equipment is maintained in good condition.

(2) An architect and a professional engineer contravenes this Act if, as a result of his or her certification required under this Act that is made negligently or incompetently, a worker is endangered.

Duties of directors officers of corporations

41. **[Optional Section]** Every director and every officer of a corporation shall take all reasonable care to ensure that the corporation complies with,

- (a) this Act and the regulations;
- (b) orders and requirements of inspectors and the Chief Officer; and
- (c) orders of the Minister.

[Drafting Instruction: It may be appropriate for the Act to include a reference to the legislation of corporations to ensure that the terms “director” and “officer” relate to those used in the companies’ acts. Partnerships and other legal entities may also be included, if appropriate].

Refusal to work

42. (1) A worker may refuse to work or do particular work where he or she has reasonable justification to believe that,

- (a) any equipment, machine, device or article the worker is to use or operate presents an imminent and serious danger to the life of health of himself, herself or another worker;

- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work presents an imminent and serious danger to the life and health of himself or herself; or

(2) The provisions in this Section do not apply to a worker who is a member of a specific category of personnel specified for such purpose in an order of the minister [or other Competent Authority], and when that workers refusal to work would directly endanger the life, safety or health of another person,

(3) The categories of persons to which subsection (2) refers may be - **[Drafting Instruction: The specification by the government of the categories of workers and the restricted circumstances referred to herein are probably to be found in the statutes, regulations, and official manuals which govern the operation of the specific categories such as the police force, firefighter service, correctional institution, and health care facility. There should be a cross reference to such statutes, regulations, and official manuals. There should also be consultation with representatives of the specific categories when the restricted circumstances are defined and established].**

- (a) a person employed in, or a member of a police force;
- (b) a full-time, or a volunteer firefighter;
- (c) a person employed in the operation of a correctional institution or facility;
- (d) a person employed in the operation of,
 - (i) a hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health or mental retardation centre or a rehabilitation facility **[Drafting Instruction: Add other health care institutions that may be relevant],**
 - (ii) an ambulance service or a first aid clinic or station,
 - (iii) a laundry, food service, power plant or technical service or facility used in conjunction with an Institution, facility or service described in subsections (i) and (ii).

(4) Upon refusing to work or do particular work, the worker shall forthwith report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a safety and health representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them, who shall be made available and who shall attend without delay.

(5) Until the investigation is completed, the worker shall remain in a

safe place near his or her work station unless reassigned under subsection (11).

(6) The worker who refuses to work under subsection (1) shall be deemed to be at work and the worker's employer shall pay him or her at the regular or premium rate, as may be proper, for the time extending from the time when the worker started to refuse to work under subsection (1) to the time when the investigation mentioned in subsection (5) is completed.

(7) Where, following the investigation or any remedial action taken by the employer or supervisor to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable justification to believe that,

- (a) the equipment, machine, device or article that was the cause of the refusal to work or do particular work continues to present an imminent and serious danger to the life or health of himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works continues to present an imminent and serious danger to the life or health of himself or herself; or
- (c) any equipment, machine, device or article he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to present an imminent and serious danger to the life and health of himself, herself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

(8) An inspector shall investigate the refusal to work in the presence of

the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4)(a), (b) or (c).

(9) The inspector shall, following the investigation referred to in subsection (8), decide whether the machine, device, article or the workplace or part thereof presents an imminent and serious danger to the life or health of the worker or another person.

(10) The inspector shall give his or her decision, in writing, as soon as is practicable, **[Drafting Instruction: Insert definite period of time from when notification is given under subsection (7)]** to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c).

(11) Pending the investigation and decision of the inspector, the employer, subject to the provisions of a collective agreement, if any, may -

- (a) assign the worker reasonable alternative work during such hours; or
- (b) subject to section 43, where an assignment of reasonable alternative work is not practicable, give other directions to

the worker.

(12) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or article or to work in the workplace or in the part of the workplace being investigated as long as there is continuing imminent and serious danger to the life or health of any worker or person and until after the employer or supervisor has taken remedial action, if necessary, to deal with the circumstances that caused the worker to refuse to do particular work.

(13) The worker who refuses to work under subsection (7) shall be deemed to be at work and the worker's employer shall pay him or her at the regular or premium rate, as may be proper for the time extending from the time when the worker started to refuse to work under subsection (7) to the time when the inspector has given a decision under subsection (10) provided that the inspector decides that the machine, device, article or workplace or part thereof presents an imminent and serious danger to the life or health of the worker or another person.

(14) A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be at the regular or premium rate, as may be proper for the time spent by the person carrying out the duties under subsections (4) and (8) of a person mentioned in clause (4) (a), (b) or (c).

Complaint regarding refusal to work 43. (1) An employer, a worker at the workplace or a representative of a trade union that represents workers at the workplace may file a complaint with the Minister if he or she or it has reasonable grounds to believe that the worker, trade union or employer at the workplace acted without reasonable cause or in bad faith with respect to the refusal to work under section 41.

(2) A complaint must be filed not later than fourteen days after the event to which the complaint relates.

(3) The Minister shall make a decision respecting the complaint and may make such order as he or she considers appropriate in the circumstances within 30 days of receipt of the complaint. **[Drafting Instruction: It may be specified in each jurisdiction the manner in which this decision may be appealed.]**

No discipline dismissal reprisal by employer 44. (1) No employer or person acting on behalf of an employer shall,
(a) dismiss or threaten to dismiss a worker;
(b) discipline or suspend or threaten to discipline or suspend a worker;
(c) impose any penalty upon a worker; or intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations, has observed the procedures established by the employer or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an

inquest under the Accidents and Occupational Diseases (Notification) Legislation. **[Drafting Instruction: if inquests are held under a different statute, insert correct statute.]**

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement, by arbitration under a collective agreement, if any, or file a complaint with the **[Drafting Instruction: Insert (a) name of appropriate Competent Authority (Board, Tribunal, Court), or (b) Minister]** in which case any regulations governing the practice and procedure of the **[Drafting Instruction: Insert (a) Competent Authority, or (b) Minister]** apply with all necessary modifications to the complaint.

(3) The **[Drafting Instruction: Insert (a) Competent Authority or (b) Minister]** may inquire into any complaint filed under subsection (2), and **[Drafting Instruction: Insert statute governing the Competent Authority, if any.]**

(4) On an inquiry by the **[Drafting Instruction; Insert (a) Competent Authority, or (b) Minister]** into a complaint filed under subsection (2), sections of the **[Drafting Instruction: Insert statute governing the Competent Authority, if any]** apply with all necessary modifications.

(5) On an inquiry by the **[Drafting Instruction: Insert (a) Competent Authority, if any, or (b) Minister]** into a complaint filed under subsection (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer.

[Drafting Instruction: The Minister may wish to appoint a Commissioner to deal with all matters relating to this Part, in which case the Commissioner can be substituted for Minister in this Part.]

PART VII - HAZARDOUS CHEMICALS, PHYSICAL AGENTS AND BIOLOGICAL AGENTS

**Orders on
hazardous
chemicals
and physical
biological
agents**

45. (1) Where a chemical, physical agent or biological agent or a combination of such a chemical and agents is used or intended to be used in the workplace, and its presence in the workplace or the manner of its use is in the opinion of the Ministry likely to endanger the health of a worker, the Ministry shall by notice in writing to the employer order that the use, intended use, presence or manner of use be,

- (a) prohibited;
- (b) limited or restricted in such manner as the Ministry specifies; or
- (c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Ministry specifies.

- (2) Where the Ministry makes an order to an employer under subsection (1), the order shall,
- (a) identify the chemical, physical agent or biological agent, or a combination of such a chemical and agents, and the manner of use that is the subject-matter of the order; and
 - (b) state the opinion of the Ministry as to the likelihood of the danger to the health of a worker, and the Ministry's reasons in respect thereof, including the matters or causes which give rise to the Ministry's opinion.

(3) The employer shall cause a copy of the order to be posted in a conspicuous place in the workplace where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the chemical, physical agent or biological agent or a combination of such a chemical and agents.

(4) Where the employer, a worker or a trade union considers that, he, she or it is aggrieved by an order made under subsection (1), the employer, worker or trade union may by notice in writing given fourteen days of the making of the order, appeal to the Minister.

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection (4) be determined on his or her behalf by a person appointed by the Minister for that purpose.

(6) The Minister or, where a person has been appointed under subsection (5), the person so appointed, may give such directions and issue such orders as he or she considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chair of a "board of arbitration" **[Drafting Instruction: if possible, there should be a specification or a reference to an appropriate statute, which would allow the said "board of arbitration" to have a semi-judicial status.]**

(7) On an appeal, the Minister or, where a person has been appointed under subsection (5), the person so appointed, may substitute his or her findings for those of the Ministry and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Ministry and such order shall be final and not subject to appeal under this section.

(8) In making a decision or order under subsection (1) or (7), the Ministry, the Minister or, where a person has been appointed under subsection (5), the person so appointed shall consider as relevant factors,

- (a) the relation of the chemical or agent, combination of chemicals and agents or by-product to a chemical or a biological agent that is known to be a danger to health;
- (b) the quantities of the chemical or agent, combination of chemicals and agents or by-product used or intended to be used or present;
- (c) the extent of exposure;

- (d) the availability of other processes, chemicals and agents or equipment for use or intended use;

shall require the manufacturer, distributor or supplier, as the case may be, to provide, at the expense of the manufacturer, distributor or supplier, a report or assessment, made or to be made by a person possessing such special, expert or professional knowledge or qualifications as are specified by the Chief Officer, of the new chemical or agent intended to be manufactured, distributed or supplied and the manner of use including the matters referred to in subsections 61 (1)(o)(i) to (vii).

(3) For the purpose of this section, a chemical or biological agent is not considered to be new if, before a person manufactures, distributes or supplies the chemical or agent, it was used in a workplace other than the person's workplace or it is included in an inventory compiled or adopted by the Minister.

**Hazardous
materials
inventory**

47. (1) An employer shall make or cause to be made and shall maintain an inventory of all hazardous chemical; and all hazardous physical agents that are present in the workplace.

(2) The inventory required by subsection (1),

(a) shall contain such information as may be prescribed, and in addition shall include,

(i) toxic properties, including both acute and chronic health effects in all parts of the body;

(ii) chemical or physical characteristics, including flammable, explosive, oxidizing and dangerously reactive properties;

(iii) corrosive and irritant properties;

(iv) allergenic and sensitizing effects;

(v) carcinogenic effects;

(vi) teratogenic and mutagenic effects;

(vii) effects on the reproductive system of men and women.

(b) shall be prepared in consultation with the committee or safety and health representative, if any, for the workplace or with a worker selected by the workers to represent them, if there is no committee or safety and health representative.

(3) Where an inventory required by subsection (1) is amended during
a

year, the employer, not later than the 1st day of February in the following year, shall prepare a revised version of the inventory incorporating all changes made during the preceding year.

(4) Where, under the regulations, an employer is required to identify
or

obtain the identity of the ingredients of a hazardous chemical, the employer is not in contravention of the regulations if the employer has made effort reasonable in the circumstances to identify or obtain the identity of the ingredients, but has been unable to do so due to circumstances beyond his or her control.

(5) An employer shall advise the Chief Officer in writing if, after making reasonable efforts, the employer is unable to identify or obtain the identity of the ingredients of a hazardous chemical as required by the regulations.

(6) Except as may be prescribed, subsection (1) does not apply to an employer who undertakes to perform work or supply services on a construction site in respect of chemicals to be used on the site.

(7) The employer shall keep readily accessible at the workplace a floor plan, as prescribed, showing the names of all hazardous chemicals and their locations and shall post a notice stating where the floor plan is kept in a place or places where it is most likely to come to the attention of the workers.

