



BILL NO. 12

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
62 Elizabeth II, 2013*

An Act to Amend Chapter 7 of the Acts of 1996, the Occupational Health and Safety Act

CHAPTER 41
ACTS OF 2013

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 12, 2013**

The Honourable Kelly Regan
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 7
of the Acts of 1996,
the Occupational Health and Safety Act**

Be it enacted by the Governor and Assembly as follows:

1 Subsection 11(3) of Chapter 7 of the Acts of 1996, the *Occupational Health and Safety Act*, is amended by adding “or the regulations” immediately after “Act” in the third line.

2 Clause 39(1)(c) of Chapter 7 is amended by striking out “67 or” in the second line.

3 Section 40 of Chapter 7 is repealed and the following Section substituted:

40 (1) For the purpose of this Act and the regulations and any proceedings thereunder, an order, notice or other document sent by regular mail is deemed to have been received ten days after the day on which it was mailed, unless the person to whom it was sent establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person’s control.

(2) For the purpose of this Act and the regulations and any proceedings thereunder, an order, notice or other document that is to be served on a person must be served by

(a) personal service;

(b) a form of delivery that provides proof of delivery, sent to the last known address of the person being served; or

(c) electronic transmission, including facsimile or electronic mail.

(3) An order, notice or other document that is served on a person under clause (2)(b) is deemed to have been received five days after the date of the first attempted delivery, unless the person being served establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person’s control.

(4) An order, notice or other document that is served on a person under clause (2)(c) is deemed to have been received the day after it was sent or, where that day is a Saturday or a holiday, on the next day that is not a Saturday or a holiday, unless the person being served establishes that, acting in good faith, the person did not receive the order, notice or other document until a later date, through absence, incident, illness or other cause beyond the person’s control.

4 Section 54 of Chapter 7 is amended by striking out “67” in the last line and substituting “69”.

5 Chapter 7 is further amended by repealing Sections 67 and 67A and substituting the following Section:

67 (1) For the purpose of this Section and subsection 69(2), “alter” means vary, revoke or suspend the order or decision of an officer or make any order or decision that an officer may make under this Act or the regulations.

(2) Subject to the regulations, the Director may

(a) on the Director’s own motion, review an order or decision of an officer; and

(b) by order, alter an order or decision of an officer after first consulting with the officer.

(3) When reviewing an order or decision of an officer, the Director may consider new information that was not available to the officer when the officer made the order or decision.

(4) The Director is not disqualified from reviewing an order or decision by reason only that the Director, in the course of performing the Director’s powers, duties or functions pursuant to this Act, receives information regarding or communicates with a person concerning the matter to which the order or decision relates.

(5) An order of the Director made pursuant to clause (2)(b) that is not appealed pursuant to subsection 69(1) is final and binding.

(6) Subject to the regulations, where the Director alters an order or decision of an officer after reviewing it, the Director shall provide a copy of the Director’s order to

(a) the employer;

(b) the person to whom the officer’s order or decision was issued;

(c) the Board, if the Director’s order is issued after the filing of a notice of appeal under subsection 69(2); and

(d) an aggrieved person, other than a person referred to in clauses (a) and (b), who has filed a notice of appeal, if the Director’s order is issued after the filing of a notice of appeal under subsection 69(2),

and the employer shall communicate the order in accordance with subsection 39(1).

6 (1) Subsections 68(1) and (2) of Chapter 7 are repealed and the following subsection substituted:

(1) The Board shall hear all appeals filed under this Act and the regulations.

(2) Subsection 68(3) of Chapter 7, as enacted by Chapter 37 of the Acts of 2010 and amended by Chapter 66 of the Acts of 2010, is further amended by striking out “or (2)” in the second line.

(3) Subsection 68(9) of Chapter 7, as amended by Chapter 37 of the Acts of 2010, is further amended by adding “pursuant to this Act or the regulations” immediately after “Board”.

7 (1) Subsections 69(1) and (2) of Chapter 7 are repealed and the following subsections substituted:

(1) Subject to the regulations and subsection (2), an aggrieved person may appeal

- (a) an order made by an officer pursuant to this Act or the regulations;
- (b) the decision of an officer not to issue an order;
- (c) the decision of an officer to advise an employee to return to work or the decision to provide no advice, pursuant to clause 43(1)(c);
- (d) an order made by the Director pursuant to this Act or the regulations;
- (e) any decision for which a right of appeal is provided in the regulations.

(2) Where an order or decision of an officer is appealed to the Board and the Director subsequently alters the decision in accordance with subsection 67(2), the appeal of the order or decision of the officer is terminated.

(2A) Subject to the regulations, an appeal pursuant to subsection (1) is initiated by filing a notice of appeal with the Board within thirty days after the order or decision is served on the recipient.

(2) Subsection 69(3) of Chapter 7, as amended by Chapter 24 of the Acts of 2009 and Chapter 66 of the Acts of 2010, is further amended by

- (a) striking out “A” in the first line and substituting “Subject to the regulations, a”; and
- (b) striking out “or subsection 67A(2)” in the second line.

