



Amendments to Alberta's *Occupational Health & Safety Act:*

More Roles, More Obligations, Many More Pitfalls

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Big Changes are coming.

1. Safety may now be by Committee.
2. *Harassment is now a Safety Hazard.*
3. Retribution against workers who complain is broadened.
4. *OHS Officers' powers are increased.*
5. New Kinds of Roles.
- 6. New Obligations on Prime Contractors.**
7. New Triggers for Reporting an Incident.

Definitions—the Remarkable

“**Discriminatory action**”: any action or threat of action* by a person that does or would adversely affect a worker re: any terms or conditions of employment or opportunity for promotion

* *Includes termination, layoff, suspension, demotion, reduced wages or hours, reprimand, coercion, intimidation*

Definitions—the Remarkable

“**Harassment**”: any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action which person knows or ought reasonably to know will or would cause offence or humiliation to a worker, or adversely affects worker’s health and safety, including ...

Definitions (Harassment)

- i. Conduct, comment, bullying, action because of race, religious beliefs, colour, disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression, sexual orientation [**Note: Same as s. 7, AB Human Rights Act. Who ya gonna choose?**]
- ii. a sexual solicitation or advance

but not any reasonable conduct of employer or supervisor re: management of workers or work site

Definitions—the Remarkable

- ▲ “**Health and safety**”: includes physical, psychological and social well-being
- ▲ “**Health and safety program**”: coordinated system of procedures, processes, other measures **[NOTE: is that my Due Diligence defence?]** designed to be implemented by organizations to promote continuous improvement in OHS **[NOTE: so I must show on-going, constant training?]**

Purposes of the *Act*—the Remarkable

2(a) Promotion and maintenance of the highest [NOTE: ?!] degree of physical, psychological and social well-being of workers...

- d) To ensure all workers have:
 - ii. Right to meaningful participation in health/safety activities pertaining to their work... including ability to express health/safety concerns

Obligations of Work Site Parties

- ▲ Sections 3 – 12 outline obligations of owners, employers, workers, contractors, prime contractors, suppliers, **AND supervisors, service providers, self-employed persons and temporary staffing agencies** (*these are new*)
- ▲ All of above have the obligation to comply with *OHS Act, Regulations* and *OHS Code* and cooperate with any person exercising duty imposed by those laws
- ▲ **[NOTE: so more people to look after!]**

Section 3 – Employer Obligations

- ▲ **(1)** Ensure health/safety, as reasonably practicable
 - a) (iii): Of other persons **[NOTE: not “workers”]** at or in the vicinity **[NOTE: is this OHS law?]** of work site who may be affected by worksite hazards
 - c) Employer’s workers not subjected to/participate in **[NOTE: 1x!]** harassment/violence at work site
 - d) Employer’s workers are supervised by person who is (i) competent and (ii) familiar with *Act, Regulations, Code* applicable to the work performed at work site
[NOTE: competence now in Act and is broad]

Employer Obligations

- e) Employer consults and cooperates with Joint Work Site Health & Safety Committee (**JWSHSC**) or Health and Safety Representative (**HSR**) to exchange information and resolve concerns re: health/safety
- f) Health and safety concerns raised by workers, supervisors, self-employed and JWSHSC or HSR are resolved in a timely manner
- ▲ **(2)** Ensure workers adequately trained *before* (a) begin performing work activity, (b) performing new work activity, using new equipment, performing new process, (c) moved to other area or work site

Section 5 – Worker Obligations (new)

Every **worker** shall, while engaged in occupation...

- c) Use all devices and wear all PPE designated and provided for worker's protection
- d) Not cause or participate in harassment or violence
- e) Report to employer or supervisor a concern about an unsafe or harmful work site act or site condition that exists or has existed

Section 6 – Supplier Obligations

- ▲ Supplier: defined as person who rents, leases, erects or installs any tools, appliances or equipment, etc.
- ▲ **Prior to amendment**, obligations limited to:
 - ensuring, as far as reasonably practicable, any tool, etc.,
 - is in safe operating condition and
 - Complies with *OHS Act, Regulations or Code*

Section 6 – Supplier Obligations (new)

(1) Every **supplier** shall

- c) If contract provides for equipment maintenance, ensure equipment is maintained in safe condition, in accordance with manufacturer's specifications (if any) and in compliance with OHS legislation
- d) When supplier becomes aware of non-compliance with a standard prescribed under *OHS Regulations* or *Code*, give notice to all employers, purchasers or lessees of such equipment or harmful substance

Section 7 – Service Provider* Obligations

7(2) Every **service provider** shall

- a) Ensure all services comply with OHS legislation
- b) Ensure services provided to meet a legislated obligation are completed by workers competent to provide such services
- c) Ensure **no person** at or near a work site is endangered as a result of service provider's activity