**Hazardous
chemical
identification
and safety
data sheets**

48. (1) An employer,
- (a) shall ensure that all hazardous chemicals present in the workplace are labeled in a way easily understandable to the workers, or are identified in the prescribed manner;
 - (b) shall obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in the workplace;
 - (c) shall ensure that the identification required by clause (a) and chemical safety data sheets required by clause (b) are available in English and such other languages as may be prescribed;
 - (d) shall ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to workers their identity, any hazards associated with their use, and any safety precautions to be observed; and
 - (e) shall ensure that information is provided on the handling, and disposal of hazardous chemicals which are no longer required and containers which have been emptied but which may contain residues of hazardous chemicals so that the risk to safety and health and to the environment is eliminated or minimized.

(2) No person shall remove or deface the identification described in clause (1) (a) for a hazardous chemical.

(3) An employer shall ensure that a hazardous chemical is not used, handled or stored at a workplace unless the prescribed requirements concerning identification, chemical safety data sheets and worker instruction and training are met.

(4) An employer shall advise the Chief Officer **[or insert other designated competent person or Authority]** in writing if the employer, after making reasonable efforts, is unable to obtain a label or chemical safety data sheet required by subsection (1).

(5) A chemical safety data sheet expires three years after the date of its publication.

**Inventory
and chemical
data sheet to
be made
available**

49. (1) A copy of the most recent version of the inventory and of every unexpired chemical safety data sheet required by this Part in respect to hazardous chemicals in a workplace shall be,

- (a) made available by the employer in the workplace in such a manner as to allow examination by the workers;
- (b) furnished by the employer to the committee or safety and health representative, if any, for the workplace or to a worker selected by the workers to represent them, if there is no committee or safety and health representative;
- (c) furnished by the employer on request or if so prescribed to the medical officer of health of the health unit in which the workplace is located;
- (d) furnished by the employer on request or if so prescribed to the fire department which serves the location in which the workplace is located; and
- (e) filed by the employer with the Chief Officer on request or if so prescribed.

(2) The medical officer of health [**or insert other designated competent authority**], at the request of any person, shall request an employer to furnish a copy of the most recent version of the inventory or of an unexpired chemical safety data sheet, as the case may be.

(3) At the request of any person, the medical officer of health [**or other designated competent authority**] shall make available to the person for inspection a copy of any inventory or chemical safety data sheet requested by the person and in the possession of the medical officer of health.

(4) A medical officer of health [**or other designated competent authority**] shall not disclose the name of any person who makes a request under subsection (2) or (3).

(5) In addition to the requirements imposed under subsection (1), a copy of every chemical safety data sheet required by subsection (1) shall be made available by the employer in the workplace in such a manner that it is readily accessible by all workers who may be exposed to the hazardous chemical to which it relates.

(6) [**Optional Section**] An employer who makes a chemical safety data sheet readily accessible on a computer terminal at a workplace,

- (a) shall take all reasonable steps necessary to keep the terminal in working order;
- (b) shall give a worker upon request a copy of the chemical safety data sheet; and
- (c) shall teach all workers who work with or in proximity to hazardous chemicals, the safety and health representative, if any, at the workplace and the members of the committee

how to retrieve the chemical safety data sheet on the computer terminal.

- Assessment for hazardous chemicals** 50. (1) Where so prescribed, an employer shall cause to be assessed all chemicals and biological agents introduced and produced in the workplace for use therein to determine if they are hazardous.
- (2) The assessment required by subsection (1) shall be in writing and a copy of it shall be,
- (a) made available by the employer in the workplace in such a manner as to allow examination by the workers;
 - (b) furnished by the employer to the committee or safety and health representative, if any, for the workplace or to a worker selected by the workers to represent them, if there is no committee or safety and health representative.

- Hazardous physical agents** 51. (1) A person who distributes or supplies, directly or indirectly, or manufactures, produces or designs an article for use in a workplace that causes, emits or produces a hazardous physical agent when the article is in use or operation shall ensure that such information as may be prescribed is readily available respecting the hazardous physical agent and the proper use or operation of the article.
- (2) Where an employer has an article described in subsection (1) in the workplace, the employer shall ensure that the information referred to in that subsection has been obtained and is,
- (a) made available in the workplace for workers who use or operate the article or who are likely to be exposed to the hazardous physical agent; and
 - (b) furnished by the employer to the committee or safety and health representative, if any, for the workplace or a worker selected by the workers to represent the, if there is no committee or safety and health representative.
- (3) An employer to whom subsection (2) applies shall post prominent notices identifying and warning of the hazardous physical agent in the part of the workplace in which the article is used or operated or is to be used or operated.
- (4) Notices required by subsection (3) shall contain such information as may be prescribed and shall be in English and such other language or languages as may be prescribed.

- Instruction and training** 52. (1) In addition to providing information and instruction to a worker as required by clause 33(1)(s), an employer shall ensure that a worker exposed or likely to be exposed to a hazardous chemical or to a hazardous physical agent receives, and that the worker participates in, such instruction and training as may be prescribed.
- (2) The instruction and training to be given under subsection (1) shall

be developed and implemented by the employer in consultation with the committee or safety and health representative, if any, for the workplace.

(3) An employer shall review, in consultation with the committee or safety and health representative, if any, for the workplace, the training and instruction provided to a worker and the worker's familiarity therewith at least annually.

(4) The review described in subsection (3) shall be held more frequently than annually, if

- (a) the employer, on the advice of the committee or safety and health representative, if any, for the workplace, determines that such reviews are necessary; or
- (b) there is a change in circumstances that may affect the safety or health of a worker.

**Confidential
business
information**

53. (1) An employer may file a claim with the Minister for an exemption from disclosing,

- (a) information required under this Part in an inventory, label or chemical safety data sheet; or
- (b) the name of a toxicological study used by the employer to prepare a chemical-safety data sheet,

on the grounds that it is confidential business information and that disclosure of such information to a competitor would be liable to cause harm to an employer's business, so long as the safety and health of workers are not compromised thereby.

(2) An application under subsection (1) shall be made only in respect of such types of confidential business information as may be prescribed.

(3) Any worker of the employer or any trade union representing the workers of the employer may file with the Minister a rebuttal to the claim made

by

the employer under subsection (1).

(4) The Minister shall make a determination on every claim made under subsection (1) and on every rebuttal made under subsection (3).

(5) Information that an employer considers to be confidential business information is exempt from disclosure from the time a claim is filed under subsection (1) until the claim is finally determined and for three years thereafter, if the claim is found to be valid.

PART VIII - ENTERPRISE SAFETY AND HEALTH REPRESENTATIVES AND COMMITTEES

**Safety and
health
representative**

54. (1) At a construction site or other work-place where no committee is required under Section 55 and where the number of workers regularly exceeds five, the employer shall cause the workers to select at least one safety representative from among the workers at the workplace who do not exercise managerial functions.

(2) If no safety and health representative is required under subsection (1) and no committee is required under section 55 for a workplace, the Minister may, by order in writing, require an employer to cause the workers to select one or more safety and health representatives from among the workers at the workplace or part thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representatives.

(3) The Minister may by order give such directions as the Minister considers advisable concerning the carrying out of the functions of a safety and health representative.

(4) In exercising the power conferred by subsection (2), the Minister shall consider the matters set out in subsection 55 (5).

(5) The selection of a safety and health representative shall be made by those workers who do not exercise managerial functions and who will be represented by the safety and health representative in the workplace, or the part or parts thereof, as the case may be.

(6) Where there is a trade union or trade unions representing the workers referred to in subsection (5), the selection of a safety and health representative may be delegated by a majority of such workers to the trade union or trade unions.

(7) Unless otherwise required by the regulations or by an order by an inspector, a safety and health representative shall inspect the physical condition of the workplace at least once a month.

(8) If it is not practical to inspect the workplace at least once a month, the safety and health representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month.

(9) The inspection required by subsection (8) shall be undertaken in accordance with a schedule agreed upon by the employer and the safety and health representative.

(10) The employer and workers shall provide a safety and health representative with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace.

(11) A safety and health representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his or her findings thereon to the employer, the workers and the trade union or trade unions representing the workers.

(12) A safety and health representative has the power,

- (a) to obtain information from the employer concerning the conducting or taking of tests of any equipment, machine, device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health;
- (b) to be consulted about, and be present at the beginning of, testing referred to in clause (a) conducted in or about the

workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and

- (c) to obtain information from the employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) safety and health experience and work practices and standards in similar or other industries of which the employer has knowledge.

(13) An employer who receives written recommendations from a safety and health representative shall respond in writing within twenty-one days.

(14) A response of an employer under subsection (13) shall contain a timetable for implementing the recommendations the employer agrees with and give reasons why the employer disagrees with any recommendations that the employer does not accept.

(15) Where a person is killed or critically injured at a workplace from any cause, the safety and health representative may, subject to subsection 58 (2), inspect the place where the accident occurred and any machine, device or article, and shall report his or her findings in writing to the Chief Officer.

(16) A safety and health representative is entitled to take such time from work as is necessary to carry out his or her duties under subsection (7) and (15), and the time so spent shall be deemed to be work time for which the representative shall be paid by his or her employer at the representative's regular or premium rate as may be proper.

(17) A safety and health representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the employer and the workers, has, in addition to his or her functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a safety and health representative by this section.

(18) A safety and health representative shall maintain and keep a record of the exercise of his or her functions and powers conferred upon him or her by this section and shall make the same available for examination by an inspector.

**Joint
workplace
and health
committee**

55. (1) A joint workplace safety and health committee is required,
- (a) at a workplace at which (twenty) or more workers are regularly employed; **[Drafting Instruction: the number set that triggers requirement of a committee should be based on national conditions; in other words it may be appropriate to set it lower than twenty in some countries; it may also be designated on an industry - wide basis depending on the extent of hazard, etc. by the**

competent authority].

- (b) at a workplace with respect to which an order to an employer is in effect under section 45; or
 - (c) at a workplace, other than a construction site where fewer than twenty workers are regularly employed, with respect to which a regulation concerning critical substances applies.
- (2) Subject to subsection (3), this section does not apply,
- (a) to an employer at a construction site at which work is expected to last less than three months; or
 - (b) to a prescribed employer or workplace or class of employers or workplaces.
- (3) Despite subsections (1) and (2), the Minister may, by order in writing, require an employer to establish and maintain one or more joint workplace safety and health committees for a workplace or a part thereof, and may, in such order, provide for the composition, practice and procedure of any committee to be established.
- (4) The employer shall cause a joint workplace safety and health committee to be established and maintained at the workplace unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate was, on the **[Drafting Instruction: Specify date on which this Act comes into force]** established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the safety and health of the workers equal to, or greater than, the benefits to be derived under a committee established under this section.
- (5) In exercising the power conferred by subsection (3), the Minister shall consider,
- (a) the nature of the work being done;
 - (b) the request of an employer, a group of the workers or the trade union or trade unions representing the workers in a workplace;
 - (c) the frequency of work-related disease or injury in the workplace or in the industry of which the employer is a part;
 - (d) the existence of safety and health programs and procedures in the workplace and the effectiveness thereof; and
 - (e) such other matters as the Minister considers advisable.
- (6) A committee shall consist of,
- (a) at least four persons, for a workplace where fewer than fifty workers are regularly employed; or
 - (b) at least six persons or such greater number of people as may be prescribed, for a workplace where fifty or more workers are regularly employed.
- (7) At least half the members of a committee shall be workers employed at the workplace who do not exercise managerial functions.

(8) The members of a committee who represent workers shall be selected by the workers who do not exercise managerial functions and who will be represented by those members of the committee in the workplace or the part or parts thereof, as the case may be.

(9) Where there is a trade union or trade unions representing the workers referred to in subsection (8), the selection of the members of a committee referred to in subsection (8) may be delegated by a majority of such workers to the trade union or trade unions to be selected from among members employed at the workplace.

(10) The employer shall select the remaining members of a committee from among persons who exercise managerial functions for the employer and, to the extent possible, who do so at the workplace.

(11) A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee.

(12) Two of the members of a committee shall co-chair the committee, one of whom shall be selected by the members who represent workers and the other of whom shall be selected by the members who exercise managerial functions.

