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REPUBLIC OF KIRIBATI
(No.4 of 2018)

I assent,


Beretitenti
13/10/2018

AN ACT TO AMEND THE OCCUPATIONAL HEALTH AND SAFETY ACT 2015

Commencement:
13/10/2018

1. Short Title

This Act may be cited as the Occupational Health and Safety (Amendment) Act 2018

2. Meaning of 'principal Act'

In this Act principal Act means the *Occupational Health and Safety Act 2015*

3. Insertion of new definitions in Section 2

Section 2 of the principal Act is amended as follows:-

(a) by inserting a new definition immediately before "employee" as follows:-

"dangerous incident" means a workplace incident that exposes an employee or any other person to a serious risk to a person's health and safety emanating from an immediate or exposure to the following:-

- (a) an uncontrolled escape, spillage or leakage of a substance; or
- (b) an uncontrolled implosion, explosion or fire; or
- (c) an uncontrolled escape of gas or steam; or
- (d) the fall or release from a height of any plant, substance or thing; or
- (e) the collapse or partial collapse of a structure; or
- (f) the collapse or failure of an excavation or of any shoring supporting an excavation; or
- (g) the interruption of the main system of ventilation in an underground excavation or confined space; or
- (h) the failure of a breathing apparatus; or
- (i) any other event prescribed by regulations.

(b) by repealing the definition of "employer" and substituting the following:-

"employer" means a person, company or entity who or which -

- (a) employs one or more other persons under contracts of employment or contracts of training; or
- (b) has the management and control of a workplace; or
- (c) conducts or carries out a business or undertaking.

(c) by inserting new definitions immediately before "plant" as follows:-
"inspector" means a person appointed under section 8 of this Act;

"occupational disease" includes a physical or mental ailment disorder, defect, condition or chronic ailment that occurs as a result of exposure to a workplace hazard, whether of sudden or gradual development and whether contracted before or after the commencement of this Act;

(d) by inserting a new definition immediately before "supply" as follows:-
"supervisor" means any person appointed by the employer to report on health and safety compliance issues within the workplace;

4. Amendment of section 8

Section 8 of the principal Act is amended by repealing it and substituting the following:-
"The Minister may appoint an officer to be an inspector for the purposes of this Act".

5. Insertion of section 9(2)(i) and (j)

Section 9 of the principal Act is amended by inserting section 9(2)(i) and (j) immediately after section 9(2)(h) as follows:-

"9(2) An inspector may, for the purpose of the execution of this Act-

- (i) issue an infringement notice in the prescribed form;
- (j) facilitate the monitoring, collecting and analysing of national data on compensable injuries, occupational accidents and diseases or other relevant data in Kiribati for the purposes of reviewing the effectiveness of implemented policies and standards, recommending appropriate priorities and facilitating the production of annual statistics on occupational accidents and diseases:".

6. Amendment of section 20

Section 20 of the principal Act is amended by repealing it and substituting the following:-
"Right of employee to remove himself from risky situations

20(1) An employee has the right to:-

- (a) inform a person who is a supervisor or manager or responsible for health and safety compliance within the workplace and the workplace's health and safety representative if the employee has reasonable cause to believe that there is an immediate or imminent risk of harm to himself or herself or any person in the workplace;
 - (b) cease or refuse to carry out works or remove himself or herself from a work situation which he or she has reasonable justification to believe presents an immediate or imminent risk of serious harm;
 - (c) if the employee chooses (a), then he or she has to take the prescribed steps stated in (2), (3), (4) and (5) and if the employee chooses (b) then he or she has to follow prescribed steps stated in (6).
- (2) Where a Supervisor has been advised of a hazard and risk of serious harm, the Supervisor shall take such action as he or she considers appropriate to either remove the hazard or reduce the risk of harm to as low as reasonably practicable;
- (3) The parties must make reasonable effort to achieve a timely, final and effective resolution

of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default Issue Resolution Procedure prescribed in the regulations;

- (4) If an issue has not been resolved a party to the issue may refer the matter to an inspector for investigation and assistance;
- (5) An inspector, as soon as possible after a request is made, shall carry out an investigation of the issue and shall make such decisions and exercise such powers under this Act, as the inspector considers necessary, in relation to the issue or work;
- (6) An employee or any person in the workplace who ceases work under this section:-
 - (a) must as soon as practicable, notify the employer that the employee or any person in the workplace has ceased work under this section;
 - (b) shall be protected from undue consequences, in accordance with national conditions of service and employment contracts;
 - (c) cannot be required to return to a work situation where there is a continuing immediate or imminent risk of serious harm until the employer has taken remedial action, if necessary."