* **This is an entirely new category**

Section 10 - Prime Contractor Obligations

- ▲ (2) Person in control of the work site shall designate in writing a person as prime contractor of work site
- ▲ (3) Name of PC must be posted in a conspicuous place
- ▲ (4) If no PC designated, person in control of the work site* is deemed to be the PC
- ▲ (5) PC shall b) coordinate, organize and oversee the performance of all work at work site; d) consult and cooperate with JWSHSC or HSR to resolve health/safety issues; e) coordinate the health & safety programs of 2 or more employers, self-employed persons on work site

▲ *** no longer just "owner"**

Joint Work Site Health & Safety Committee, Health & Safety Representative

- ▲ **JWSHSC** required for employers with >20 and work **at a given work site** expected >90 days or at any other work site designated by a Director (s. 16)
- ▲ **HSR** required for employers, PCs or 2+ employers/self-employed with combined total of 5 -19 workers & work expected >90 days **at a given work site** (s. 17)
- ▲ Numbers calculated based on average of full/part time workers over specified time (s. 18)

JWSHSC/HSR Duties (s. 19)

- a) Receipt, consideration and disposition of health and safety concerns and complaints
- b) Participation in identification of worksite hazards to workers/persons
- c) Development/promotion of measures to protect the health and safety of persons at the work site and checking effectiveness of such measures
- d) Cooperation with an officer exercising duties under OHS legislation

JWSHSC/HSR Duties (s. 19)

- e) Development/ promotion of programs for H&S education/ information
- f) Inspection of the work site at regular intervals
- g) Participation in investigations of serious injuries and incidents
- h) Maintenance of records re: concerns and complaints and attendance to other matters relating to duties of the committee

Dangerous Work & Discriminatory Action

31(1) A worker may refuse to work (or refuse particular work) if s/he reasonably believes a dangerous condition* exists at work site or the work is a danger

(3) Employer shall immediately inspect dangerous condition in the presence of the worker, **and** (a) Co-Chair or member of JWSHSC, (b) HSR or (c) if none, another worker selected by worker refusing the work

- **Formerly “imminent danger”;** now, no definition
- **Was “not normal for that occupation or worker”**

Dangerous Work & Discriminatory Action

(8) After inspection, employer shall prepare written report of the refusal to work, inspection and any action taken

- ▲ 32(1) If dangerous condition not remedied after inspection, Refusing worker or any person present during the inspection may file a complaint with an officer (s. 32(1))
- ▲ 32(2) Officer shall investigate and decide if danger/dangerous condition

Report of Dangerous Condition

- ▲ 32(3) Officer shall report in writing, make any order officer considers necessary and give copies to the refusing worker, employer, JWSHSC or HSR, if any, and any other complainant
- ▲ 32(4) If no dangerous condition found, inform the worker s/he is no longer entitled to refuse the work

Discriminatory Action

- ▲ 36(3) If in the opinion of officer* (after investigation/report) discriminatory action occurred, can order:
 - a) Cease the discriminatory action
 - b) Reinstate worker to former employment, same terms/conditions
 - c) Pay worker equivalent of wages/ benefits worker would have earned but for discriminatory action
 - d) Remove any reprimand, etc. from worker's records
 - e) Other measures to prevent recurrence (*Admin. Penalty?*)

* ***Formerly the role of OHS Council***

Discriminatory Action

- ▲ 36(5) If officer determines discriminatory action
 - a) Presumption in favour of worker that discriminatory action was due to worker having acted or participated in an activity described in s. 35*
 - b) Onus is on employer to establish discriminatory action for reason other than acting or participating in an activity described in s. 35*

** Activities in s. 35 include: compliance with OHS laws, testifying or giving relevant information about work site conditions to officer, employer or JWSHSC/HSR, refusing work, JWSHSC or HSR duties*

Serious Injuries and Incidents

- ▲ 40(2) Must report where...
 - b) Injury or incident results in a worker being admitted to a hospital

Means when a physician writes admitting orders to cause a worker to be an inpatient of hospital, but not an emergency room or urgent care centre assessment where worker is not admitted.

Serious Injuries and Incidents

(5) If injury or incident occurs at work site or if any other injury or any other incident that has potential of causing serious injury, Prime Contractor (or Employer) shall *[with participation of JWSHSC or HSR, if any]*

- a) Report time, place, nature of incident to Director of Inspection...
- e) Provide copy of report* to a Director of Inspection, JWSHSC or HSR, if any, or, if none, make it available to workers once investigation is complete

* *Be careful what is in report!*

Safety has always been part of our culture, from the Beginning.

- ▲ ח כִּי תִבְנֶה בַּיִת חָדָשׁ, וְעָשִׂיתָ מַעֲקֶה לְגִגְּתָּהּ; וְלֹא-תָשִׂים דַּמִּים בְּבֵיתְךָ, כִּי-יִפֹּל הַנֶּפֶל מִמֶּנּוּ.
- 8 When thou buildest a new house, then thou shalt make a parapet for thy roof so that you will not bring bloodguilt on your house if anyone falls from it...¹

THANK YOU



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