(13) It is the function of a committee and it has power to,

- (a) identify situations that may be a source of danger or hazard to workers;
- (b) make recommendations to the employer and the workers for the improvement of the safety and health of workers;
- (c) recommend to the employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the safety or health of workers;
- (d) obtain information from the employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) safety and health experience and work practices and standards in similar or other industries of which the employer has knowledge;
- (e) obtain information from the employer concerning the conducting or taking of tests of any equipment, machine, device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health; and
- (f) be consulted about, and have a designated member representing workers be present at the beginning of, testing referred to in clause (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

(14) The members of the committee who represent workers shall designate one of them who is entitled to be present at the beginning of testing

described in clause(55) (f).

(15) An employer who receives written recommendations from a committee shall respond in writing within twenty-one days.

(16) A response of an employer under subsection (15) shall contain a timetable for implementing the recommendations the employer agrees with and give reasons why the employer disagrees with any recommendations that the employer does not accept.

(17) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector.

(18) The members of a committee who represent workers shall designate a member representing workers to inspect the physical condition of the workplace.

(19) The members of a committee are not required to designate the same member to perform all inspections or to perform all of a particular inspection.

(20) Unless otherwise required by the regulations or by an order by an inspector, a member designated under subsection (18) shall inspect the physical condition of the workplace at least once a month.

(21) If it is not practical to inspect the workplace at least once a month, the member designated under subsection (18) shall inspect the physical condition of the workplace at least once a year **[Drafting Instruction: or other designated period of time]** and inspect at least a part of the workplace in each month.

(22) The inspection required by subsection (21) shall be undertaken in accordance with a schedule established by the committee.

(23) The employer and the workers shall provide a member designated under subsection (18) with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace.

(24) The member shall inform the committee of situations that may be a source of danger or hazard to workers and the committee shall consider such information within a reasonable period of time.

(25) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a workplace from any cause and one of those such members may, subject to subsection 58 (2), inspect the place where the accident occurred and any machine, device or article, and shall report his or her findings to the Chief Officer and to the committee.

(26) An employer required to establish a committee under this section shall post and keep posted at the workplace the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers.

(27) A committee shall meet at least once every three months **[Drafting Instruction: or other designated period of time]** at the workplace and may be required to meet by order of the Minister.

(28) A member of a committee is entitled to,

- (a) one hour or such longer period of time as the committee determines is necessary to prepare for each committee meeting;
 - (b) such time as is necessary to attend meetings of the committee; and
 - (c) such time as is necessary to carry out the member's duties under subsections (20), (21) and (25).
- (29) A member of a committee shall be deemed to be at work during the

times described in subsection (28) and the member's employer shall pay the member for those times at the member's regular or premium rate as may be proper.

(30) Any committee of a like nature to a committee established under this section in existence in a workplace under the provisions of a collective agreement or other agreement or arrangement between an employer and the workers has, in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section.

(31) Where a dispute arises as to the application of subsections (2), or the compliance or purported compliance therewith by an employer, the dispute shall be decided by the Minister after consulting the employer and the worker or the trade union or trade unions representing the workers.

**Worker
trades
committee**

56. (1) If a committee is required at a construction site, other than a construction site where fewer than fifty workers are regularly employed or that is expected to last less than three months, the committee shall establish a worker trades committee for the construction site.

(2) The members of a worker trades committee shall represent workers employed in each of the trades at the workplace.

(3) The members of a worker trades committee shall be selected by the workers employed in the trades the members are to represent.

(4) Where there is a trade union representing the workers referred to in subsection (3), the selection of the members of a worker trades committee may be delegated by a majority of such workers to the trade union.

(5) It is the function of a worker trades committee to inform the committee at the workplace of the safety and health concerns of the workers employed in the trades at the workplace.

(6) Subject to subsection (7), a member of a worker trades committee is entitled to such time from work as is necessary to attend meetings of the worker trades committee and the time so spent shall be deemed to be work time for which the member shall be paid by the employer at the member's regular or premium rate as may be proper.

(7) The committee for a workplace shall determine the maximum amount of time for which members of a worker trades committee for the workplace are entitled to be paid under subsection (6) for each meeting of the worker trades committee.

**Consultation
on industrial
hygiene**

57. (1) The employer at a workplace shall consult a safety and health representative or the committee with respect to proposed testing strategies for investigating industrial hygiene at the workplace.
- (2) The employer shall provide information to a safety and health representative or the committee concerning testing strategies to be used to investigate industrial hygiene at the workplace.
- (3) A safety and health representative of a designated committee member representing workers at a workplace is entitled to be present at the beginning of testing conducted with respect to industrial hygiene at the workplace if the representative or member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.
- (4) The committee members representing workers shall designate one of them for the purpose of subsection (3).

PART IX - NOTICES

**Notice of
death
or injury**

58. (1) Where a person is killed or critically injured from any cause at a workplace, the employer shall notify an inspector, and the committee, safety and health representative and trade union, if any, immediately of the occurrence by telephone, telefacimile or other direct means and the employer shall, within forty-eight hours after the occurrence, send to the Chief Officer a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.
- (2) Where a person is killed from any cause at the workplace, a report stating the cause of death shall be furnished to the Chief Labour Officer and the protections under section 69 shall apply.
- (3) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,
- (a) saving life or relieving human suffering;
 - (b) maintaining an essential public utility service or a public transportation system; or
 - (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage or article at the scene of or connected with the occurrence until permission so to do has been given by an inspector.

**Notice of
accident
explosion or
fire causing
injury**

59. (1) Where an accident, explosion or fire causes injury to a person at a workplace whereby the person is unable to perform his or her usual work or requires medical attention, and such occurrence does not cause death or critical injury leading to disability to any person, the employer shall give notice in writing within four days of the occurrence, to the Chief Officer, and to the committee, safety and health representative and trade union, if any, containing such

information and particulars as are prescribed.

- (2) If an employer is advised by or on behalf of a worker that,
 - (a) the worker has a work-related disease as defined which includes the occupational diseases as prescribed, or
 - (b) a claim in respect of a “Prescribed Disease” as defined in the National Insurance and Social Security Legislation has been filed with the National Insurance Scheme by or on behalf of the worker,

the employer shall give notice in writing, within four days of being so advised, to the Chief Officer, to the committee or a safety and health representative and to the trade union, if any, containing such information and particulars as are prescribed.

[Drafting Instruction: The intent here is to require notification of work related diseases as defined, occupational diseases as prescribed in regulations, and disease related NIS claims, without infringing on the NIS mandate to compensate for diseases it deems appropriate.] [Drafting Note: An up-to-date list of occupational diseases should be established under the National Insurance and Social security legislation. An example of a list of occupational diseases is appended to this Model as Annex I.]

(3) Subsection (2) applies with all necessary modifications if an employer is advised by or on behalf of a former worker that the worker has or had a work-related disease or that a claim in respect of a “Prescribed Disease” as defined in the National Insurance and Social Security Legislation has been filed with the National Insurance Scheme by or on behalf of the worker.

**Notice of
accident
explosion
of fire**

60. Where a notice or report is not required under section 58 or 59 and an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a construction site or mine, notice in writing of the occurrence shall be given to the Chief Officer and to the committee, safety and health representative and trade union, if any, by the employer at the construction site or the owner of the mine within two days of the occurrence containing such information and particulars as are prescribed. **[Drafting Instruction: National legislation may prescribe reporting forms on accidents, disease, etc., to be appended in Schedules to the Act.] [Drafting Note: National legislation may require the employer to carry out investigations of specific accidents, occupational diseases, commuting accidents, dangerous occurrences and incident and to report on the action taken to prevent a recurrence. The ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases is attached as Annex II for guidance.]**

PART X - ENFORCEMENT

**Powers of
inspector**

61. (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

- (a) subject to subsection (2), enter in or upon any workplace at any time without warrant or notice;

- (b) enter, inspect and examine any building of which an industrial establishment forms part where there is reasonable cause to believe explosive or highly flammable materials are stored;
- (c) require the production of any register, specifications, certificate, license, document, record or report, and inspect, examine and copy the same;
- (d) upon given a receipt therefor, remove any register, specifications, certificate license, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;
- (e) conduct or take tests without unduly disturbing the workplace, of any equipment, machine, device, article, material, chemical, physical agent, or biological agent in or about a workplace and for such purposes, take and carry away such samples as may be necessary subject to the employer being notified of such samples taken and carried away;
- (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the expense of the employer, by a person possession such special expert or professional knowledge or qualifications as are specified by, the inspector and to provide, at the expense of the employer, a report or assessment by that person;
- (g) make such examination, inquiry or test as may be necessary to ascertain whether, in respect of any workplace or the persons employed therein, or in respect of any prescribed occupation, the provisions of the Act and of the legislation in force relating to public health are being complied with;
- (h) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him or her any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him or her and use any equipment or materials required for such purpose;
- (i) make enquiries of any person who is or was in a workplace either separate and apart from another person or in the presence of any other person that is or may be relevant to an inspection, examination, inquiry or test;
- (j) require that any equipment, machine, device, article or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination inquiry or test;
- (k) require in writing an employer to have equipment,

machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker.

- (l) require in writing that any equipment, machinery or device not be used pending testing described in clause (k);
- (m) require in writing an owner or employer to provide, at the expense of the owner or employer, a report bearing the seal and signature of a professional engineer stating,
 - (i) the load limits of a floor, roof, part of a building, structure or temporary work,
 - (ii) that a floor, roof, part of a building, structure or temporary work is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or
 - (iii) that a floor, roof, part of a building, structure or temporary work is capable of supporting or withstanding all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under the **[Drafting Instruction: Insert any building code Standards applicable]** Code or Act or established by regulation.
- (n) require in writing an owner of a mine or part thereof to provide, at the owner's expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered.
- (o) require in writing, within such time as is specified, a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of the person, a report or evaluation made or to be made by a person, or organization having special, expert or professional knowledge or qualifications as are specified by the inspector of any process, chemical, physical agent, or biological agent or a combination of such a chemical and agents present, used or intended for use in a workplace and the manner of use, including,
 - (i) the ingredients thereof and their common or generic name or names,

- (ii) the composition and the properties thereof,
- (iii) the toxicological effect thereof,
- (iv) the effect of exposure thereto whether by contact, inhalation or ingestion,
- (v) the protective measures used or to be used in respect thereof,
- (vi) the emergency measures used or to be used to deal with exposure in respect thereof, and
- (vii) the effect of the use, transport and disposal thereof; and
- (p) require the production of any materials concerning the content, frequency and manner of instruction of any training program and inspect, examine and copy the materials and attend any such program.

[Drafting Instruction: The Act may also provide for the appointment of medical inspectors and set out their inspection duties.]

(2) An inspector shall only enter a dwelling or that part of a dwelling actually being used as a workplace with the consent of the occupier or under the authority of a search warrant issued under **[Drafting Instruction: Insert appropriate statute applicable]** Act.

(3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the employer or group of employers shall afford a committee member representing workers or a safety and health representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof.

(4) Where there is no committee member representing workers, no safety and health representative or worker selected under subsection (3), the inspector shall endeavour to consult during his or her physical inspection with a reasonable number of the workers concerning matters of safety and health at their work.

(5) The time spent by a committee member representing workers, a safety and health representative or a worker selected in accordance with subsection (3) in accompanying an inspector during his or her physical inspection, shall be deemed to be work time for which he or she shall be paid by his or her employer at his or her regular or premium rate as may be proper.

Seizure of articles

62. (1) While acting under the authority of this Act, an inspector may, without a warrant or court order, seize any article that is produced to him or her or that is in plain view if the inspector reasonably believes that this Act or a regulation has been contravened and that the article will afford evidence of the

contravention.

(2) The inspector may remove the article seized or may detain it in the place in which it is seized.

(3) The inspector shall inform the person from whom the article is seized as to the reason for the seizure and shall give the person a receipt for it.

(4) The inspector shall bring an article seized under the authority of this section before a judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a judge or justice of the peace. **[Drafting Instruction: Insert appropriate judiciary. Also insert any applicable statute governing the seizure of evidence.]**

**Orders by
inspectors**

63. (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

(2) Where an inspector makes an oral order under subsection (1), the inspector shall confirm the order in writing before leaving the workplace.

