

2018 *OHS Act* Post Implementation Update

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Key Concepts in Canadian OHS Law

- Internal responsibility
 - Everyone in the workplace is responsible for OHS, according to the their authority and control
 - Internal monitoring by HSCs or health and safety representatives
 - External monitoring and enforcement by government
- Three fundamental rights of workers
 - Right to know
 - Right to participate
 - Right to refuse dangerous work

Right to Refuse Dangerous Work

- A worker may refuse to do work where they believe on reasonable grounds it is dangerous to them or others.
- The worker must promptly report the refusal to the supervisor or employer.
- If the supervisor or employer cannot remedy the issue immediately, they must inspect the dangerous condition with the refusing worker and a member of the HSC or representative to resolve the issue/remedy the danger.
- If the matter is still not resolved it may be referred to an OHS officer, who will resolve the matter.
- No loss of pay or benefits for worker exercising right to refuse.
- Another worker may be assigned to do the work if they are advised of the refusal, the reason for the refusal, and advised of their right to refuse.

Workers Protected from Discriminatory Action

- **Discriminatory action** is any action or **threat of action** by any person that would adversely affect a workers with respect to terms or conditions of employment, or opportunity for promotion.
 - Includes termination, layoff, suspension, demotion or transfer of a worker, discontinuation of job, change of job location, reduction of wages, change of hours, reprimand, coercion, intimidation or imposition of discipline or penalty.
- No person may take any discriminatory action against a worker for fulfilling their duties under legislation or exercising their OHS rights.
- Discriminatory action complaints are referred to an OHS officer, who investigates and resolves the complaint.
- **Onus is on employer to show action taken against worker was for reason other than fulfilling an OHS duty or responsibility.**

Responsibilities of Work Site Parties

Employers

- Ensure health, safety and welfare of workers and other persons at the work site
- Ensure workers are aware of OHS rights and duties
- Ensure workers are not subjected to or participate in harassment or violence
- Ensure workers have competent supervision
- Ensure workers are properly trained
- Consult and cooperate with HSCs or health and safety representative and resolve issues in a timely manner
- Ensure prime contractor is advised of names of supervisors
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Supervisors

- Ensure they are competent to supervise workers
- Take all precautions to protect worker health and safety
- Ensure workers work accordance requirements of legislation
- Ensure workers use hazard controls and personal protective equipment
- Ensure workers are not subjected to or participate in harassment or violence
- Advise workers of all known or reasonably foreseeable hazards
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Workers

- Take reasonable care to protect their own health and safety and health and safety of others at the work site
- Cooperate with supervisor, employer, or any other person to protect their health and safety,
- Use safety devices and wear personal protective equipment
- Refrain from causing or participating in harassment or violence
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Suppliers

- Ensure products and equipment comply with the legislation
- Ensure products and equipment supplied are safe when used according to manufacturer specifications (includes leased equipment)
- Maintain equipment in safe condition
- Provide notice when their product or equipment does not comply with legislation
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Service Providers

- Ensure a service provided to help a person meet an obligation under OHS legislation achieves that objective
- Ensure the service complies with OHS legislation
- Ensure the service is provided by a competent worker
- Ensure the service does not create a hazard to others on the work site
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Owners (of land or premises of worksite)

- Excludes a private residence unless business located there
 - Ensure property and premises that is under their control do not endanger health and safety
 - Cooperate with any person exercising duty under legislation
 - Comply with legislation

Contractors

- Person or group of persons who contract with and direct the work of employer or self-employed person
 - Ensure the work site and work processes under their control do not endanger health and safety
 - Advise prime contractor of the names of employers or self-employed persons working under the direction of the contractor
 - Cooperate with any person exercising duty under legislation
 - Comply with legislation

Prime Contractor

- Required on **construction or oil and gas work sites (or a work site designated by a Director)** with 2 or more employers or self-employed persons
 - Establish a system to ensure compliance with legislation
 - Co-ordinate, organize and oversee work to ensure health and safety of workers and others
 - Ensure their own activities do not create a hazard to the health and safety of others
 - Consult and co-operate with the JWSHSC or health and safety representative
 - Co-ordinate the health and safety programs of employers and self-employed persons on the work site
 - Cooperate with any person exercising duty under legislation
 - Comply with legislation

Self-Employed Persons

- Conduct their work in a way that protects them and others from health and safety hazards
- Advise prime contractor that they are working on the project
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Temporary Staffing Agencies

- Ensure workers assigned to another employer are suitable for the work
- Ensure worker is equipped or will be equipped with necessary personal protective equipment
- Ensure the other employer is capable of protecting the health and safety of the workers
- Cooperate with any person exercising duty under legislation
- Comply with legislation

Harassment and Violence Definitions

Harassment and Violence Defined

- “harassment” means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action that causes offence or humiliation to a worker, or adversely affects the worker’s health and safety, and includes
 - i. conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression, and sexual orientation, and
 - ii. sexual solicitations or advance.
- but excludes any reasonable conduct or an employer or supervisor in respect of their management of the workers or a work site.
- “violence” threatened, attempted or actual conduct of a person that causes or is likely to cause physical or psychological injury or harm, and includes domestic or sexual violence.