7. Amendment of section 22

Section 22 of the principal Act is amended by repealing section 22(1) and substituting the following:-

"22(1) An employer shall ensure that the Secretary of the Ministry responsible for the administration of this Act is immediately notified of:-

- (a) an accident, serious injury, work-related illness or occupational disease of an employee, at a workplace under his or her management that resulted in serious harm; or
- (b) a dangerous incident:"

8. Amendment of the title in Part VI

Part VI of the principal Act is amended by inserting at the title the word, "INFRINGEMENT" between the words, "IMPROVEMENT" and "PROHIBITION" and it shall read as follows:-
"IMPROVEMENT, INFRINGEMENT AND PROHIBITION NOTICES"

9. Insertion of new section 25A

Inspector may issue infringement notice

Section 25A is inserted immediately after section 25 of the principal Act as follows:-

- "25A(1) An inspector may serve an infringement notice on a person if it appears on reasonable grounds to the inspector that the person has committed an offence prescribed by the regulations;
- (2) An infringement notice must be issued in the form prescribed by regulation;
 - (3) If the person served does not contest the notice or wish to have the matter dealt with by a court, the person may pay, within the time frame specified in the notice, the penalty prescribed by the regulations for the offence;
 - (4) If the amount of the penalty prescribed for an alleged offence is paid under this section no person is liable to any further proceedings under this Act for the alleged offence;
 - (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence;
 - (6) The regulations may;
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by

- referring to the provision creating the offence; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences
- (7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court;
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences;

10. Amendment of section 29

Section 29 of the principal Act is amended as follows:

- (a) at the title of this section by repealing the words "Minister" and substituting it with the words "Secretary";
- (b) in subsection (1) by repealing it and substituting the following:-
"29(1) A person issued with an improvement notice or an infringement notice or prohibition notice by an inspector may, within seven days of the date of issue of the notice, apply to the Secretary for a review of that notice";
- (c) in subsection (3)(a) by inserting the words "or infringement notice" immediately after the words "notice" and before the comma;
- (d) in subsection (4)(a) by repealing it and substituting the following:-
"29(4)(a) the Secretary affirms an improvement notice or an infringement notice or a prohibition notice or affirms such a notice with modifications; and".

11. Amendment of section 30

Section 30 of the principal Act is amended as follows:-

- (a) in subsection (1) by repealing it and substituting the following:-
"30(1) A person issued with an improvement notice or an infringement notice or prohibition notice which has been subject to review under section 29 may, within 30 days of the date of the service of the Secretary's decision, appeal to the High Court against the Secretary's decision;
- (b) in subsection (3)(a) by inserting the words "or infringement notice" immediately after the words "notice" and before the comma;
- (c) in subsection (4)(a) by repealing it and substituting the following:-
"30(4)(a) the Court affirms an improvement notice or an infringement notice or a prohibition notice or affirms such a notice with modifications; and".

12. Amendment of section 33

Section 33(1) of the principal Act is amended by repealing the word, "Beretitenti" and substituting it with the word, "Minister".

13. Amendment of section 34

Section 34 of the principal is amended by repealing it and substituting the following:-

"34(1) A person who commits an offence against this Act is liable to a penalty-

- (a) in the case of a body corporate to a fine of \$10,000; or
- (b) in any other case to a fine of \$2,000; and

(c) imprisonment for 1 year or to both.