(3) An order made under subsection (1) shall indicate generally the nature of the contravention and where appropriate the location of the contravention.

(4) An order made under subsection (1) may require an employer to submit to the Ministry a compliance plan prepared in the manner and including such items as required by the order.

(5) The compliance plan shall specify what the employer plans to do to comply with the order and when the employer intends to achieve compliance.

(6) Where an inspector makes an order under subsection (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the safety and health of a worker, the inspector may,

(a) order that any place, equipment, machine, device, article or any process or chemical shall not be used until the order is complied with;

(b) order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;

(c) order that the workplace where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the safety or health of a worker is removed.

(7) Despite clause (6) (b), an employer who gives notice to an inspector of compliance with an order made under subsection (6) may resume work pending an inspection and decision by an inspector respecting compliance

with the order if, before the resumption of work, a committee member representing workers or a safety and health representative, as the case may be, advises an inspector that in his or her opinion the order has been complied with.

(8) In addition to the orders that may be made under subsection (6), where an inspector makes an order under subsection (11) for a contravention of section 48 or 51 or the Chief Officer has been advised of an employer's inability to obtain an unexpired chemical safety data sheet, the inspector may order an unexpired chemical safety data sheet, the inspector may order that the hazardous chemical shall not be used or that the article that causes, emits or produces the hazardous physical agent not be used or operated until the order is withdrawn or cancelled.

(9) Where an inspector makes an order under this section, he or she may affix to the workplace, or to any equipment, machine, device or article, a copy thereof or a notice in the prescribed form and no person, except an inspector shall remove such copy or notice unless authorized to do so by an inspector.

(10) Where an inspector makes an order in writing or issues a report of his or her inspection to an owner, employer, occupier or person in charge of the workplace, the owner, employer, occupier or person in charge of the workplace shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the workplace where is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the safety and health representative and the committee, if any, and the inspector shall cause a copy to be furnished to a person who has complained of a contravention of this Act or the regulations.

(11) An inspector is not required to hold or afford to an owner, employer or any other person an opportunity for a hearing before making an order.

(12) Notwithstanding all the requirements specified in this section with regard to an order of an inspector, where the provision of this Act or the regulations that is being contravened is a prescribed provision, the inspector may issue to the owner, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener a safety and health contravention ticket on the prescribed form.

(13) The safety and health contravention ticket shall specify the prescribed fine for the contravention and such fine shall be sued for and recovered under the Summary Jurisdiction Acts from the person to whom the ticket is issued. **[Drafting Instruction: If fines imposed by issued tickets or notices are governed under another statute, insert correct statute. The intent here is to impose fines for relatively minor contraventions without relying on prosecutions and convictions.]**

**Entry to
hazardous
area**

64. Where an order is made under clause 63 (6)(c), no owner, employer or supervisor shall require or permit a worker to enter the workplace except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard.

**Notice of
Compliance**

65. (1) Within three days after an employer who has received an order under Section 63 believes that compliance with the order has been achieved, the employer shall submit to the Ministry a notice of compliance.
- (2) The notice shall be signed by the employer and shall be accompanied by,
- (a) a statement of agreement or disagreement with the contents of the notice, signed by a member of the committee representing workers or by a safety and health representative, as the case may be; or
 - (b) a statement that the member or representative has declined to sign the statement referred to in clause (a).
- (3) The employer shall post the notice and the order issued under section 49 for a period of fourteen days following its submission to the Ministry in a place or places in the workplace where it is mostly likely to come to the attention of workers.
- (4) Despite the submission of a notice of compliance, an employer achieves compliance with an order under section 63 when an inspector determines that compliance has been achieved.

**Injunction
proceeding**

66. In addition to any other remedy or penalty therefor, where an order made under subsection 63 (6) is contravened, such contravention may be restrained upon an application made without notice to a judge. **[Drafting Instruction: Insert appropriate judiciary applicable]** made at the instance of the Chief Officer.

**Appeals
from order
of an
inspector**

67. (1) Any employer, owner, worker or trade union which considers himself, herself or itself aggrieved by any order made by an inspector under this Act or the regulations may, within fourteen days of the making thereof, appeal to the Minister or other Competent Authority who shall hear and dispose of the appeal as promptly as is practicable.
- (2) An appeal to the Minister or other Competent Authority may be made in writing or orally or by telephone, but the Minister or other Competent Authority shall require the grounds for appeal to be specified in writing.
- (3) The appellant, the inspector from whom the appeal is taken and such other persons as the Minister or other Competent Authority may specify are parties to an appeal under this section.
- (4) On an appeal under this section, the Minister or other Competent Authority may substitute his or her findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Minister or other Competent Authority shall stand in the place of and have the like effect under this Act and the Regulations as the order of the inspector.

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector.

(6) A decision of the Minister or other Competent Authority under this section is final.

(7) On an appeal under subsection (1), the Minister or other Competent Authority may suspend the operation of the order appealed from pending the disposition of the appeal.

**Obstruction
of inspector**

68. (1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations.

(2) Every person shall furnish all necessary means in the person's power to facilitate any entry, inspection, examination, testing or inquiry by an inspector in the exercise of his or her powers or performance of his or her duties under this Act or the regulations.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his or her duties under this Act or the regulations.

(4) No person shall interfere with any monitoring equipment or device in a workplace.

(5) No person shall knowingly,

(a) hinder or interfere with a committee, a committee member or a safety and health representative in the exercise of a power or performance of a duty under this Act;

(b) furnish a committee, a committee member or a safety and health representative with false information in the exercise of a power or performance of a duty under this Act; or

(c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act.

**Confidential
information**

69. (1) Except for the purpose of this Act and the regulations or as required by law,

(a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;

(b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret

acquired, furnished, obtained, made or received under the provisions of this Act or the regulations;

- (c) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and
- (d) no person shall disclose any information obtained in any medical examination, test or X-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.

(2) No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute, to a health record concerning a worker without the worker's written consent.

(3) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector, is not a compellable witness in a civil suit or any proceeding, except an inquest under the Accidents and Occupational Diseases (Notification) legislation [**Drafting Instruction: If inquests are held under a different statute, insert correct statute**], respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations.

(4) The Chief Officer may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations.

(5) Subsection (1) does not apply so as to prevent any person from providing any information in the possession of the person, including confidential business information, in a medical emergency for the purpose of diagnosis or treatment.

Copies of reports 70. The Chief Officer may, upon receipt of a request in writing from the owner of a workplace who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by the owner copies of reports or orders of an inspector made under this Act in respect of the workplace as to its compliance with subsection 38 (1).

Immunity 71. No action or other proceeding for damages or prohibition shall be instituted respecting any act done in good faith in the execution or intended execution of a person's duties under this Act or in the exercise or intended exercise of a person's powers under this Act or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is -

- (a) an employee of the Ministry or a person who acts as an advisor for the Ministry;

- (b) a safety and health representative or a committee member;
- (c) a worker selected by a trade union or trade unions or by workers to represent them; or
- (d) a Commissioner or a person to whom the Commissioner has delegated powers or duties.

PART XI - OFFENCES AND PENALTIES

[Drafting Instruction: National law should also include provisions prescribing procedures, special evidentiary rules, service of process, etc. and make reference to existing regulations where applicable.]

Penalties

72. (1) Every person who contravenes or fails to comply with,
- (a) a provision of this Act or the regulations;
 - (b) an order or requirement of an inspector or the Chief Officer; or
 - (c) an order of the Minister,

is guilty of an offence and on conviction is liable to a fine of not more than \$ or to imprisonment for a term of not more than twelve months, or to both.

(2) If a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed upon the corporation is \$ and not as provided therein.

- (3) On a prosecution for a failure to comply with,
- (a) subsection 33 (1);
 - (b) clause 34 (1) (b), (c) or (d); or
 - (c) subsection 36 (1),

it shall be a defense for the accused to prove that every precaution reasonable in the circumstances was taken.

(4) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused.

(5) The payment of the prescribed fine, required under section 63 (13) for a contravention of a prescribed provision shall have no bearing on the force of this Part.

[Drafting Instruction: Offences should be categorized by severity with corresponding degrees of severity of sanctions. For example, the lower offence category should include failure to register, failure to give notice or furnish information. A second offence level could include willful delay or

obstruction of an inspector's exercise of duties, withholding information. A higher offence level could include violation of safety and health provisions as well as include an inspector's violation of responsibilities concerning confidential information and business secrets.]

[Drafting Instruction: Provision may also be made for special powers for enforcement of provisions and for an order for cause of contravention of Act to be remedied.]

**Certified
copies of
documents**

73. (1) In any proceeding or prosecution under this Act,
- (a) a copy of an order of decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;
 - (b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefor given or made under this Act or the regulations and purporting to be certified by an inspector;
 - (c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a chemical, physical agent, or biological agent in a workplace or part thereof and purporting to be certified by and inspector;
 - (d) a document purporting to certify the result of a test or an analysis of any equipment, machine, device, article, or substance and purporting to be certified by an inspector,
- is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof.
- (2) In any proceeding or prosecution under this Act, a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister, the Chief Officer or an inspector may be served,
- (a) personally in the case of an individual or in the case of a partnership upon the partner, and in the case of a corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the workplace; or
 - (b) by registered letter addressed to a person or corporation mentioned in clause (a) at the last known place of business of the person or corporation,
- and the same shall be deemed to be good and sufficient service thereof.

Jurisdiction

74. An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Court **[Drafting Instruction: Insert appropriate competent judicial authority]** sitting in the province or district in which the accused is resident or carries on business

although the subject matter of the information did not arise in that province or district.

Statute of limitations 75. No prosecution under this Act shall be instituted more than one year after the last act or default upon which the prosecution is based occurred.

PART XII - REGULATIONS

Regulations 76. (1) The Minister [**Drafting Instruction: Insert appropriate legislative body**] may make such regulations as are advisable for the safety or health of persons in or about a workplace.

(2) Without limiting the generality of subsection (1), the Minister [**Drafting Instruction: Insert appropriate legislative body**] may make regulations,

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, workplace, employer or class workplaces or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any workplace, industry, activity, business, work, trade, occupation, profession, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any workplace, industry, activity, business, work, trade, occupation, profession, employer or any class thereof;
5. exempting an employer from the requirements of clause 48 (1) (a) or (b) with respect to a hazardous chemical;
6. respecting any matter or article that is required or permitted to be regulated or prescribed under this Act;
7. respecting any matter or article, where a provision of this Act requires that the matter or article be done, used or carried out or provided as prescribed;
8. respecting any matter or article, where it is a condition precedent that a regulation be made prescribing the matter or article before this Act or a provision of this Act has any effect;
9. providing for and prescribing fees and the payment or refund of fees;
10. prescribing medical supplies to be kept in first aid boxes or cupboards;

11. prescribing employers or workplaces or classes thereof for the purposes of Part VIII;
12. exempting any workplace, industry, activity, business, work, trade, occupation, profession, employer, or any class thereof from the application of Part VIII;
13. respecting the conditions for eligibility, qualifications, selection and term of committee members, and the operation of the committee;
14. regulating or prohibiting the installation or use of any machine, device or article or any class thereof;
15. requiring that any equipment, machine, device, or article used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, or article and designating organizations for such purposes;
16. prescribing classes of employers who shall establish and maintain a medical surveillance program in which workers may volunteer to participate;
17. governing medical surveillance programs;
18. respecting the reporting by physicians and others of workers affected by any chemical, physical agent, or biological agent or combination thereof;
19. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a workplace;
20. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any chemical, physical agent, or biological agent or combination thereof in a workplace;
21. prescribing any chemical, physical agent, or biological agent or combination thereof as a critical substance;
22. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any critical substance;
23. adopting by reference, in whole or in part, with such changes as the Government **[Drafting Instruction: Insert appropriate legislative body]** considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;
24. adopting by reference any criteria or guide in relation to the exposure of a worker to any chemical, physical agent, or biological agent or combination thereof;
25. enabling the Chief Officer by notice in writing to designate that any part of a construction site shall be an individual construction site for the purposes of this Act and the regulations and prescribing to whom notice shall be given;
26. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests

and examinations, and requiring that sampling, analyses, examinations and tests be carried out and performed by a laboratory approved by the Minister;

27. requiring and providing for the registration of employers of workers;

28. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;

29. prescribing training programs that employers shall provide;

30. prescribing floor plans for the purposes of Part VI;

31. prescribing forms and notices and providing for their use;

32. prescribing building standards for industrial establishments;

33. prescribing by name or description any chemical as a hazardous chemical, any biological agent as a hazardous biological agent, and any physical agent as a hazardous physical agent;

34. prohibiting an employer from altering a label on a hazardous chemical in prescribed circumstances;

35. prescribing the criteria to be used to determine whether information is confidential business information in an application under subsection 53 (1);

36. requiring an employer to disclose to such persons as may be

prescribed the source of toxicological data used by the employer to prepare a chemical safety data sheet;

37. prescribing the format and contents of a chemical safety data sheet;

38. prescribing by class of employer the intervals at which a safety and health representative or a committee member designated under Part VIII shall inspect all or part of a workplace;

39. establishing criteria for determining, for the purpose of Part IX, whether a person is critically injured;

40. prescribing first aid requirements to be met and first aid services to be provided by employers;

41. prescribing, for the purpose of Part VI, medical examinations and tests that a worker is required to undergo to ensure that the worker's health will not affect his or her ability to perform his or her job in a manner that might endanger others;

42. prescribing certain diseases to be occupational diseases for the purposes of this Act;

43. prescribing certain provisions with associated contravention

tickets and fines for the purposes of Part X.

