ENACTMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT, 2004

TRINIDAD AND TOBAGO

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<th>Institution or government agency presenting the experience:</th>
<th>Ministry of Labour and Small and Micro Enterprise Development</th>
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<td>Web-site:</td>
<td><a href="http://www.labour.gov.tt">www.labour.gov.tt</a></td>
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PROGRAM DESCRIPTION

Description

The year 2004 proved to be the beginning of a new era for occupational safety and health in Trinidad and Tobago with the assenting by Parliament of the Occupational Safety and Health Act (OSHA), 2004 in January 2004. The OSHA was amended by the Occupational Safety and Health (Amendment) Act, 2006 and was proclaimed on February 17, 2006 and has been operational since that date. This Act is of significance given that as of August 17, 2007 it will repeal and replace the Factories Ordinance Chapter 30, No. 2 which has governed health and safety in Trinidad and Tobago since 1948 and which was left operational for a few months after the new Act was proclaimed. The Factories Ordinance Chapter 30 No. 2 was left in force for this period as the arrangements for the implementation arm of the Occupational Safety and Health Authority, which is provided for in the Act, were put in place. The OSHA brings the legislation in step with the country’s rapid industrialization spurred by increased activities in the construction and petrochemical sectors.

Before its enactment, the OSHA was the subject of public consultation. Employers’ and workers’ organizations also played a significant role in its development. Additionally, an Occupational Safety and Health Council, comprising the social partners as well as representatives of Non-governmental organizations, was established in May 2003 for a period of five (5) months with the following terms of reference:

- to draft an Occupational Safety and Health Policy;
- to develop codes that would provide the framework for the Occupational Safety and Health Authority to carry out its functions; and
- to submit recommendations for the organizational structure of the Occupational Safety and Health Authority.

One of the key changes brought about by the enactment of this legislation is the widening of the scope of categories of protected workers. While the Factories Ordinance made provisions for persons employed in factories only, the OSHA covers most workers in all aspects of work undertaken in an industrial establishment (defined as a factory, shop, office, place of work or other premises excluding residential premises) that may have significant impacts on the health and safety of the employees, with the exception of workers in private homes (domestic workers).

The OSHA promotes voluntary compliance by facilitating a shift to stronger self-governance by the employer and the workers and a more regulatory role by the Government. It seeks to ensure that the promotion of high safety and health standards does not hinder business performance, productivity and efficiency while, on the other, it addresses employee rights issues such as sufficient protection and avenues for redress in accordance with the law and good industrial relations practices.

Other key features of the OSHA are:

- It addresses the roles and responsibilities of employers, employees, occupiers, suppliers and manufacturers – Employers have the duty of care to ensure the safety, health and welfare at work of all employees and any third party that can be affected by his/her undertaking.
Employees must assume personal responsibility for their own safety and actions at work and must be aware of and respect all potential hazards. They are required to take reasonable care for their own safety and health and for the safety and health of other persons who may be affected by their acts or omissions at work. They must comply with the employer’s occupational safety and health and welfare rules, instructions, safe work practices, established procedures, permit requirements and codes. Occupiers or those with ultimate control over the affairs of an industrial establishment must ensure that the employer discharges his duty of care for the safety and health of employees and members of the public on or in the vicinity of the premises. This will include the provision and maintenance of safe means of access and egress and emergency response planning for those using their premises. A duty is imposed on anyone in the supply chain who designs, manufactures, imports or supplies any technology, machinery, plant, equipment or material for use at work to ensure that such items are safe and without risk to the safety and health of employees when properly used;

- It promotes consultation between employers and workers’ organization on occupational safety and health issues – For example, the OSHA requires employers or occupiers of industrial establishments of twenty-five or more employees to prepare in consultation with the worker representatives, a general policy with respect to occupational safety and health. Such an employer/occupier is also expected to establish a joint (trade union/employee and employer) Safety and Health Committee to review health and safety measures as well as investigate matters considered to be unsafe or a risk to health at the industrial establishment; and
- It empowers inspectors to take enforcement and legal actions – Inspectors are permitted to enter, inspect, examine and take samples from any industrial establishment at all reasonable times in their conduct of inspection duties. Inspectors can also serve prohibition or improvement notices and initiate legal proceedings against persons in breach of the Act.

With respect to administration of the legislation, the OSHA provides for the establishment of two entities, the Occupational Safety and Health Authority (referred to as the Authority) and the Occupational Safety and Health Agency (referred to as the Agency).

Occupational Safety and Health Authority
The Occupational Safety and Health Authority is the regulatory body that is responsible to the Government for the implementation of the provisions of the OSHA. It has a tripartite composition. The Authority was established in October 2006 to, inter alia:

- act as an Advisory Body to the Minister of Labour on policy, standards and matters related to occupational safety and health;
- make recommendations to the Minister of Labour in respect of regulations under the Act and seek his approval for the issuance of codes of practice;
- Guide the Minister of Labour on the organizational structure, staff requirements and operations for the proper and efficient functioning of the Agency;
- Provide leadership, guidance, direction and control in the execution and implementation of the National Occupational Safety and Health Policy;
- ensure that occupational safety and health standards are established, communicated and enforced;
- reach out to employers and employees through research, education and awareness, technical assistance and consultation programs; and
- ensure that all stakeholders are kept informed and adequately advised on occupational safety and health issues.


Occupational Safety and Health Agency

The Occupational Safety and Health Agency is established as an administrative and occupational safety and health inspection and enforcement group. Whereas the Authority has the primary function of policy formulation, the Agency is responsible for the implementation of those policies. The Agency is also responsible for initiating consultation with government entities performing various inspection functions, with the objective of formulating memoranda of understanding, establishing mechanisms for coordination across jurisdictional lines and the provision for the implementation of integrated occupational safety and health programs. Enforcement of the provisions of the Act and related regulations is the responsibility of the Agency, and this is achieved through suitably qualified inspectors. Currently, there are thirty-two inspectors and a Chief Inspector. It is expected that the complement of inspectors will be increased in the future.

SUSTAINABILITY

Funding
The mechanisms under the Act are sustained through funding by the Government of Trinidad and Tobago.

PROGRAM EVALUATION

It is too early to formally evaluate the impact of the OSHA on safety and health in the workplace. However, given the expanded scope of the legislation and the mechanisms established for the administration of the legislation including tripartite collaboration as well as institutional strengthening of the inspectorate, it is anticipated that the overall effect will be a decline in occupational accidents, injuries and diseases. The OSHA is also intended to promote a culture of prevention and control of occupational hazards in Trinidad and Tobago.