(3) Subsection 69(4) of Chapter 7, as amended by Chapter 24 of the Acts of 2009, is further amended by

- (a) striking out “Where” in the first line and substituting, “Subject to the regulations, where”; and
- (b) striking out “or subsection 67A(1)” in the second line;

(4) Subsection 69(5) of Chapter 7, as amended by Chapter 37 of the Acts of 2010, Chapter 66 of the Acts of 2010 and Chapter 24 of the Acts of 2011, is further amended by

- (a) striking out “On” in the first line and substituting “Subject to the regulations, on”;
- (b) adding immediately before clause (b) the following clause:
 - (a) the Board shall forthwith provide a copy of the notice of appeal to the Director; and

and

(c) adding “, either orally or by way of written submissions,” immediately after “hearing” in the first line of clause (b).

(5) Subsection 69(6) of Chapter 7, as amended by Chapter 37 of the Acts of 2010, is further amended by striking out “The” in the first line and substituting “Subject to the regulations, the”.

(6) Subsection 69(7) of Chapter 7 is amended by adding “and the regulations” immediately after “(8)” in the first line.

(7) Subsection 69(8) of Chapter 7 is amended by adding “an officer or” immediately after “of” in the second line.

(8) Subsection 69(9) of Chapter 7, as amended by Chapter 37 of the Acts of 2010, is further amended by adding “but subject to the regulations” immediately after “(7)” in the first line.

(9) Subsection 69(10) of Chapter 7, as amended by Chapter 37 of the Acts of 2010, is further amended by

(a) striking out “The chair of a panel of the Board constituted to hear a particular matter shall provide a copy of the decision of the appeal panel” in the first and second lines and substituting “Subject to the regulations, the Board shall provide a copy of its decision”;

(b) striking out “and” at the end of clause (b);

(c) striking out the comma at the end of clause (c) and substituting “; and”; and

(d) adding immediately after clause (c) the following clause:

(d) the Director,

8 Chapter 7 is further amended by adding immediately after Section 69 the following Section:

69A Subject to the regulations, where an aggrieved person has more than one appeal made pursuant to the Act or the regulations pending before the Board, the Board may hear the appeals together but shall render a separate decision for each appeal.

9 Section 81 of Chapter 7 is amended by

(a) adding “or the regulations” immediately after “Act” in the second line;

(b) adding “, notice, report” immediately after “decision” in the first and in the last lines of clause (a);

(c) adding “, notice, report” immediately after “decision” in the fifth last, in the fourth last and in the second last lines.

10 (1) Subsection 82(1) of Chapter 7, as amended by Chapter 66 of the Acts of 2010, is further amended by

(a) adding immediately after clause (ad) the following clause:

(ada) respecting the Director's ability to review and alter an order or decision of an officer under subsection 67(2);

(b) repealing clause (an) and substituting the following clause:

(an) respecting the establishment and administration of a system of administrative penalties, including, without limiting the generality of the foregoing, regulations

(i) prescribing who may impose administrative penalties,

(ii) prescribing time frames for imposing an administrative penalty,

(iii) respecting the payment of administrative penalties,

(iv) prescribing the content of a notice of administrative penalty,

(v) prescribing the dollar amount of administrative penalties,

(vi) prescribing how an administrative penalty may be revoked,

(vii) respecting the extension of the time frame for filing a notice of appeal of an order or decision made under this Act or the regulations in relation to a notice of administrative penalty,

(viii) respecting the remedies available on an appeal of an administrative penalty, and

(ix) respecting the use to be made of any funds collected through the imposition of administrative penalties, including where such funds are to be deposited or held;

(c) striking out "including, but not limited to" in the first and second lines of clause (ao) and substituting "pursuant to this Act and the regulations, including, without limiting the generality of the foregoing";

(d) striking out the semicolon at the end of subclause (ao)(v) and substituting a comma;

(e) adding immediately after subclause (ao)(v) the following subclauses:

(vi) respecting the effect of any defect in form or any technical irregularity in an appeal proceeding, and

(vii) the hearing of appeals together if an aggrieved person has more than one appeal made pursuant to the Act or the regulations pending before the Board;

and

(f) adding immediately after clause (ap) the following clause:

(apa) respecting the effect of any defect in form or any technical irregularity that occurs in any order, decision, notice, report, certificate or other document issued pursuant to this Act and the regulations;

(2) Clause 82(2)(e) of Chapter 7 is repealed.

11 (1) Where an appeal is initiated pursuant to the *Occupational Health and Safety Act* and is not completed before the coming into force of this Section, the appeal must be heard and determined pursuant to the *Occupational Health and Safety Act* as it read immediately before the coming into force of this Section.

(2) Where a right of appeal exists pursuant to the *Occupational Health and Safety Act*, the appeal period does not expire before the coming into force of this Section and an appeal is not initiated pursuant to the *Occupational Health and Safety Act* before the coming into force of this Section,

(a) the time for filing the appeal must be reckoned; and

(b) the appeal must be heard and determined,

pursuant to the *Occupational Health and Safety Act* as it read immediately before the coming into force of this Section.

12 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