44. prescribing the threshold quantity of a given hazardous

substance or category of substances which, if exceeded, identifies a major hazard installation.

Article 6 of ILO Convention No. 170 states that:

1. Systems and specific criteria appropriate for the classification of all chemicals according to the type and degree of their intrinsic health and physical hazards and for assessing the relevance of the information required to determine whether a chemical is hazardous shall be established by the competent authority, or by a body approved or recognized by the competent authority, in accordance with national or international standards.
2. The hazardous properties of mixtures composed of two or more chemicals may be determined by assessments based on the intrinsic hazards of their component chemicals.
3. In the case of transport, such systems and criteria shall take into account the United Nations Recommendations on the transport of dangerous goods.
4. The classification systems and their application shall be progressively extended.

Annex A: Schedule 1: List of Occupational Diseases (amended 1980)

Occupational Diseases	Work involving exposure to risk
1. Pneumoconloses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned
2. Bronchopulmonary diseases caused by hard-metal dust.	“
3. Bronchopulmonary diseases caused by cotton dust (byssinosis) or flax, hemp or sisal dust.	“
4. Occupational asthma caused by sensitizing agents or irritants both recognized in this regard and inherent in the work process.	“
5. Extrinsic allergic alveolitis and its sequelae caused by the inhalation of organic dusts, as prescribed by national legislation.	“
6. Diseases caused by beryllium or its toxic compounds.	“
7. Diseases caused by cadmium or its toxic compounds.	“
8. Diseases caused by phosphorus or its toxic compounds.	“
9. Diseases caused by chromium or its toxic compounds.	“
10. Diseases caused by manganese or its toxic compounds.	“
11. Diseases caused by arsenic or its toxic compounds.	“

Annex B: Recording and Notification

- 1.2.3. Diseases caused by work in compressed air
- 1.2.4. Diseases caused by ionizing radiations
- 1.2.5. Diseases caused by heat radiation
- 1.2.6. Diseases caused by ultraviolet radiation
- 1.2.7. Diseases due to extreme temperature (e.g. sunstroke, frostbite)
- 1.2.8. Diseases caused by any other physical agents not mentioned in the preceding items 1.2.1. to 1.2.7., where a direct link between the exposure of a worker to these physical agents and the diseases suffered is established
- 1.3. Biological agents
 - 1.3.1. Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination
- 2. Diseases by target organ systems
 - 2.1. Occupational respiratory diseases
 - 2.1.1. Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silicotuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.
 - 2.1.2. Bronchopulmonary diseases caused by hard metal dust.
 - 2.1.3. Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust (byssinosis).
 - 2.1.4. Occupational asthma caused by recognized sensitizing agents or irritants inherent to the work process.
 - 2.1.5. Extrinsic allergic alveolitis caused by the inhalation of organic dusts as prescribed by national legislation.
 - 2.1.6. Siderosis
 - 2.1.7. Chronic obstructive pulmonary diseases
 - 2.1.8. Diseases of lung, due to aluminium
 - 2.1.9. Upper airways disorders caused by recognized sensitizing agents or irritants inherent to the work process
 - 2.1.10. Any other respiratory disease not mentioned in the preceding items 2.1.1 to 2.1.9, caused by an agent where a direct link between the exposure of a worker to this agent and the disease suffered is established
 - 2.2. Occupational skin diseases
 - 2.2.1. Skin diseases caused by physical, chemical or biological agents not included under other items
 - 2.2.2. Occupational vitiligo
 - 2.3. Occupational musculo-skeletal disorders
 - 2.3.1. Musculo-skeletal diseases caused by specific work activities or work environment where particular risk factors are present. Examples of such activities or environment include:
 - (a) rapid or repetitive motion
 - (b) forceful exertion
 - (c) excessive mechanical force concentration
 - (d) awkward or non-neutral posture
 - (e) vibrationLocal or environmental cold may potentiate risk

3. Occupational cancer
 - 3.1. Cancer caused by the following agents
 - 3.1.1. Asbestos
 - 3.1.2. Benzidine and salts
 - 3.1.3. Bis chloromethyl ether (BCME)
 - 3.1.4. Chromium and chromium compounds
 - 3.1.5. Coal tars and coal tar pitches; soot
 - 3.1.6. Betanaphthylamine
 - 3.1.7. Vinyl chloride
 - 3.1.8. Benzene or its toxic homologues
 - 3.1.9. Toxic nitro- and amino-derivatives of benzenes or its homologues
 - 3.1.10. Ionizing radiations
 - 3.1.11. Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products of residues of these substances
 - 3.1.12. Coke oven emissions
 - 3.1.13. Compounds of nickel
 - 3.1.14. Dust from wood
 - 3.1.15. Cancer caused by any other agents not mentioned in the preceding items 3.1.1. to 3.1.14, where a direct link between the exposure of a worker to this agent and the cancer suffered is established
4. Others
 - 4.1. Miner's nystagmus

Annex C: Recording and Notification of Occupational Accident and Diseases

1. General Provisions
 - 1.1. Objectives
 - 1.1.1. The objectives of this code are:
 - (a) to increase the scope and effectiveness of the investigation of causes of occupational accidents and diseases, and the identification and implementation of preventative measures;
 - (b) to establish general principles and to reinforce and channel various national activities into nationally consistent systems of collecting reliable information on occupational accidents and diseases with a view to promoting international comparability;
 - (c) to provide guidance in setting up legal, administrative and practical frameworks for the recording and notification of occupational accidents and diseases;
 - (d) to promote the introduction, monitoring and validation of uniform procedures and methods for recording of occupational accidents and diseases, and for their notification to the competent authority;
 - (e) to improve the comprehensiveness, comparability and analysis of statistics on occupational accidents and diseases;
 - (f) to promote the progressive development of procedures and methods of recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents;
 - (g) to promote awareness among health care providers of the potential effects of their work upon the health of their patients with a view to assisting competent authorities in the compilation

of more comprehensive information on occupational injuries and diseases.

1.1.2. In addition, recommendations are made concerning equivalent requirements for the recording and notification of commuting accidents, dangerous occurrences and incidents.

1.2. Scope

1.2.1. The provisions of this code apply to all branches of economic activity, all enterprises and all workers regardless of their status of employment.

1.2.2. The provisions of this code should be considered as the basic recommendations for the recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents. More stringent national or international regulations have priority over these recommendations.

1.2.3. In this code, notification to the competent authorities covers all fatal occupational accidents, occupational accidents causing loss of working time and all occupational diseases included in a national list or covered by the prescribed definition of such diseases.

1.2.4. In this code, recording at enterprise level also includes occupational accidents and diseases not covered by the notification requirements stipulated in paragraph 1.2.3. above, in particular commuting accidents and incidents not causing loss of working time.

1.3. Definitions

1.3.1. In this code, the following terms have the meanings hereby assigned to them:

Commuting Accident: An accident occurring on the direct way between the place of work and

- (a) the worker's principal or secondary residence;
- (b) the place where the worker usually takes his/her meals; or
- (c) the place where the worker usually receives his/her remuneration,

which results on death or personal injury involving loss of working time. Traffic accidents in which workers are involved during working hours and which occur in the course of paid work are considered as occupational accidents.

Competent Authority: A minister, government department or other public authority with the power to issue regulations, orders or other instructions having the force of law. Under national laws or regulations, the competent authorities may be appointed with responsibilities for specific activities, such as for implementation of national policy and procedures for reporting, recording and notification, workers' compensation, and the elaboration of statistics.

Competent Person: A person with suitable training and sufficient knowledge, experience and skill for the performance of the specific work, in good safety conditions. The competent authority may define appropriate criteria for the designation of such persons and may determine the duties to be assigned to them.

Dangerous Occurrence: Readily identifiable event as defined under national laws and regulations, with potential to cause an injury or disease to persons at work or the public.

Employer: Any physical or legal person who employs one or more workers.

Enterprise: An institutional unit or the smallest combination of institutional units that encloses and directly or indirectly controls all necessary functions to carry out its own production activities.

Establishment: An enterprise or part of an enterprise which independently engages in one, or predominantly one, kind of economic activity at or from one location or within one geographic area, for which data are available, or can be meaningfully compiled, that allow the calculation of the operating surplus.

Fatal Occupational Injury: Occupational injury leading to death.

Incapacity for Work: Inability to perform normal duties of work.

Incident: An unsafe occurrence arising out of or in the course of work where no personal injury is caused, or where personal injury requires only first-aid treatment.

Injury to Health: See *Occupational Injury*

Loss of Working Time: Lost days from and including the day following the day of the accident, measured in calendar days, weekdays, work shifts or working days. Calendar days are preferable as a measure of accident severity, while working days are preferable as a measure of economic impact. Where working days or weekdays are used, an estimate in terms of calendar days should be provided wherever possible.

Loss Time: See *Loss of Working Time*

Non-fatal Occupational Injury: Occupational injury not leading to death.

Notification: Procedure specified in national laws and regulations which establishes the ways in which:

- (a) the employer or self-employed person submits information concerning occupational accidents, commuting accidents, dangerous occurrences or incidents; or
 - (b) the employer, the self-employed person, the insurance institution or others directly concerned submit information concerning occupational diseases;
- as appropriate and as prescribed by the competent authority.

Occupational Accident: An occurrence arising out of or in the course of work which results in:

- (a) fatal occupational injury;
- (b) non-fatal occupational injury.

Occupational Disease: A disease contracted as a result of an exposure to risk factors arising from work activity.

Occupational Injury: Death, any personal injury or disease resulting from an occupational accident.

Recording: Procedure specified in national laws and regulations which establish the means by which the employer or self-employed person ensures that information be maintained on:

- (a) occupational accidents and diseases;
- (b) commuting accidents; and
- (c) dangerous occurrences and incidents.

Reporting: Procedure specified by the employer in accordance with national laws and regulations, and in accordance with the practice at the enterprise, for the submission by workers to their immediate supervisor, the competent person, or any other specified person or body, of information on:

- (a) any occupational accident or injury to health which arises in the course of or in connection with work;
- (b) suspected cases of occupational diseases;
- (c) commuting accidents; and
- (d) dangerous occurrences and incidents.

Self-employed Person: As may be defined by the competent authority with reference to the

most recent version of the International Classification of Status in Employment (ICSE).

Worker: Any person who performs work, either regularly or temporarily, for an employer.