- (2) The whole or part of any penalty or fine paid under an infringement notice may be applied for the benefit of a person who has been injured or died pursuant to a serious breach of this Act or regulations or his or her family or otherwise, as the court may determine.
- (3) An employer who commits a second or subsequent breach or offence under this Act or regulations which comprises a repetition or omission of a previous offence, may be liable for an additional penalty or fine as prescribed in the regulation".

EXPLANATORY MEMORANDUM

This Act amends the Occupational Health and Safety Act of 2015 (Principal Act) to better implement the obligations provided under the Principal Act and ensure that occupational health and safety in the workplace is prioritised by the different sectors (workers, employers and the government) involved. Following the Tripartite consultation in March 2017, the Ministry responsible for labour found that the Principal Act did not provide clearly and sufficiently for enforcement mechanisms hence this amendment to address issues such as providing the powers of Occupational Health and Safety Inspectors to serve notices.

This Act amends section 2 of the Principal Act to insert definitions of dangerous incidents and occupational disease as currently only accidents that cause or result in serious harm are reported without provision for harms such as those that may be from occupational disease. The amendment is now recognising that occupational disease should also be reported as one of the cause of harm covered under the Act. It is recommended that a “dangerous incident” and “occupational disease” should also be reported to the Ministry. Another definition added is for Inspectors and Supervisors and the roles and responsibilities that these officers should have in relation to occupational health and safety issues. More duties and powers are further added with the amendment of section 9 to include duties and powers of the Inspectors that have not been provided for in the Principal Act.

Another amendment is on section 8 to repeal the word “Beretitenti” and substitute with the word the “Minister”. This is to avoid imposing the role on the Beretitenti which could otherwise be carried out by the Minister responsible for labour in line with the Ministry’s portfolio.

Since section 20 of the Principal Act only provide a general provision on the rights of employees to remove himself/herself from situations that he/she believes to be risky; this section is amended by repealing the whole section and substituting it with a broader and specific provision that emphasised employees’ rights to avoid eminent and risky situations. The amendment inserts a longer and inclusive provision on this issue by adding the procedures and steps that employees should do when they are of the view that their work or workplace poses a danger or risk to them. This amendment adds another prevention measure in the Act.

Following the amendments to section 2, section 22 is broadened to include incidents ranging from serious accidents, illness, disease and dangerous incident. This broader provision will cover actual and potential incidents as well as the extent of causes and effect whether it is serious, dangerous or occupational. This amendment will also add measures for prevention and reduction of risk from incidents or accidents, in addition to the real causes or actual occurrences.

The Principal Act is also amended by inserting the word “INFRINGEMENT” at the title of Part IV under the notices. This will add a third notice (infringement) to the improvement notice and prohibition notice. The inspectors may now serve and impose an infringement notice to enforce a penalty for breaching of the Act and any other conditions imposed in relation to occupational health and safety under the Act or Regulation. To support this provision, sections 29 and 30 (right of appeal) are amended to provide that an infringement notice cannot be appealed to the Minister or High Court where the offence relates to an infringement offence. However, these amendments still accommodate the right of the employer to dispute the infringement notice by providing that in the event of dispute, the employer will have the opportunity to make submissions and dispute the commission of the offence (infringement) and fine imposed during the prosecution process.

As recommended from the Tripartite consultation, the penalties in the Principal Act are amended by increasing the fines. By comparison, other jurisdictions are imposing higher penalties than the rate imposed in the Principal Act. The seriousness and cruciality of health and safety of workers in the workplace should be reflected with higher penalties. For this, the Principal Act is amended by increasing the penalty for breaches of the Act by companies from \$5,000 to \$10,000.

Honourable Ioteba Redfern
Minister for Labour and Human Resources Development

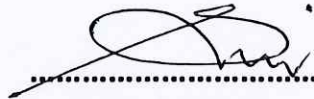
LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act conflicts with the Constitution and the Beretitenti may properly assent to the Act.

Mrs Tetiro Maate Semilota
Attorney General

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the Occupational Health and Safety (Amendment) Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 26th April 2018 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene

Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 13 day of October 2018.



Eni Tekanene

Clerk of the Maneaba ni Maungatabu