Joint Work Site Health and Safety Committee (HSC) and Representative (HS rep)

HSC and HS rep

- Employer or prime contractor required to establish a HSC for a work site with 20 or more workers
 - Director may approve other forms of HSC where necessary
- HS rep required for work site or project with 5 to 19 workers
- Requirements apply to work that will last 90 days or more
- Training required for HSC co-chairs and HS reps
 - When HSC members or HS reps provide reasonable notice, they are permitted up to 2 days to attend OHS education or training
- No loss of pay or benefits for HSC members or HS rep when carrying out duties or participating in OHS training or education

Reporting

Reporting Serious Injuries and Incidents

- Employers or prime contractor must report:
 - Incident resulting in death of worker
 - Incident resulting in hospitalization of worker
 - Explosion, fire, or flood that has potential to cause serious injury
 - Collapse of crane, derrick or hoist
 - Collapse or failure of building or structure
 - Significant mining incidents (ground fall, ventilation failure, out of control vehicle, fire, serious electrical failure hoist or shaft failure, dam failure, other emergency)
- Incidents with potential to cause serious injury (near misses) must also be reported

Reporting Serious Injuries and Incidents

Potentially Serious Incidents: June 1 – September 16, 2018	
PSIs reported online	
PSIs	679
Employers and industries involved	
Employers reporting	
Top 3 industries with PSIs reported	1. Cities
	2. Construction - Industrial
	3. Oil & Gas - Upstream
PSIs and OHS inspections	
Inspections resulting from PSIs	52
Injuries from PSIs	
Workers	522
Non-worker (public)	15
Total	537
PSI exposure and injuries	
Persons on worksite at time of PSIs	30,569
Persons exposed to PSI	1,246
Percentage of persons exposed	4%
Percentage of exposed persons injured	42%

Enforcement and Compliance

Enforcement Tools

- Order to remedy unhealthy or unsafe conditions
 - Must identify contravened provision of legislation
 - State reasons for order
 - Require corrective measures within specified period of time
 - OHS officer may extend the timeframe for compliance
 - Order remains in effect until compliance achieved or the order is withdrawn by the officer or revoked on review or appeal

Stop Work/Stop Use Orders

- Stop work orders
 - Issued when OHS officer determines there is a danger to health and safety
 - Orders can stop work, or any part of the work, clear the work site and require measures to remove the source of danger
 - Stop work order may be issued on multiple work sites of an employer
- Stop use orders
 - Issued when OHS officer determines equipment is not safe to operate or a harmful substance is not safe to use
 - Equipment subject to order may not be sold, rented, leased or transferred
 - OHS officer may order supplier to stop supplying the unsafe substance or material
- Affected workers may be reassigned to other work, but receive the same wages and benefits

Report on Compliance

- The person who received an order is required to:
 - Report to the OHS officer on the measures taken or planned to be taken to remedy the contravention within 7 days of compliance date specified in order
 - Provide a copy of the report to the HSC or health and safety representative, if one exists
 - Post the report at the work site

Acceptances and Approvals

- Acceptances

- Director may issue acceptance for an alternative approach to achieving compliance with OHS requirements if Director is satisfied the alternative provides equal or greater protection
- Acceptance may contain terms and conditions
- Director is required to ensure consultation with HSC or health and safety representative, or workers and other affected parties occurs
- Acceptance has time limit of up to 5 years

- Approvals

- Director may issue an approval for work procedures, standards, equipment and training, and set out terms and conditions for the approval
- The Director will, as appropriate, ensure consultation with HSC, health and safety representative or workers and other affected parties occurs
- Approval has time limit of up to 5 years

Review of Orders

- **Director review**

- A person receiving order from an OHS officer may request a review by a Director of Inspections (with exception of discriminatory action orders).
- Director is not required to hold a hearing.
- Affected parties have opportunity to provide submissions.
- The Director must provide reasons for decision.
- Decision may confirm, vary or revoke the order or decision, or a new order may be issued.
- Director may also refer the matter to the Labour Relations Board (LRB).

Appeal of Orders

- **Labour Relations Board** appeals
 - Appeals of orders or **decisions by Director of Inspection**, discriminatory action orders, cancellation of a licence or administrative penalties heard by the LRB.
 - LRB may reject matter when it determines the matter is without merit.
 - LRB conducts a hearing.
 - LRB may confirm, vary or revoke an order or decision.
 - LRB hearing appeals as of Dec 15, 2017.

Offences and Penalties

- Penalties:
 - First offence: fine of not more than \$500,000/ for continuing offence, a further fine of not more than \$30,000 each day the offence continues.
 - Imprisonment for up to 6 months.
 - Second or subsequent offence or failure to comply with stop work order: fine of not more than \$1 million, and for a continuing offence a further fine of not more than \$60,000/day.
 - Imprisonment up to 12 months.
- Additional powers of court to make directions
 - Expands the range of creative sentencing options that the court can impose and allows the court to provide oversight.

Thank you

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Alberta 