Workers' Representative: Any person who is recognized as such by national law or practice, in accordance with the Worker's Representatives Convention, 1971 (No. 135).

2. Policy on Recording, Notification and Investigation of Occupational Accidents, Occupational Diseases and Dangerous Occurrences, and related statistics

2.1. Policy and principles at national level

2.1.1. Each government should nominate a competent authority or authorities, as appropriate, which should, in the light of national conditions and practice and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy (hereinafter referred to as "the policy") and principles on:

- (a) the recording, notification and investigation of occupational accidents and diseases;
- (b) the recording, notification and investigation of commuting accidents, dangerous occurrences and incidents; and
- (c) the compilation, analysis and publication of statistics on such accidents, diseases and occurrences.

2.1.2. The national policy should:

- (a) aim at preventing accidents and injury to health arising out of, linked with or occurring in the course of work by identifying and minimizing the causes of occupational accidents, occupational diseases, dangerous occurrences and incidents in the working environment;
- (b) initiate appropriate national activities;
- (c) reinforce various national activities and channel them into a consistent system of collecting reliable information on occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents;
- (d) establish general principles and uniform procedures concerning the reporting, recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents, and implement them in all branches of economic activity and in all enterprises;

2.1.3. With a view to ensuring the coherence of the policy and of measures for its implementation, the competent authority should:

- (a) establish the respective functions and responsibilities of the public authorities involved, employers and workers and their organizations and others, taking account of the complementary character of such duties and responsibilities and of national conditions and practice;
- (b) make arrangements appropriate to national conditions and practice to ensure the necessary coordination between the various authorities and bodies called

upon to give effect to the policy.

2.1.4. The competent authority should establish and implement progressively a national system for the recording, notification and investigation of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents for all branches of economic activity and all enterprises, and for all workers, regardless of their status in employment.

2.1.5. The provisions made should be adequate and appropriate to the specific type of enterprise and workers' status in employment.

2.1.6. If such a national system cannot be immediately implemented for all enterprises and all types of workers' status in employment, the competent authority should draw up plans for its progressive extension, in consultation with the most representative employers' and workers' organizations.

2.1.7. Whenever circumstances so require and national conditions and practice permit, the coordination and implementation of the policy should be promoted by a body composed of the most representative workers' and employers' organizations and other organizations and authorities involved, as specified by national laws and regulations or by the competent authority.

2.1.8. The competent authority should secure the enforcement of national laws or regulations concerning the policy through an adequate and appropriate system of inspection.

2.1.9. The system of enforcement should provide for adequate penalties for violations of national laws and regulations concerning the policy.

2.1.10 The situation regarding the policy and its implementations should be reviewed at appropriate intervals by the competent authority, either overall or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them, setting priorities for action, and evaluating results.

2.1.11 The competent authority should ensure that guidance is provided to employers and workers to help them comply with their legal obligations under the policy.

2.1.12 In appropriate cases, the competent authority should prescribe general procedures for cooperation between employers whenever two or more enterprises engage in activities simultaneously at one workplace.

2.2. Policy and principles at enterprise level

2.2.1 For the implementation of the national policy and the principles established by the competent authority, the employer, following consultations with the workers or their representatives, should make adequate arrangements at enterprise level under which:

- (a) workers, in the course of their work, cooperate with the employer in the fulfilment of the obligations placed upon them;
- (b) workers and their representatives and the employer cooperate in the implementation of the established principles;
- (c) workers and their representatives in the enterprise are provided with adequate information on measures taken by the employer to implement the policy and established principles, and may consult their representative organizations about such information;
- (d) workers and their representatives in the enterprises are given appropriate training in the implementation of the established principles.

2.2.2. Measures for the implementation of the policy should not involve any expenditure

for workers.

2.2.3 Whenever two or more employers undertake activities simultaneously at one workplace, they should cooperate in making effective arrangements for implementation of the policy. The competent authority should prescribe the general procedures of this cooperation when necessary.

3. Legal, institutional and administrative arrangements for setting up reporting, recording and notification systems

3.1. General

3.1.1. By national laws or regulations or any other method consistent with national conditions and practice, the competent authority, following consultations with the most representative organizations of employers and workers, should determine concepts and terminology concerning the recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents; these should be consistent with this code, and with international agreements and recommendations, and should promote the harmonization of methodologies and the comparability of statistics.

3.1.2. The competent authority should, in particular:

- (a) specify which categories or types of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents are subject to requirements for reporting, recording and notification;
- (b) establish and apply uniform requirements and procedures for employers and workers at the level of the enterprise, physicians, health services and other bodies, as appropriate, regarding reporting and recording of occupational accidents, cases and suspected cases of occupational accidents, cases and suspected cases of occupational diseases, commuting accidents, dangerous occurrences and incidents;
- (c) establish and apply uniform requirements and procedures for the notification of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences to the competent authority, insurance institutions, labour inspectorates, health services and other authorities and bodies directly concerned, as appropriate;
- (d) make appropriate arrangements for the necessary coordination and cooperation between the various authorities and bodies;
- (e) make appropriate arrangements for guidance to be provided to employers and workers to help them comply with the legal obligations.

3.1.3. These requirements and procedures should be applied to all workers in all branches of economic activity, regardless of their status in employment, and throughout the country as a whole.

3.1.4. By national laws or regulations or any other method consistent with national conditions and practice, the competent authority should:

- (a) prescribe a list of diseases, comprising at least the diseases enumerated in the most recent version of Schedule 1 to the Employment Injury Benefits

Convention, 1964 (No. 121) (the current version as amended in 1980 is given in Annex A of this code), which should be regarded as occupational diseases under prescribed conditions; or

- (b) include in its legislation a general definition of occupational diseases broad enough to cover at least the diseases enumerated in Schedule I to the above-mentioned Convention; or
- (c) prescribe a list of diseases in conformity with subparagraph (a) above complemented by a general definition of occupational diseases and make other provisions, such as a system of classification, for establishing the occupational origin of diseases not so listed or which manifest themselves under conditions different from those prescribed.

3.1.5. The competent authority should periodically review the prescribed list of occupational diseases and extend it progressively. It may wish to consider the contents of Annex B of this code as an example of proposed occupational diseases for inclusion in such a list.

3.1.6. The competent authority should ensure by appropriate means and measures that the prescribed list of occupational diseases is known and available to physicians, health services, insurance institutions, employers and workers, and their representative organizations.

3.1.7. The competent authority should, through national laws and regulations, seek the coordination of arrangements prescribed under the Employment Injury Benefits Convention, 1964 (No. 121), and arrangements for the recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents.

3.1.8. In accordance with national laws or regulations, the employer should ensure that arrangements are made within the enterprise which are capable of satisfying the requirements to record and notify information in connection with:

- (a) the system for benefits in case of occupational injury and occupational disease; and
- (b) the system for the recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents.

3.1.9. Workers and their representatives in the enterprise should be given appropriate information by the employer about the arrangements for recording and notifying information required for benefits in the case of occupational injury and occupational disease and for the reporting, recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents.

3.2 Classification of information to be recorded and notified

3.2.1. The competent authority should make appropriate arrangements for the classification of information of which it is notified and should promote the classification of specified kinds of information kept as records at the enterprise level. The classification to be used should accord with the most recent versions of adopted international classifications or with classification systems given in this code as follows:

- (a) *economic activity of the employer, enterprise or establishment:*
International Standard Industrial Classification of all Economic Activities - ISIC (the broad structure of the most recent version, approved in 1989, is given in Annex C of this code), or an industrial classification convertible to

- this international standard;
- (b) *occupation*:
International Standard Classification of Occupations - ISCO (the classification of the most recent version, ISCO-88, is given in Annex D of this code), or a classification of occupations convertible to this international standard;
 - (c) *employment status*:
International Classification of Status in Employment - ICSE (the classification of the most recent version, as adopted in 1993, is given in Annex E of this code);
 - (d) *nature and bodily location of the injury, type of accident, agency related to the injury or the accident*:
Annexes F,G,H and I of this code give the most recent versions of the classifications for statistical purposes, respectively.

3.2.2. The competent authority, after consulting the most representative organizations of employers and workers, should promote the development of a classification system for physical, chemical and biological exposures in the working environment.

4. Reporting at the level of the enterprise

4.1 The employer, after consultation with the workers or their representatives in the enterprise, should set up arrangements, in accordance with national laws or regulations, to enable workers to comply with the requirements to report forthwith to their immediate supervisor, without detriment to themselves, any situation which they have reasonable justification to believe presents an imminent and serious danger to life or health.

4.2 The employer, after consultation with the workers or their representatives in the enterprise, should set up arrangements, in accordance with national laws or regulations, to enable workers to comply with the requirements to report any occupational injury, suspected case of occupational disease, commuting accident, dangerous occurrence and incident.

4.3 These arrangements should include:

- (a) the provision of information by workers, workers' representatives, physicians and other appropriate persons on occupational accidents, occupational diseases, dangerous occurrences and incidents in the enterprise, and commuting accidents;
- (b) the identification of a competent person, where appropriate:
 - (i) to receive this information on behalf of the employer and to take appropriate action; and
 - (ii) for appropriate investigation on behalf of the employer, following receipt of that information;
- (c) measures to ensure the confidentiality of personal and medical data in the employer's possession, in accordance with national laws and regulations, conditions and practice.

5. Arrangements for Recording

5.1 At National Level

5.1.1 National laws or regulations should require that employers establish and maintain records on occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents, as determined by the competent authority.

5.1.2 To ensure that all required data and information are collected systematically, and to provide the methodology for investigating occupational accidents, occupational diseases, dangerous occurrences and incidents, national laws or regulations should prescribe which data and information are to be recorded. Where forms are used for this purpose they should be standardized.

5.1.3 The information required to be recorded at the level of the enterprise should include at least the information to be notified, as set out in Chapter 6 of this code.

5.1.4 National laws or regulations should specify which additional information must be recorded by employers, although it is not required to be notified. This should apply to:

- (a) all incidents where no immediate personal injury is recognized;
- (b) specified categories of dangerous occurrences;
- (c) commuting accidents, if applicable.

5.1.5 National laws or regulations should specify, in particular:

- (a) the content and format of such records;
- (b) the period of time within which records are to be established;
- (c) the period of time for which records are to be retained;
- (d) that such records are to be obtained and maintained in such a way that respects the confidentiality of personal and medical data in accordance with the national laws and regulations, conditions and practice, and are consistent with paragraph 6 of the Occupational Health Services Recommendation, 1985 (No. 171);
- (e) that the employer should identify a competent person at the level of the enterprise to prepare and keep records; and
- (f) the cooperation in recording procedures where two or more employers engage in activities simultaneously at one worksite.

5.2 At the level of the enterprise

5.2.1 The employer should set up arrangements, in accordance with national laws or regulations, to record occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents.

5.2.2 These arrangements should include:

- (a) the identification of a competent person to prepare and keep records of all occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents, as required by national laws and regulations; and
- (b) cooperation in recording procedures where two or more employers engage in activities simultaneously at one worksite, as required by national laws and regulations;

5.2.3 The employer should ensure that records of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents are available and readily retrievable at all reasonable times.

5.2.4 In cases in which more than one worker is injured in a single occupational accident, a record should be made for each of the injured workers.

5.2.5 Workers' compensation insurance reports and accident reports to be submitted for notification are acceptable as records if they contain all the facts required for recording or are supplemented in an appropriate manner.

5.2.6 For inspection purposes and as information for workers' representatives and health services, employers should prepare records within a period of time to be determined by the competent authority, but preferably within no more than six days after reporting has occurred.

5.2.7 Workers in the course of performing their work should cooperate with the employer in carrying out the arrangements within the enterprise for recording and notification of occupational accidents, occupational diseases and dangerous occurrences.

5.2.8 The employer should give appropriate information to workers and their representatives concerning:

- (a) the arrangements for recording; and
- (b) the competent person identified by the employer to receive and record information on occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents.

5.2.9 The employer should provide appropriate information to workers or their representatives on all occupational accidents, occupational diseases, dangerous occurrences and incidents in the enterprise, as well as commuting accidents, to assist workers and employers to reduce the risk of exposure to similar events.

6. Arrangements for Notification

6.1. At National Level

6.1.1. The competent authority should, through national laws or regulations or by any other method consistent with national conditions and practice, establish and apply procedures for the notification of occupational accidents, occupational diseases, dangerous occurrences and commuting accidents, as appropriate.

6.1.2. Close cooperation should be ensured between the competent authority or authorities, public authorities, and representative organizations of employers and workers, as well as other bodies concerned in the formulation and application of the procedures referred to in paragraph 6.1.1. above.

6.1.3. National laws or regulations should specify that occupational accidents, occupational diseases, commuting accidents and dangerous occurrences be notified, as appropriate, to:

- (a) the relevant enforcement body (e.g. labour inspectorate);
- (b) the appropriate insurance institution;
- (c) the statistics-producing body; or
- (d) any other body.

6.1.4. National laws or regulations should specify:

- (a) the respective information on occupational accidents, occupational diseases, dangerous occurrences and commuting accidents, as appropriate, to be notified to the competent authority, labour inspectorate, insurance institution or other bodies;
- (b) the timing of the notification, which should preferably be made by the employer:
 - (i) by the quickest possible means immediately after reporting of an occupational accident causing loss of life;
 - (ii) within a prescribed time for other occupational accidents and occupational

diseases;

- (c) the prescribed standardized form of notification to be used for submission of notifications to the competent authority, labour inspectorate, insurance institution or other bodies;
- (d) that the employer identify a competent person at the level of the enterprise for notification;
- (e) the responsibilities, appropriate arrangements and procedures enabling employers to cooperate in the notification procedure where two or more enterprises engage in activities simultaneously at one workplace; and
- (f) the systems for the classification of information to be used (see section 3.2 of this code).

6.1.5 National laws or regulations should specify that notification of an occupational disease by an employer is mandatory, at least whenever the employer receives a medical certificate to the effect that one of his or her workers is suffering from an occupational disease.

6.1.6 If more detailed information is needed beyond that required for notification, national laws or regulations should specify:

- (a) the content and format of the returns to the competent authority containing supplementary information;
- (b) the frequency and manner in which such returns are to be made by employers to the competent authority.

6.1.7 The competent authority should register notifications in such a way as to enable them to be used for compiling appropriate statistics, using classification systems as referred to in paragraph 3.2 of this code, and for making analyses.

6.2 At the Level of the Enterprise

6.2.1 The employer, after consultation with the workers and their representatives, should set up arrangements within the enterprise, in accordance with national laws or regulations, to notify occupational accidents, occupational diseases, dangerous occurrences and commuting accidents, as appropriate.

6.2.2 The arrangements within the enterprise should include:

- (a) the identification of a competent person to prepare the appropriate notification for submission by the employer;
- (b) the determination of responsibility for notification, where two or more employers engage in activities simultaneously at one worksite, as required by national law and regulations.

6.3 Notification of Occupational Accidents

6.3.1 General

6.3.1.1. All occupational accidents should be notified, as required by national laws or regulations, to the competent authority, the labour inspectorate, the appropriate insurance institution or any other body:

- (a) immediately after reporting of an occupational accident causing loss of life;
- (b) within a prescribed time for other occupational accidents.

6.3.1.2. Notification should be made within such time as may be specified, and in prescribed specific forms, such as:

- (a) an accident report for the labour inspectorate;
- (b) a compensation report for the insurance institution;
- (c) a report for the statistics-producing body; or
- (d) a single form which contains all essential data for all bodies.

6.3.2. Minimum Information

6.3.2.1. With a view to meeting the requirements of labour inspectorates, insurance institutions and the statistics-producing body, the forms prescribed in either a specific or single format should include at least the following information:

- (a) enterprise, establishment and employer:
 - (i) name and address of the employer, and his or her telephone and fax numbers (if available);
 - (ii) name and address of the enterprise;
 - (iii) name and address of the establishment (if different);
 - (iv) economic activity of the establishment; and
 - (v) number of workers (size of the establishment);
- (b) injured person:
 - (i) name, address, sex and age;
 - (ii) employment status;
 - (iii) occupation;
- (c) injury
 - (i) fatal accident;
 - (ii) non-fatal accident;
 - (iii) nature of the injury (e.g. fracture, etc.);
 - (iv) location of the injury (e.g. leg, etc.);
- (d) accident and its sequence:
 - (i) geographical location of the place of the accident (usual workplace, another workplace within the establishment or outside the establishment);
 - (ii) date and time;
 - (iii) action leading to injury - type of accident (e.g. fall, etc.);
 - (iv) agency related to the accident (e.g. ladder, etc.).

6.3.2.2. For commuting accidents, the relevant necessary information to be notified should be specified.

6.3.3. More Detailed Information

6.3.3.1. National laws or regulations should provide for the specification of more detailed information, which should include the following:

- (a) enterprise, establishment and employer:
 - (i) name and address of the employer, and his or her telephone and fax numbers (if available);
 - (ii) name and address of the enterprise;
 - (iii) name and address of the establishment (if different);

- (iv) economic activity of the establishment; and
- (v) number of workers (size of the establishment);
- (b) injured person:
 - (i) name, address, sex and date of birth;
 - (ii) employment status;
 - (iii) occupation;
 - (iv) length of service for present employer;
- (c) injury:
 - (i) fatal accident;
 - (ii) non-fatal accident;
 - (iii) nature of the injury (e.g. fracture, etc.);
 - (iv) location of the injury (e.g. leg, etc.);
 - (v) incapacity for work in calendar days;
- (d) accident and its sequence:
 - (i) geographical location of the place of the accident (usual workplace, another workplace within the establishment or outside the establishment);
 - (ii) date and time;
 - (iii) shift, start time of work of the injured person and hours worked in the activity in which the accident occurred;
 - (iv) work environment (e.g. workshop area, office, road, etc.);
 - (v) work process (e.g. welding, maintenance, manual transport, etc.);
 - (vi) activity of the injured person at time of the accident (e.g. welding, maintaining press, operating machine, driving, walking, etc.);
 - (vii) item or items associated with activity of the injured person (e.g. machine, tool, power press, vehicle, etc.);
 - (viii) action leading to injury - type of accident (e.g. fall, etc.);
 - (ix) agency related to injury (e.g. ladder, etc.);

6.3.3.2. For commuting accidents, the relevant necessary information to be notified should be specified.

6.4. Notification of Occupational Diseases

6.4.1. National laws or regulations should specify that notification of occupational diseases include at least the following information:

- (a) enterprise, establishment and employer:
 - (i) name and address of the employer, and his or her telephone and fax numbers (if available);
 - (ii) name and address of the enterprise;
 - (iii) name and address of the establishment (if different);
 - (iv) economic activity of the establishment; and
 - (v) number of workers (size of the establishment);
- (b) person affected by the occupational disease:
 - (i) name, address, sex and date of birth;
 - (ii) employment status;
 - (iii) occupation at the time when the disease was diagnosed; and
 - (iv) length of service with present employer;

- (c) occupational disease:
 - (i) name and nature of occupational disease;
 - (ii) harmful agents, processes or exposure to which the occupational disease is attributable;
 - (iii) description of work which gave rise to the condition;
 - (iv) length of exposure to harmful agents and processes;
 - (v) date of diagnosis of the occupational disease.

6.5 Notification of Dangerous Occurrences

6.5.1. National laws or regulations should specify that notification of a dangerous occurrence arising in connection with work activities, and which is required to be notified to the competent authorities, include at least the following information:

- (a) enterprise, establishment and employer:
 - (i) name and address of the employer, and his or her telephone and fax numbers (if available);
 - (ii) name and address of the enterprise;
 - (iii) name and address of the establishment (if different);
 - (iv) economic activity of the establishment; and
 - (v) number of workers (size of the establishment);
- (b) Dangerous occurrence:
 - (i) date, time and location;
 - (ii) type of dangerous occurrence;
 - (iii) circumstances leading up to the dangerous occurrence.

7. Extension of Recording and Notification Systems of self-employed persons

7.1. At National Level

7.1.1. National laws or regulations on the reporting, recording and notification of occupational accidents, occupational diseases, dangerous occurrences and incidents should also apply to self-employed persons, as specified by the competent authority.

7.1.2. National laws or regulations should specify that notification to the competent authorities of occupational accidents, occupational diseases and dangerous occurrences involving self-employed persons in their own enterprise should be submitted as follows:

- (a) in the case of death or non-fatal occupational accident, occupational disease or dangerous occurrence rendering the self-employed person incapable of submitting notification, the notification should be submitted by the person in control of the establishment, or as prescribed by the competent authority;
- (b) in other cases, the notification should be submitted by the self-employed themselves.

7.1.3. National laws or regulations should specify that notification to the competent authority of occupational accidents of self-employed persons in other than their own enterprises should be:

- (a) recorded and notified by the employer of the enterprise in which the self-employed person was required to work;
- (b) notified by the self-employed person to his or her insurance institution, with a record

as requested in paragraph 7.1.3(a) above.

7.2 At the Level of the Enterprise

7.2.1. The person in control of the establishment where the self-employed person is contracted to work should make arrangements for the reporting, recording and notification of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents which can be applied to self-employed persons.

7.3 The self-employed person

7.3.1. The self-employed person should cooperate with the person in control of the establishment where he or she is contracted to work, to enable notification of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences.

7.3.2. The self-employed person should, in accordance with national laws or regulations, submit notification to the competent authorities of non-fatal occupational accidents, occupational diseases, commuting accidents and dangerous occurrences. If he or she is not in a position to do so, the self-employed person should make suitable alternative arrangements.

8. Statistics of Occupational Accidents, Occupational Diseases, Commuting Accidents and Dangerous Occurrences: Compilation and Publication

8.1. At the National Level

8.1.1. The competent authority should arrange for the compilation and publication, at least once a year, of statistics of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences, on the basis of the information notified to it.

8.1.2. Where practicable, the statistics should be compiled by the competent authority from notifications of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences without recourse to additional returns.

8.1.3. The unit to be recorded should be:

- (a) the person killed or injured as a result of an occupational accident or commuting accident;
- (b) the person affected as a result of an occupational disease; or
- (c) the dangerous occurrence.

8.1.4. Where one person has suffered more than one separate occupational accident or disease during the period covered by the statistics, he or she should be counted separately with respect to each accident or disease.

8.1.5. The period covered by the statistics should be clearly defined and ideally should not exceed one calendar year.

8.1.6. Information on occupational accidents and occupational diseases relating to self-employed persons, as well as commuting accidents, should be included in the statistics, however, such

9.3.2. The period covered by the statistics of occupational diseases should not exceed a calendar year.

9.3.3. Statistics on occupational diseases for self-employed persons should be shown separately.

9.4. Dangerous Occurrences

9.4.1. The competent authority should publish statistics of the numbers and types of dangerous occurrences that have been notified.

10. Investigation of Occupational Accidents, Occupational Diseases, Commuting Accidents, Dangerous Occurrences and Incidents

10.1. At National Level

10.1.1 In furtherance of national policies on occupational safety, occupational health and the working environment, and of national policy on the prevention of occupational accidents and diseases, the competent authority should arrange for the investigation of a sufficient number and variety of types of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences in order to be able to:

- (a) verify the effectiveness of those policies;
- (b) determine whether changes are necessary to those policies, or to national laws or regulations; and
- (c) verify the effectiveness, at both national and enterprise levels, of the arrangements for recording and notification of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences.

10.1.2. National laws or regulations concerning occupational safety and health, and the working environment, should specify that the competent authority must establish adequate arrangements and appropriate systems of investigation of occupational accidents, occupational diseases, commuting accidents and dangerous occurrences.

10.1.3. The competent authority should arrange for investigations to be carried out by labour inspectorates or by other authorized agencies. Representatives of the employers, and of the workers of the enterprise, should have the opportunity to accompany the investigators, unless the latter considers, in the light of the general instructions of the competent authority, that this may be prejudicial to the performance of these duties.

10.1.4. Where the investigation is not entrusted to an institution authorized by the competent authority or to a government department responsible to the legislature, national laws or regulations should specify arrangements for the participation of the most representative organizations of employers and workers and of public authorities, in the planning of the investigations, and for the participation in the investigations of the representatives of the employers and of the workers affected, as specified in paragraph 10.1.3 above.

10.1.5. The competent authority should hold inquiries, and publish reports on those inquiries into cases of occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents which appear to reflect serious situations in terms of actual or potential risk to workers or the public.

10.1.6. The competent authority should require employers to carry out investigations of specific occupational accidents, occupational diseases, commuting accidents, dangerous occurrences and incidents, and to report on the action taken to prevent a recurrence.

10.1.7. The competent authority should require employers to assist them in carrying out investigations and holding inquiries.

10.2 At the Level of the Enterprise

10.2.1 The employer should investigate all reported occupational accidents, occupational diseases, dangerous occurrence and incidents.

10.2.2 The employer should ensure that a competent person, as specified by the competent authority, is identified within the enterprise to carry out thorough investigations of occupational accidents, occupational diseases and dangerous occurrences.

10.2.3 Where the employer lacks the necessary expertise within the enterprise to carry out a thorough investigation, he or she should call upon the assistance of a person with appropriate expertise, if necessary, from outside the enterprise.

10.2.4 The employer should arrange for the site of an occupational accident or a dangerous occurrence to be left undisturbed before the start of the investigation, apart from the requirements for first aid or to prevent further risk to persons.

10.2.5 Where for reasons of first aid, or to prevent further risk to persons, it is necessary to disturb the site before the start of the investigation, the employer should arrange for a competent person to make a record of the site, including where necessary photographs, drawings and the identities of eyewitnesses prior to any intervention.

10.2.6 The employer should ensure that the investigations of occupational accidents, occupational diseases and dangerous occurrences should, as far as possible:

- (a) establish what happened;
- (b) determine the causes of what happened; and
- (c) identify measures necessary to prevent a recurrence.

10.2.7 The employer should ensure that arrangements are in place at the enterprise for an immediate investigation of reported occupational accidents, occupational diseases, dangerous occurrences and incidents.

10.2.8 The employer should ensure that the report required under paragraph 10.1.6 of this code is sent to the competent authority by the quickest practicable means.

10.2.9 The employer should make the results of investigations available to workers and their representatives with a view to preventing similar occurrences and so that they may assist the employer in the more effective implementation of his or her policy on occupational safety and health.

10.3 Workers and the investigation of occupational accidents, occupational diseases, dangerous occurrences and incidents

10.3.1 Whenever an employer investigates under this code an occupational accident, an occupational disease, a commuting accident or a dangerous occurrence, workers' representatives should have the right, the facilities and the necessary time, without loss of pay, to participate in such investigations.

10.3.2 Workers in the course of their work should assist the employer and persons acting on

his or her behalf in the investigation of occupational accidents, occupational diseases, dangerous occurrences and incidents.

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CARICOM MODEL LAW ON PROTECTION OF WORKERS DURING INDUSTRIAL ACTION

PART I PRELIMINARY

1. Short Title

This Act may be cited as the Industrial Act of _____

2. [Optional] Purpose

The purpose of this Act is to promote harmonious and constructive industrial relations practices through the pursuit of the following objectives:

- (a) establishment of rights and procedures to protect workers during the course of industrial action;

- (b) promotion of application of the principles contained in ILO Conventions concerning Freedom of Association and Protection of the Rights to Organise (No. 87) and Right to Organise and Collective Bargaining (No. 98).

3. **Application of the Act**

- (1) This Act shall apply to all employers, including the State, all employees and other persons for whom provision is made.
- (2) Notwithstanding the provisions of subsection (1), this Act shall not apply to members of the disciplined forces.

4. **Definitions**

In this Act -

“collective agreement” means a written agreement between an employer, or an employer’s organization authorized by the employer; and a trade union concerning terms and conditions of employment and any other matter of mutual interest;

“employee” means a person who offers his or her services under a contract of employment and includes a dependent contractor, a managerial employee and a former employee, where appropriate;

“employer” means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person to work under a contract of employment or uses the services of a dependent contractor, commission agent, or contract worker and includes the heirs, successors and assigns of an employer;

“employers organization or association” means any combination established by employers, the principal purposes of which are the representation and promotion of employees’ interests and the regulation of relations between employers and employees;

“employment contract” or “contract of employment” means any contract, whether expressed or implied and whether written or oral whereupon it is agreed that one person (the worker) will perform certain services or labour for another (the employer); the term shall include any contract of apprenticeship or probation;

[Drafting Instruction: For further information on definition, refer to CARICOM Model Law on Termination of Employment]

“essential service” means any service, whether rendered by the Government or any other body or person, the interruption of which is likely to endanger the life, health or personal safety of the whole or part of the population of the country. **[Drafters Note: this definition may extend to specify” and includes, but is not necessarily limited to, the prison, fire, water, electricity and health services”]. Essential services shall be designated by**

competent national authority in accordance with set procedures based on above definition].

“industrial action” means strike or lockout. **[Drafting note: an additional category of other action may be necessary to add if definition of strike is limited.]**

“lockout” means an employer’s closing of an enterprise or place of business, his or her suspension of work, or refusal to continue to employ any number of employees, with a view toward inducing or compelling employees directly or indirectly through their bargaining agent, to accept conditions of employment which have been offered to the employees and which have been rejected by them; and the terms includes such action designed to induce or compel acceptance by the employees, or their bargaining agent, of another employer, of conditions of employment so offered and rejected; **[Drafting note: this definition is the one contained in the CARICOM Model concerning Termination of Employment. It should reviewed for continued acceptability for us in this Act. It is recommended that “lockout” be confirmed to action taken in contemplation and furtherance of a trade dispute.]**

“Minister” means the Minister of the country for the time being responsible for labour matters or any person authorised to act on his or her behalf;

“strike” means a partial or total withdrawal of services from an employer by two or more employees, in concern or pursuant to a common understanding, or at the request or upon the order of their bargaining agent, either (a) as a protest against a condition of work or employer action related thereto, or (b) as a device to induce or compel their employer, or his or her bargaining agent, to accept conditions of employment which they have requested and which request has been refused; and the term may include such action designed to induce or compel the acceptance of another employer, or his or her bargaining agent, of conditions of employment which his or her employees have requested and which request has been refused; and the term further includes picketing related to working conditions and/or labour relations, generally, whether by the employees or non-employees and whether or not signs are carried or posted and whether or not literature is being distributed. **[Drafting note: this is the definition contained in the CARICOM Model Law on Termination of Employment. It should be reviewed for continued applicability in this Act. Revision is recommended to be limited to action taken in contemplation or furtherance of a trade dispute. It should be determined whether the definition should cover activities such as sickouts, sit-ins, work-to-rule or go-slows or be restricted to stoppages of work.]**

“trade dispute” or “industrial dispute” means a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers, where such dispute relates wholly or partly to -

- (a) terms and conditions of employment, or the working environment;
- (b) engagement or non-engagement, or termination or suspension of employment, of one or more workers;
- (c) allocation of work as between workers or groups of workers; or

- (d) any matter affecting the privileges, rights and duties of any employer or organization representing employers or of any worker or organization representing workers;

“trade union” means any combination of persons, whether temporary or permanent, the principal purposes of which are the representation and promotion of workers interests and the regulation of relations between employees and employers, and includes a federation of trade unions, but not an organization or association that is dominated or influenced by an employer or an employers’ organizations. **[Drafters note: the exclusion of employers’ organizations under this definition is for purposes of Part Two on Industrial Action to ensure that entitlement to strike is not excluded to employers’ organizations.]**

PART TWO INDUSTRIAL ACTION

5. Right to Industrial Action

A party to a trade dispute and any employee of an employer party to the dispute is entitled to take action by way of strike, subject to the provisions of this Act.

6. Conditions for the Exercise of the Right to Strike

The exercise of the right to strike set out in section 5 shall be subject to the following conditions:

- (a) the trade dispute has been reported in accordance with national industrial relations regulations and is unresolved [after completion of conciliation or mediation proceedings];
- (b) the trade dispute does not concern the interpretation or application of a collective agreement or an arbitration award;
- (c) the trade dispute does not concern an essential service [that has been referred by the Minister to compulsory arbitration in accordance with national laws.];
- (d) [optional] a ballot has been taken in accordance with section 7 and has been successful; and
- (e) notice of the strike has been given to the other party [3] days before action is taken, and a copy of such notice has been delivered to the Minister.

[Optional] Strike ballots

- (1) Before resort is had to action by way of a strike, a ballot shall be taken of the employees contemplating such action after the compilation of any proceedings referred to in section 6.
- (2) For a ballot to be successful it must -
 - (a) fulfill all requirements of the rules of any trade union concerned;
 - (b) unless provided otherwise by collective agreement, obtain a majority of the votes cast of the members of the trade union or the group of employees concerned in the workplace, enterprise or bargaining unit with respect to

- which the strike is contemplated;
- (3) The results of the ballot shall be certified [in accordance with national procedures/practice] by the persons taking the ballot and such certification shall be made available to inspection if so required under order of Court [or other competent authority designated at national level]

8. Secondary Strikes

It shall be unlawful to organise or participate in a strike (called below a secondary strike) against an employer with whom the employees concerned are not engaged in a labour dispute, if that strike is in support of a strike (called a primary strike) by other employees against their employer and if:

- (a) the primary strike is held in compliance with the requirements of this Act; and
- (b) the secondary strike complies with section 6 (c), (d) and (e) **[Drafting Note: in some jurisdictions a clause on the relationship between the primary and secondary employers is required to be such that the primary employers may be deemed to be allied with the secondary employer's dispute with the employees concerned.]**

9. Lockouts

Resort to lockout shall be subject to the following conditions:

- (a) the trade dispute has been reported in accordance with national industrial relations regulations and is unresolved [after completion of conciliation or mediation proceedings];
- (b) the trade dispute does not concern the interpretation or application of a collective agreement or an arbitration award;
- (c) the trade dispute does not concern an essential service
[Drafting note: in some countries with definitions of essential service this provision may be modified to limit to dispute in essential services that has been referred by the Minister to compulsory arbitration in accordance with national laws.]
- (d) notice of the lockout has been given to the other party [3] days before action is taken, and a copy of such notice has been delivered to the Minister.

10. Essential Services

- (1) Where a dispute in an essential service is unresolved, [any party to the dispute or] the Minister may [shall] refer the dispute to compulsory arbitration;
- (2) An employee or employer engaged in an essential service shall not take action by way of strike or lockout in connection with any such service. [Unless the Minister fails to act in accordance with national procedures to refer dispute to compulsory arbitration];
- (3) The minister may at any time apply to the appropriate Court for a determination as to whether a threatened or actual strike or lockout involves an essential service.
Drafting Note: While it is unlikely that a list of employees and activities would be able to be agreed upon for CARICOM and included in this section, a limited

exemplary list could be provided (See definition section).]

11. Emergency Situations

If continuation of a strike or lockout is likely to result in a real or present danger to the life, health or personal safety of the whole or part of the population, the Minister may refer the dispute to the appropriate court that shall, if it finds that such a threat exists, enjoin such strike or lockout and order the dispute to be settled through compulsory arbitration.

12. Effect on Contracts of Employment and Collective Agreements

The provisions of a collective agreement of employment contract in effect shall not be deemed to have been breached by a strike or lockout that takes place in conformity with this Act.

13. Civil and Criminal Immunity

No civil or criminal proceedings shall be brought against an employee, employer, organization, trade union or officer or member of such trade union or organization, in respect of any strike or lockout in conformity with this Act, or any act, not constituting a separate criminal offence, committed by such person or organization or trade union in furtherance of such strike or lockout.

14. No Entitlement to Industrial Action

No industrial action shall be taken once a trade dispute has been referred to arbitration.

15. Penalties

f:labour/modelaw